COMMISSION OF THE EUROPEAN COMMUNITIES

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94/0182 (ACC)

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

on the results of the informal consultations held by the UN Secretary General to seek universal acceptance of the 1982 UN Convention on the Law of the Sea;

Proposal for a

COUNCIL DECISION

94/0182 (ACC)

concerning the signing by the European Community of the Agreement relating to the implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea and the provisional implementation by the Community of that Agreement and of Part XI of the Convention

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(presented by the Commission)

I. INTRODUCTION

The Convention, which has so far been ratified by 61 states, all of them developing countries except Iceland, former Yugoslavia and Malta, will enter into force on 16 November, one year after the sixtieth ratification.

The industrialized nations have not ratified (some, notably Germany, the United Kingdom and the United States, have not even signed the Convention) because they consider that Part XI establishes dirigiste, bureaucratic and extremely costly arrangements for deep seabed mining. The developing countries' view, on the other hand, is that Part XI paves the way to a new world economic order.

The only reasons for the developing countries' recognition of a need to amend the deep seabed mining arrangements in order to make the Convention universally acceptable are the political and economic changes of recent years and the financial burdens which they would otherwise have had to shoulder without the industrialized world.

Mr Pérez de Cuéllar, the UN Secretary-General, accordingly took the initiative in 1990 of calling together a number of the states with an interest in the matter to determine which aspects of Part XI were causing the industrialized nations the most problems and to seek compromise solutions.

Ths second phase of the consultations was open to all the countries with an interest in the matter and to the Community.

This ended on 3 June of this year with the production of a draft Resolution and a draft Agreement on the implementation of Part XI.

The vast majority of the delegations in attendance expressed their satisfaction, with only the Russian Federation differing in its view on the grounds that a number of its proposals had been rejected by the delegations of the Group of 77.

The draft Resolution and Agreement will be referred for adoption to the 48th UN General Assembly, which will be reconvened from 27 to 29 July for the purpose. The Agreement will be open for signing immediately after adoption.

Under the terms of the Convention, signed by the Community on 7 December 1984, the Community cannot sign the agreement without a majority of the Member States first having signed it themselves (see Article 3 of the Agreement, Article 305(1)(f) of the Convention and Article 2 of Annex IX to the Convention).

II. EVALUATION OF THE DRAFT RESOLUTION AND DRAFT AGREEMENT (1)

1. Introduction

1.1. When signing the United Nations Law of the Sea Convention, on December 7, 1984, the European Community made the following statement:

On signing the United Nations Convention on the Law of the Sea, the European Economic Community declares that it considers that the Convention constitutes, within the framework of the Law of the Sea, a major effort in the codification and progressive development of international law in the fields to which its declaration pursuant to Article 2 of Annex IX of the Convention refers. The Community would like to express the hope that this development will become a useful means for promoting co-operation and stable relations between all countries in these fields.

The Community, however, considers that significant provisions of Part XI of the Convention are not conducive to the development of the activities to which that Part refers in view of the fact that several Member States of the Community have already expressed their position that this Part contains considerable deficiencies and flaws which require rectification. The Community recognises the importance of the work which remains to be done and hopes that conditions for the implementation of a sea bed mining regime, which are generally acceptable and which are therefore likely to promote activities in the international sea bed area can be agreed. The Community, within the limits of its competencies, will play a full part in contributing to the task of finding satisfactory solutions.

A separate decision on formal confirmation will have to be taken at a later stage. It will be taken in the light of the results of the efforts made to attain a universally acceptable Convention.

1.2. Other industrialised countries, in particular those interested in the exploitation of the sea-bed, made similar declarations.

1.3. **The Preparatory Commission for the International Sea-Bed Authority and the International Tribunal of the Law of the Sea** has proved to be the adequate framework for the elaboration of rules, regulations and procedures, as long as these were of a technical and "neutral" nature, but not for rectifying the "deficiencies and flaws".

(1) Drawn up by the Commission and approved in New York on 2 June 1994 by the members of the working party on the Law of the Sea in their personal capacities.

1.4. At the end of the eighties, it became apparent that the Convention had been ratified almost exclusively by developing States (with the exception of Iceland and Yugoslavia) and that the industrialised countries in East and West would not ratify it as long as the sea-bed mining regime remained unchanged. A number of important political and economic changes affecting international relations in general that had taken place since the adoption of the Convention led the United Nations Secretary General to make a new effort in order to achieve the universal acceptability of the latter.

1.5. He invited a limited number of developing and industrialised States with a particular interest to "**Informal Consultations**" where eight elements of Part XI were identified as representing the major reasons for which industrialised States have not ratified or acceded to, the Convention:

- Costs to States Parties
- Enterprise
- Decision making procedures of the Authority
- Review Conference
- Transfer of Technology
- Production Limitation
- Compensation Fund
- Financial Terms of Contract

1.6. After nearly four years, the consultations - which since the beginning of 1992 had been open to all interested States and to the European Community - have led to agreements on all the eight identified issues and on the establishment of a subsidiary organ of the Authority to deal with financial matters (Article 162, paragraph 2(y) of the Convention), the "Finance Committee".

1.7. In the last phase of the consultations, the participating delegations were also able to agree on the legal form to be given to the results of the negotiations, i. e. on the drafting of an **Agreement relating to the implementation of Part XI of the Convention.** The solutions to the eight identified problems and the provisions on the establishment of the "Finance Committee" form an annex to the agreement. The first section, dealing with the problem of "Costs to States Parties" contains also provisions concerning "institutional arrangements".

2. THE IMPLEMENTATION AGREEMENT

2.1. The Agreement is a legally binding instrument which modifies the provisions of Part XI of the Convention. It prescribes that the provisions of the Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between the two texts, the provisions of the Agreement shall prevail.

2.2. The Agreement reconciles the Interests of those States among them the European Community and its Member States - which until now have refused to ratify, or to accede to, the Convention because of its sea-bed mining regime, and of those States which have already ratified, but which have accepted, in order to achieve its universal acceptance, to modify certain provisions of Part XI, as long as the principle of the Area and its resources being the common heritage of mankind is reaffirmed and as there is a clear indication that the States which had refused the original mining regime, will accept the modified Convention.

The provision concerning provisional application will avoid, to the extent possible, a situation whereby different Member States might, at least temporarily, apply different versions of the Convention: From the entry into force of the Convention, and until the entry into force of the Agreement, the latter shall be applied provisionally

- by all States which have voted in the United Nations General Assembly for its adoption and which have not expressively notified the depository before the entry into force of the Convention that they will not do so;

- by States which have signed the Agreement and have not notified the depository that they will not apply it provisionally;

- by the States which have acceded to the Agreement.

This does not exclude that States which have voted against the adoption of the Agreement or which have not been represented at the meeting of the General Assembly may apply the un-modified Convention. But there is no doubt that the Agreement will obtain the consent of virtually all States which were represented at the "Informal Consultations" and, in particular, of the developing countries among them, which have already ratified the Convention and which have indicated, by their presence, their interest in the sea-bed mining regime.

2.3. States can express in different forms their consent to be bound by the Agreement (Articles 4 and 5). The *simplified procedure* allows governments of States which have already ratified the Convention to give their consent tacitly if they wish to do so. The other forms are, as usual, signature not subject to ratification, ratification and accession. For the European Community, The procedure of the Convention concerning the *formal confirmation by* "international organisations" (Annex IX, Article 3) applies.

2.4. The Agreement enters into force 30 days after the date, when 40 States have established their consent to be bound, provided such States include at least seven "Pioneer Investor" States (Resolution II, paragraph 1(a)) [2] among, of which at least five must be industrialised States. This gives the developing States the assurance that the modifications of Part XI to which they have agreed, have produced the intended result, that is the acceptance of the Convention by industrialised States.

2.5. For the same reason, the Agreement prescribes (Article 7, paragraph 3) that the provisional application shall terminate on 16 November 1998, that is four years after the entry into force of the Convention, if at that time the conditions mentioned in paragraph 4 have not been fulfilled.

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2) among them: Belgium, Germany, France, Italy, the Netherlands and the UK

2.6. Conclusion

The Agreement and its provisions concerning the provisional application will give the industrialised countries which have not yet ratified the Convention full access to the organs of the Authority and leave them sufficient time, until 15 November 1998, to complete their internal ratification or accession procedures. On the other hand, the developing States which already ratified, will have satisfactory guarantees that the concessions they have made in the course of the consultations, will be compensated by the universal acceptability which the Convention will now enjoy.

3. THE ANNEX TO THE IMPLEMENTATION AGREEMENT

3.1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

3.1.1. COSTS TO STATE PARTIES

3.1.1.1. The Provisions of Part XI of the Convention

The International Sea-Bed Authority and it's Secretariat, as defined by Part XI of the Convention, has been criticised as being bureaucratic, "dirigiste", interventionist and extremely costly. Industrialised countries in general and the Community and its Member States in particular could not accept

- certain provisions of Part XI which impose very high financial obligations upon the States Parties, especially the obligation to make available to the Enterprise, in the form of long-term interest-free loans, 50% of the funds *necessary to explore and exploit one mine site, and to transport, process and market the minerals recovered ... and to meet its initial administrative expenses, and the* obligation to contribute to the *Compensation Fund* for the assistance to affected developing land-based producers (see chapters 3.2 and 3.7 below);

- that a complete Authority with all subsidiary organs and a large Secretariat be established immediately after the entry into force of the Convention, that is at least fifteen years before the first commercial operation might begin and before many of the Authority's competencies will have to be exercised.

3.1.1.2. The Implementation Agreement

The Agreement recognises that after the entry into force of the Convention, the activities of the Authority will be limited as long as sea-bed mining is not economically viable. Therefore, the setting up and the functioning of the various organs and subsidiary bodies shall be based on an evolutionary approach and on cost-effectiveness. The Agreement identifies precisely the activities on which the Authority shall concentrate in the period before the approval of the first plan of work for exploitation.

The Agreement establishes a Finance Committee (Section 9) whose recommendations the Assembly and the Council have to take into account in all decisions on financial matters. Decisions by the Finance Committee on questions of substance shall be taken by consensus (see chapter 3.9 below). Until the Authority is self-financing, the membership of the Committee (of 15 members) shall include the five largest contributors (USA, Japan, Germany, Russia, France) to the administrative budget of the Authority.

In addition, the provisions of Sections 2 and 7 of the Agreement eliminate all financial obligations resulting from the establishment of the Enterprise and a "Compensation Fund" (see chapters 3.2 and 3.7 below).

Finally, the Agreement prescribes that registered pioneer investors may request approval of a plan of work for exploration within 36 months of entry into force of the Convention and that the fee of US$ 250'000 paid pursuant to Resolution II shall be deemed to be the fee relating to the exploration phase. The Agreement also establishes the principle of non-discrimination between arrangements for registered pioneer investors and arrangements for States or entities which have requested from the Authority approval of a plan of work.

3.1.1.3. Evaluation

The costs to States Parties have been considerably reduced for three reasons:

- **During the long period before the exploitation of the Area becomes economically viable, the Authority will have only a limited number of functions. The principle of the evolutionary approach should assure that during this time, the number and duration of meetings of the Assembly and the Council will be extremely reduced, that subsidiary bodies will only be set up if needed and that the Secretariat will be very small, as its tasks are precisely enumerated. The council, acting under the "chamber voting system" (see chapter 3.3 below) and assisted by the "Finance Committee" (chapter 3.9 below) will watch over the stict application of the principle of cost-effectiveness.**

- **Even after this initial period, the functions of the authority will be significantly more limited than they would have been under the original Part XI because the Agreement has "de-bureaucratised" the Authority: Functions which would have caused the establishment of large services in the Secretariat (e.g. the production limitation system and the administration of a "Compensation Fund") are replaced by less bureaucratic provisions.**

- **Finally, the financially most dangerous provisions of the Convention - concerning the funding by the States Parties of the first mine site of the enterprise (see chapter 3.2 below) and of a "Compensation Fund"** (see chapter 3.7) **- are definitively eliminated.**

3.1.2. INSTITUTIONAL ARRANGEMENTS

3.1.2.1. The Implementation Agreement

3.1.2.1.1. Provisional Membership

The Agreement might enter into force before all States, and in particular before all sponsoring States have accomplished their ratification or accession procedures. The Agreement therefore provides for the possibility that such States continue to be members of the Authority on a provisional basis or, for the period between the 15 November 1996 and the 16 November 1998, may request the Council to grant such a continued membership.

An approved plan of work for exploration, if sponsored by at least one State provisionally applying the Agreement, shall terminate if such a State ceases to apply the Agreement (Article 7) and has neither become a member on a provisional basis nor a State Party.

3.1.2.1.2. Rights and obligations of members of the Authority on a provisional basis

Such members shall apply Part XI and the Agreement in accordance with their national or internal law and annual budgetary appropriations and shall have the same rights and obligations as other members, including the obligation to contribute to the administrative budget of the Authority (see paragraph 3.1.2.1.3 below) and the right to sponsor an application for a plan of work for exploration.

If such a member has failed to comply with its obligations, its membership on a provisional basis shall be terminated.

3.1.2.1.3. Provisional funding of the Authority through the UN budget

Until the end of the year following the year during which the agreement enters into force, the administrative expenses of the Authority shall be met through the UN budget, subject to a decision of the General Assembly (Paragraph 7 of the draft UNGA resolution contains such a decision).

3.1.2.1.4. Rules, regulations and procedures

The provisions of Article 162, paragraph 2 (o)(ii) of the Convention, indicating the matters for which the Authority shall adopt rules, regulations and procedures, is extended to the provisions of the Agreement relating to the Enterprise, transfer of technology, production policy and financial terms of contract. If the Council has not completed the rules, regulations and procedures relating to exploitation within the prescribed time, it shall consider and in case approve provisionally a plan of work for exploitation.

3.1.2.2. Evaluation

The provisional financing of the administrative expenses of the Authority through the UN budget resolves problems of such States which for constitutional reasons can not contribute to the budget of an international organisation without having acceded to it.

The provisions on the adoption of rules, regulations and procedures take into account that detailed provisions related to many aspects of sea-bed mining can not be adopted before the economic, technological and environmental conditions of sea-bed mining are better known, that is at a time when commercial operations might take place in a near future.

The system of "membership on a provisional basis" gives States with complicated or long ratification procedures the assurance that they can continue to be a member of the Authority on a provisional basis after the entry into force of the Agreement until 15 November 1998.

3.2. THE ENTERPRISE

3.2.1. The Provisions of Part XI of the Convention and of Annex IV

The Establishment of the Enterprise has been considered, at the time of the adoption of the Convention, by many developing States to be the first emanation of the "New International Economic Order". For the same reasons, the "parallel system" has been criticised in Western industrialised States as incompatible with their economic system, because it created an international "State company",exposed through the Authority to political interference, was to be financed by extremely high contributions from the States Parties, and enjoyed many privileges in relation to its competing contractors, e.g. prospecting of the reserved Area at the expense of its competitors, cost-free financing of the first mining operation, exemption for an initial period of ten years from payments to the Authority, immunity from seizure, attachment or execution before a final judgement against it, right to obligatory transfer of technology from its competitors. It was also pointed out that the Enterprise whose economic activity was limited to a single sector, i.e; sea-bed mining, would be extremely vulnerable to the volatility of the world commodity markets.

3.2.2. The Implementation Agreement

As sea-bed mining will not become viable for at least fifteen years, the activities of the Enterprise will mainly consist in monitoring trends and developments and assessing data. Therefore, at the beginning, its functions will be performed by the Secretariat of the Authority.

The Enterprise shall conduct its initial operations through joint ventures. Only upon the approval of a plan of work for exploitation for another contractor, or in the case of an application for a joint venture with the Enterprise shall the Council consider its functioning independently of the Secretariat. If a joint venture accords with sound commercial principles, the Council shall decide such independent functioning.

States Parties will be under no obligation to finance any of the operations of the Enterprise, including those under its joint venture arrangements.

All obligations applicable to contractors shall also be applicable to the Enterprise.

A contractor which has contributed a particular area to the Authority as the *reserved Area* shall have the right of first refusal to enter into a joint venture with the Enterprise or, if the Enterepriseprise does not submit an application for a plan of work within 15 years of the commencement of itrs independent functioning, the contractor may apply for a plan of work for that area with the Enterprise as a joint venture partner.

3.2.3. Evaluation

It has been argued, also within the European Union, that the Enterprise as such is not compatible with the principle of the market economy. On the other hand, it is still for many developing countries the symbol of the principle of the *common heritage of mankind*.

The Agreement has maintained the Enterprise but has eliminated those of its elements which are not compatible with a world market economy: Even when it will be allowed to function independently of the Secretariat, the Enterprise will not be more than a kind of semi-autonomous body for the administration of the Authority's own mineral resources.

Formally, the Agreement prescribes only that the Enterprise shall conduct its initial mining operations through joint ventures. But even in the long run, it will not be in a position to finance an independent operation because the States Parties are not obliged to fund a mine site of the Enterprise and the developing countries, in particular land-based producers, will not want it to accumulate for such a purpose all the profits resulting from joint ventures instead of transferring them to the Economic Assistance Fund or using them for other development aims.

The Agreement assures non-discrimination between the Enterprise and other operators.

As the Enterprise will not function independently from the Secretariat before sea-bed mining becomes viable, the principle of cost-effectiveness is respected.

For these reasons, the provisions of the Agreement concerning the Enterprise are acceptable.

3.3. DECISION MAKING

3.3.1. The Provisions of Part XI of the Convention

As in the case of the United Nations, the membership of the Sea-Bed Authority will include a large number of very small developing countries, whose individual financial contributions are limited to 0,01% of the budget. In conformity with the principles of sovereignty and equality of States, all States Parties are represented in the Assembly which takes its decisions on questions of substance by a two-thirds majority.

The Convention does not sufficiently counter-balance these principles by the recognition that decisions of the Authority will affect very important financial and economic interests of certain categories of States and that these legitimate interests can not unconditionally be subject to majority decisions.

The existence of specific interests is recognised in the provisions concerning the Council, which assure a minimum representation of the groups of consumers, investors, land-based producers and developing countries with special interests. However, as the 36-member Council takes its decisions on questions of substance by a two-thirds or, in some cases, a three-quarter's majority, any of the groups can be easily overruled (This does not only concern the interests of industrialised countries: those of developing land-based producers might also be put in jeopardy).

As far as the interests of the Member States of the European Union are concerned, this could happen in the case of decisions on financial matters, on the regulation and administration of sea-bed mining, on the Enterprise and, possibly, on certain aspects of commodity policies.

3.3.2. The Implementation Agreement

- As a general rule, decision-making in the organs of the Authority should be by consensus. If all efforts to reach a decision by consensus have exhausted, decisions by voting shall be taken under the following conditions:

- The provisions concerning the voting in the **Assembly** remain unchanged. However, decisions on any matter for which the Council has also competence or on any administrative, budgetary or financial matter, shall be based on the recommendation of the Council. If the Assembly does not accept the recommendation, it shall return the matter to the Council which has to reconsider it in the light of the views expressed by the Assembly.

- In the **Council**, four chambers are established:

  1. four members representing the largest consumer States, including the largest consumer of the Eastern European region (Russia) and the State having the largest economy on the date of entry into force of the Convention (USA);

  2. four members representing the eight largest investors;

  3. four members representing the land-based producers, including at least two developing States;

  4. the developing States elected as the six developing States with special interests and those elected according to the principle of equitable geographical distribution.

- The **Council** takes decisions on questions of substance (ifconsensus could not be reached) by a two-thirds majority, provided that they are not opposed by a majority in any of the Chambers.

- Decisions by the **Assembly** or the **Council** having financial orbudgetary implications shall be based on the recommendations of the **Finance Committee.**

3.3.3. **Evaluation**

The Chamber voting system excludes the possibility that a single State might paralyse by a veto the decision-making of the Council but it protects the main interest groups by giving them a collective veto power.

The fourth category of Council members (developing countries with special interests), being defined on the basis of criteria not related to sea-bed mining, could not be recognised as a Chamber. It was therefore agreed to form a larger Chamber of all developing States represented in the Council (except the developing countries represented in the first three Chambers). This provision will have no practical effect because a two-thirds majority decision against the developing States is virtually impossible.

The fact that the decisions of the Assembly on all important matters shall be based on the recommendations of the Council makes the latter the central organ of the Authority and assures that interests of minorities are also protected in the Assembly.

The obligation to base decisions by the Assembly or the Council having financially or budgetary implications on the recommendations of the Finance Committee, gives additional protection to the interests of the Member States which will be among the main contributors to the budget of the Authority.

The interest of Member States of the Community to have access to the first two Chambers is taken into account: The United States are not defined as a member of the "Western European States and Others Group" (WEOG), so that a candidature from a Member State can not be opposed with the argument that the WEOG is already represented. As the USA can also choose to belong to a Chamber other than the first, there will be more flexibility for the representation of Member States in the first Chamber. Furthermore, the principle of rotation shall apply.

3.4. REVIEW CONFERENCE

3.4.1. Part XI of the Convention

The Convention provides for a conference which, fifteen years after the earliest commercial operation, shall review the whole system of exploration and exploitation of the Area. It shall make every effort to reach agreement by consensus but, in the end, can adopt, by a three-fourths majority of the States Parties, amendments to the system. Amendments shall enter into force *for all States Parties* after ratification or accession by three fourths of the States Parties.

The Review Conference has been criticised by industrialised States for the same reasons as the decision making procedures: It allows the majority to disregard the interests of minority groups .

The industrialised States have also stressed the constitutional problems caused by the fact that an amendment could become applicable law in their countries, after the ratification by three fourths of the States Parties, even if their own parliaments or governments have not approved it.

3.4.2. The Implementation Agreement

The provisions relating to the Review Conference shall not apply. In place of the Conference, the Council may at any time recommend to the Assembly to undertake a review of the sea-bed mining regime. The resulting amendments will be subject to the normal treaty amendment procedures of the Convention (Articles 314 - 316).

The Agreement does not modify Article 316, paragraph 5 which provides for the entry into force of such amendment *for all States Parties one year following the deposit of instruments of ratification or accession by three fourths of the States Parties.*

3.4.3. Evaluation

The new procedure offers more protection for minority interests. The recommendation of the Council to the Assembly is more than just an invitation to undertake a review of the sea-bed mining system; the Council can specify precisely what kind of amendments it deems necessary. If the Assembly does not agree, it has to refer the matter back to the Council.

By the consensus principle and, as the last resource, by the chamber voting system in the Council, the interests of the industrialised countries will be protected throughout the procedure.

The entry into force for all States Parties after the ratification of the amendment by three quarters of the States Parties results from the fact that Part XI of the Convention not only establishes rights and obligations between the States Parties (as in other Parts of the Convention), but creates a comprehensive regulatory and administrative system for the exploitation of the Area. Such a system can not function if it is not applied in a uniform way (not withstanding the provision of Article 155, paragraph 5, that amendments *shall not affect rights acquired under existing contracts*).

3.5. TRANSFER OF TECHNOLOGY

3.5.1. Part XI and Annex III of the Convention

According to Annex III, Article 5, in every contract for exploration or exploitation, the contractor shall undertake to make available to the Enterprise (or to developing States which have applied for a contract), on fair and reasonable commercial terms, the technology which it intends to use in the Area and which it is legally entitled to transfer. The contractor shall also undertake to obtain a written assurance from the owner of technology which it intends to use in the Area, that the owner is ready to make that technology available to the Enterprise or developing States. If this assurance is not obtained, the technology in question shall not be used by the contractor.

Such obligations are considered in industrialised countries as an infringement of intellectual property rights and as incompatible with the principles of a market economy.

3.5.2. The Implementation agreement

As the Enterprise will conduct its operations through joint ventures, the provisions of Annex III, Article 5 have become obsolete. The Agreement therefore stipulates that they shall not apply. Article 144 of the Convention - which also deals with the transfer of Technology but which does not impose particular obligations upon the contractors - remains in force.

3.5.3. Evaluation

The Implementation Agreement abolishes the principle of obligatory transfer of technology. If the provisions of Article 144 should ever be applied - which is unlikely as the activities of the Enterprise will always be limited to joint ventures - the chamber-voting system in the Council will protect the interests of the industrialised States.

The provisions of the Agreement are therefore acceptable.

3.6. PRODUCTION POLICY

3.6.1. The Provisions of Part XI to the Convention

Article 151, paragraph 4 provides for a *production ceiling* for any year of a 25 year long *interim period*. The ceiling limits sea-bed production to 60% of the growth rate of world nickel production, calculated on a trend line based on the most recent 15 year period.

Calculations based on such a period can not take into account new factors and, as the development since the adoption of the Convention in 1982 has already shown, produce results that do not reflect the realities of the market. The production limitation system was supposed to protect the developing land-based producers of the four minerals contained in the manganese nodules. However, it discriminates against sea-bed production, protecting all land-based producers, in industrialised as well as in developing States. In fact, production in industrialised countries would profit more from the system than developing countries: Of the four metals, only cobalt is produced mainly (74%) in developing States, whereas the figures for the other three are 45% (copper), 28% (manganese) and 27% (nickel) respectively.

On the other hand, the system does not protect the developing cobalt producers, which are most likely to be hurt by sea-bed mining, as a single maritime mining operation will produce more then 20% of the present world consumption.

3.6.2. The Implementation Agreement

The implementation agreement replaces the *production limitation* system of Part XI by rules for a **production policy based on the present and future provisions of the relevant codes of GATT/WTO**. In particular, it refers to the **GATT definition of permitted and non-permitted subsidies.** It imposes upon land-based and sea-bed producers the obligation not to discriminate between minerals derived from the Area and from other sources and not to give preferential access for such minerals.

States Parties, which are **parties to the GATT/WTO shall have recourse to the dispute settlement procedures of these agreements.** However, where one or more parties to a dispute are not parties to the GATT/WTO, the dispute settlement procedures set out in the Convention shall apply. This provision is not entirely satisfactory, as it allows non-GATT institutions to interpret GATT rules, but it is unavoidable, because the dispute settlement procedures of the GATT/WTO can only be applied among parties to these agreements.

If a determination is made under the GATT/WTO that a State Party has engaged in subsidisation which is prohibited or has resulted in adverse effects to the interests of an other State Party, the latter, if it is a party to the GATT/WTO agreements, shall have the choice to take appropriate steps under the GATT provisions or to request the Council of the Sea-Bed Authority to take appropriate measures.
Under the new production policy system; **it will not only be prohibited for States Parties to give non-permitted subsidies, but also for contractors to accept them.** The acceptance of such subsidies shall constitute a violation of the fundamental terms of the contract. A State Party may request the Council to take measures against such a contractor. The sponsoring State and the contractor have recourse to the dispute settlement procedures of the Sea-Bed Dispute Chamber of the International Tribunal for the Law of the Sea.

3.6.3. Evaluation

The reference to the GATT provisions assures fair competition between land-based and sea-bed producers as well as among the sea-bed producers. The fact that the dispute settlement procedures of the GATT/WTO can only be applied if all parties to a dispute are parties to these agreements is a consequence of the GATT procedures. It is regrettable but unavoidable that in a limited number of cases, GATT provisions might have to be interpreted by the Council of the Authority and by the Sea-Bed Dispute Chamber of the International Tribunal for the Law of the Sea. But as sea-bed mining will not become economically viable before at least fifteen years, it is quite likely that all potential sea-bed producer States will have acceded to the WTO before the start of the first commercial operation.

3.7. ECONOMIC ASSISTANCE

3.7.1. The Provisions of Part XI of the Convention

Articles 151, paragraph 10 and 171 (f) provide for a *Compensation Fund* to assist developing countries that suffer serious adverse effects resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, if such reduction is caused by sea-bed mining. The European Community and its Member States have always maintained, in the discussions on the Law of the Sea Convention as well as in other fora, that compensation funds are not an incentive for the adaptation to new economic circumstances but favour the maintenance of non-competitive production and; therefore, would necessarily not be of a temporary nature.

To administer a compensation fund, the Authority, even assisted by a large and expensive bureaucracy, would not have the necessary expertise to help an adversely affected land-based producer with the development of alternative economic activities outside the mining sector.

3.7.2. The Implementation Agreement

The Agreement replaces the *Compensation Fund* by an **Economic Assistance Fund** from which the Authority shall provide assistance to affected developing land-based producer States **in co-operation with existing global or regional development institutions** that have the necessary expertise.

The Fund shall be established from a portion of **funds from the Authority which exceed those necessary to cover the administrative expenses**. Only payments from contractors, including the Enterprise, and voluntary contributions shall be used.

3.7.3. Evaluation

The provisions of the Implementation Agreement reflect fully the positions taken by the Community and its Member States.

3.8. FINANCIAL TERMS OF CONTRACT

3.8.1. Part XI and Annex III of the Convention

The financial burdens imposed on the contractor are a strong disincentive for sea-bed mining. The payments to be made to the Authority are higher than those imposed on land-based producers. This discourages the industry to develop the necessary marine mining technology and to engage in sea-bed mining as long as land-based resources, even of a low degree of productivity, are available.

The imposition of a considerable *production charge* i. e. payments to be made to the Authority whether the mining operation has reached the stage of profitability or not, does not take into account the high costs caused by the development and the initial operation phase of the mining equipment.

3.8.2. The Implementation Agreement

The provisions of Annex III Article 13, paragraph 3 to 10, of the Convention shall not be applied. The Agreement does not replace them by another regime but prescribes a list of principles which will form the basis for the rules, regulations and procedures to be adopted by the Authority at a later stage (see paragraph 3.1.2.1.4 above).The system of financial payments shall be

- fair both to the contractor and the Authority;
- within the range of payments prevailing in respect of land-based mining;
- transparent and not impose major administrative costs on the Authority or contractor.

3.8.3. Evaluation

The principles for the rules regulations and procedures, to be adopted by the Authority, correspond to the demands made by the industrialised States. Taking into account the chamber-voting system to be applied in the Council, the provisions of the Agreement are acceptable.

3.9. THE FINANCE COMMITTEE

3.9.1. Part XI of the Convention

Article 162, paragraph 2 (y) obliges the Council, to establish a *subsidiary organ for the elaboration of draft financial rules, regulations and procedures* relating to financial matters.

3.9.2. The Implementation Agreement

The Agreement establishes a "Finance Committee" which shall not only elaborate draft rules, regulations and procedures, but also make recommendations for all activities of the Authority having administrative and budgetary implications.

3.9.3. Evaluation

The Finance Committee as established by the Agreement will assure - in combination with the chamber-voting system in the Council - the respect of the principle of cost-effectiveness by the Authority.

4. CONCLUSION

4.1. The "flaws and deficiencies" of the sea-bed mining regime which the Community had criticised on 7 December 1984 when signing the Convention, have been eliminated. They are either replaced by completely satisfactory provisions of the Implementation Agreement or will be replaced at a later stage by the Authority through rules, regulations and procedures, based on criteria laid down in the agreement and to be adopted under the chamber voting system.

4.2. The Community and its Member States have since long accepted the principle of "Common Heritage of Mankind". It was only the translation of this principle into a bureaucratic and interventionist system that they could not accept. Some of the old language will remain in Part XI and related Annexes but without any undesirable consequences of a political, economic or operational nature.

4.3. The Agreement has made the Convention "universally acceptable". It reflects to a large extent the positions expressed many times by the Community and its Member States.

4.4. The Agreement shall be adopted, as an annex to a resolution, by the members of the United Nations General Assembly. The European Community, not being a member of the General Assembly, will not be able to participate in the adoption and to express by its vote the position that the Agreement is in conformity with the results of the "informal consultations" in which the Community has actively participated.

4.5. However, the possibility of signing the Agreement immediately after its adoption offers the occasion for such an endorsement. According to Annex IX, Article 2 to the Convention, the Community may only sign the Agreement if a majority of its Member States are signatories of it. For the Community to be able to sign the Agreement immediately after its adoption, it would therefore be necessary that at least a majority of the Member States do so simultaneously.

4.6. As the "flaws and deficiencies" of Part XI have now been removed, it is in the interests of the Community and its Member States to strengthen the universal applicability of the Convention by ratifying, or acceding to, it rapidly. It would have a significant political effect, if <u>all</u> Member States and the Community would emphasize this common intention by jointly and simultaneously signing the agreement at that date.

III. ACTION PROPOSED

1. Like the other parts of the Convention, Part XI deals with matters which fall partly within the sphere of competence of the Member States and partly under that of the European Community. For the reasons already explained, the Commission considers that the Agreement should be signed by the Community and its Member States immediately after adoption at the 27 to 29 July session of the UN General Assembly. The Community and the Member States (to the degree that their constitutions permit) should then begin implementing the Agreement provisionally on 16 November of this year, when the Convention enters into force.

2. When it signed the Convention on 7 December 1984, the Community made a declaration in accordance with Article 2 of Annex IX (participation of international organizations) "specifying the matters governed by (the) Convention in respect of which competence (had) been transferred to (it) by its States members". It pointed out its responsibility for commercial policy, including issues of unfair trade, in connection with the content of Part XI.

3. The legal basis for the signing of the Agreement is Article 113 of the EC Treaty. Because the matter of provisional implementation relates only to Part XI of the Convention, Article 113 also provides the legal basis for that measure.

4. Since several Member States have indicated that they intend to ratify the Convention and the Agreement rapidly, the Commission will provide as soon as possible (in draft form) formal confirmation and a declaration on competences, in accordance with Article 5 of Annex IX to the Convention. This will give Parliament enough time to draw up its opinion and enable the Community to give formal confirmation once the majority of the Member States have ratified or acceded to the Convention and the Agreement.

5. The Commission accordingly requests the Council to adopt the attached Decision.

Annex

94/0182 (ACC)

Proposal for a Council Decision of .....

concerning the signing by the European Community of the Agreement relating to the implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea and the provisional implementation by the Community of that Agreement and of Part XI of the Convention

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the Agreement stemming from the informal consultations held by the United Nations Secretary-General has made the Convention on the Law of the Sea universally acceptable;

Whereas the Member States have made clear their intention to sign and, to the degree that their constitutions allow, provisionally implement that Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Agreement relating to the implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea shall be signed by the Community and its Member States together immediately after its adoption by the United Nations General Assembly.

2. The President of the Council is hereby authorized to designate the person empowered to sign the Agreement.

3. The text of the Agreement is attached.

Article 2

The Agreement referred to in Article 1 and Part XI of the 1982 United Nations Convention on the Law of the Sea shall be implemented provisionally from 16 November 1994.

Done at.....

For the Council,

UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/48/950
9 June 1994

ORIGINAL: ENGLISH

Forty-eighth session
Agenda item 36

LAW OF THE SEA

Consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea

Report of the Secretary-General

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94-24482 (E) 150694 15/06/94

REPORT OF THE SECRETARY-GENERAL

1. In July 1990 the Secretary-General, Mr. Javier Pérez de Cuéllar, took the initiative to convene informal consultations aimed at achieving universal participation in the United Nations Convention on the Law of the Sea. The Secretary-General stressed the importance of securing general acceptance of the United Nations Convention on the Law of the Sea, an instrument which represented many years of negotiations and which had already made a significant contribution to the international legal maritime order. He pointed out that though he would continue to encourage all States which had not done so to ratify or accede to the Convention, it had to be acknowledged that there were problems with some aspects of the deep seabed mining provisions of the Convention which had prevented some States from ratifying or acceding to the Convention.

2. He noted that in the eight years that had elapsed since the Convention was adopted certain significant political and economic changes had occurred which had had a marked effect on the regime for deep seabed mining contained in the Convention. Prospects for commercial mining of deep seabed minerals had receded into the next century, which was not what was envisaged during the negotiations at the Third United Nations Conference on the Law of the Sea. The general economic climate had been transformed as a result of the changing perception with respect to the roles of the public and private sectors. There was a discernible shift towards a more market-oriented economy. In addition, the Secretary-General made mention of the emergence of a new spirit of international cooperation in resolving outstanding problems of regional and global concern. These factors were to be taken into account in considering the problems with respect to deep seabed mining. 1/

3. Thus began a series of informal consultations under the aegis of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea.

4. These informal consultations took place in the years 1990 to 1994, during which 15 meetings were convened. 2/ They can be conveniently divided into two phases. The first phase was devoted to the identification of issues of concern to some States, the approach to be taken in examining them and the search for solutions. During the second phase more precision was given to the results reached so far; additional points were raised for consideration and participants directed their attention to an examination of consolidated texts embodying these solutions and on the procedure whereby they might be adopted.

The first phase

5. During the initial part of this phase the consultations identified nine issues as representing areas of difficulty: costs to States parties; the Enterprise; decision-making; the Review Conference; transfer of technology; production limitation; compensation fund; financial terms of contract; and environmental considerations. After examining the various approaches that might be taken in the examination of these issues, there was general agreement on an approach which enabled participants to examine all the outstanding issues with a

view to resolving them and to decide how to deal with those that might remain unresolved.

6. Participants then began to review all of these issues seriatim. This review was based on information notes compiled by the Secretariat containing background information, questions that needed to be addressed and possible approaches for the resolution of these issues.

7. In the course of six informal consultations held during the years 1990 and 1991, participants completed the consideration of all the outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea. It can fairly be said that a certain measure of general agreement was emerging on these issues.

8. The results of the Secretary-General's informal consultations held in 1990 and 1991 were set out in the summary of informal consultations conducted by the Secretary-General on the law of the sea during 1990 and 1991, dated 31 January 1992, and in an information note dated 26 May 1992. These results fell under two categories. First, general agreement seemed to have been reached on relatively detailed solutions on: costs to States parties, the Enterprise, decision-making, Review Conference and transfer of technology. Secondly, with respect to production limitation, the compensation fund and financial terms of contract it was generally agreed that it was neither necessary nor prudent to formulate a new set of detailed rules for these items. Accordingly, for those items the information note set out general principles to be applied when commercial production of deep seabed minerals was imminent.

The second phase

9. In 1992 I continued the informal consultations initiated by my predecessor. During this phase the consultations were open to all delegations. Some 75 to 90 delegations attended these meetings. In the first three rounds of this phase, consideration was given to the nine issues in order to give more precision to the results reached so far in the consultations. Additional points were submitted for consideration on the following issues: costs to States parties; the Enterprise; decision-making; Review Conference; and transfer of technology. During these consultations it was decided to remove the issue of environmental considerations from the list of issues, since it was no longer considered to be a controversial issue in the context of deep seabed mining.

10. At the informal consultations held on 28 and 29 January 1993, it was generally felt among participants that the stage had been reached when a text based on a more operational approach should be prepared in a form which could be the basis of an agreement.

11. In accordance with this request, an information note dated 8 April 1993 was prepared. This information note contained two parts:

(a) Part A dealt with various procedural approaches with respect to the use to be made of the results of the consultations. The four approaches could be summarized as follows:

(i) A contractual instrument such as a protocol amending the Convention;

(ii) An interpretative agreement consisting of understandings on the interpretation and application of the Convention;

(iii) An interpretative agreement on the establishment of an initial Authority and an initial Enterprise during an interim regime accompanied by a procedural arrangement for the convening of a conference to establish the definitive regime for the commercial production of deep seabed minerals when such production became feasible;

(iv) An agreement additional to the Convention providing for the transition between the initial phase and the definitive regime, in particular, the Authority would be mandated to develop solutions for issues still outstanding on the entry into force of the Convention;

(b) Part B set out an operationally directed formulation of the results reached so far in the consultations. It was divided into two sections:

(i) Arrangements following the entry into force of the Convention;

(ii) Draft texts concerning the definitive deep seabed mining regime.

12. The procedural approaches were reviewed during consultations held on 27 and 28 April 1993. Certain basic elements emerged from the review of these approaches. It was generally agreed that, whatever approach might be adopted, it must be of a legally binding nature. It was also pointed out that a duality of regimes must be avoided. Finally, as the position of States which have ratified or acceded to the Convention must be respected, it was considered useful to examine the role that the notion of implied or tacit consent might play in protecting their positions.

13. For the next round of consultations, held from 2 to 6 August 1993, an information note dated 4 June 1993 was circulated which updated parts A and B (i) of the information note of 8 April 1993 to reflect the observations made during the previous round of consultations. During the course of this round of consultations a paper dated 3 August 1993 prepared by representatives of several developed and developing States was circulated among delegations as a contribution to the process of the consultations. It was understood that the paper, which was commonly known as the "boat paper", did not necessarily reflect the position of any of the delegations involved, but that it was considered to provide a useful basis for negotiation.

14. Thereafter, while addressing the substantive issues contained in the information note dated 4 June 1993, delegations also made cross-references to the relevant portions of the "boat paper". That paper was divided into three parts: (i) a draft resolution for adoption by the General Assembly; (ii) a draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea; and (iii) two annexes. Annex I contained the agreed conclusions of the Secretary-General's consultations and annex II was entitled "Consequential adjustments".

15. At the last round of consultations held in 1993 (8-12 November), participants had before them three documents: the information note dated 4 June 1993; a new version of the "boat paper" consolidating the two annexes to the original paper into one; and a paper entitled "Agreement on the Implementation of Part XI and Annexes III and IV of the United Nations Convention on the Law of the Sea", submitted by the delegation of Sierra Leone. At this November meeting participants completed the review of all the items contained in the information note dated 4 June 1993. After having completed consideration of those issues, delegations embarked upon a renewed examination of the issue of "Costs to States parties and institutional arrangements", but this time based essentially on the "boat paper".

16. On 16 November 1993, the Convention on the Law of the Sea received its sixtieth instrument of ratification or accession, which means that, in accordance with its terms (article 308), it will enter into force on 16 November 1994. The General Assembly itself invited all States to participate in the consultations and to increase efforts to achieve universal participation in the Convention as early as possible. 3/ The imminent entry into force of the Convention introduced a sense of urgency to the informal consultations.

17. During the first round held in 1994 (31 January-4 February), the consultations examined a revised version of the "boat paper", dated November 1993. This revision took into account the discussions which had taken place during the Secretary-General's informal consultations held in November 1993. The work of the current round of consultations focused on some crucial issues:

(a) Decision-making, in particular the question of the relationship between the Authority and the Council, and the question as to which group of States in the Council should be considered chambers for the purposes of decision-making in the Council;

(b) Whether the administrative expenses of the Authority should be met by assessed contributions of its members, including the provisional members of the Authority, or through the budget of the United Nations;

(c) The issue of provisional application of the Agreement and of provisional membership in the Authority.

During this round of consultations progress was made on the latter two issues. A revised version of the document submitted by the delegation of Sierra Leone was submitted to this round of consultations.

18. The second round of the Secretary-General's informal consultations in 1994 was held from 4 to 8 April. The meeting had before it a further updated version of the "boat paper" entitled "Draft resolution and draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea", dated 14 February 1994.

19. Participants undertook an article-by-article review of the draft Agreement. Attention was then focused on the two most important issues facing the consultations: decision-making in the Council, and the Enterprise. These

issues, which lay at the heart of the consultations, proved most difficult to resolve. From the outset of the consultations it was evident that these issues could only be resolved in the final stages of this process, when a clearer picture of the results of the consultations had emerged. With respect to decision-making the debate was directed at the system of chambered voting, in particular whether the categories or groups of States, mainly developing States, should be treated as chambers for the purposes of decision-making in the Council. The discussion on the Enterprise centred on the type of mechanism which would trigger the commencement of its operations as well as its functions.

20. Revisions were made to the draft Agreement in the light of the debates on the various issues. This in fact was a unique feature of this round of consultations, reflecting the urgency of the situation. The revisions related to provisional application of the Agreement; provisional membership in the Authority; the treatment of the registered pioneer investors; and production policy.

21. Based on these revisions, the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea were revised in their entirety and a revised text was issued on 8 April 1994, the last day of the meeting.

22. During this round of consultations, according to many delegations, significant progress was achieved. It appeared that solutions were found to several important issues, including decision-making, the Enterprise and the treatment of the registered pioneer investors. However, not all the issues were resolved in this round of consultations.

23. The last meeting of the Secretary-General's consultations was held from 31 May to 3 June 1994. The primary purpose of this final round of consultations was the harmonization of the text in the various language versions of the draft resolution and draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea. The meeting had before it the draft resolution and draft Agreement dated 15 April 1994 which was revised on the basis of discussions in the previous round of consultations and a corrigendum to the document dated 23 May 1994. Two documents (SG/LOS/CRP.1 and SG/LOS/CRP.2), containing suggested amendments of a drafting nature prepared by the Secretariat, were also submitted to the meeting in order to facilitate the process of harmonizing the language versions of the text.

24. The first part of the meeting addressed the substantive issues that were still pending, and solutions were found for some of those issues. Delegations, however, continued their search for solutions on matters relating, inter alia, to the treatment of the registered pioneer investors and the issue of representation in the Council. The second part of the meeting was devoted to the task of harmonizing the language versions of the draft resolution and draft Agreement. The final part dealt with the decisions to be taken with regard to the convening of a resumed forty-eighth session of the General Assembly to adopt the draft resolution and draft Agreement.

25. At the close of the meeting, delegations were presented with a revised text (SG/LOS/CRP.1/Rev.1), dated 3 June 1994. That document elicited a few drafting

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comments which are reflected in the text of the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, contained in annex I to the present report. A proposed solution to the question of the issue of representation in the Council is to be found in the informal understanding contained in annex II.

26. At the conclusion of the informal consultations the delegation of the Russian Federation made a statement reserving its position in view of the fact that a number of proposals it had made had not been reflected in the draft Agreement. In reply, it was pointed out that all proposals made by delegations or groups had been thoroughly examined without exception but that it had not been possible to accept every one of them.

27. The consultations then indicated that Member States wished to convene a resumed forty-eighth session of the General Assembly of the United Nations from 27 to 29 July 1994, for adoption of the resolution. They further wished that, after the adoption of the resolution, the Agreement would be immediately opened for signature.

28. I wish to recall that the objective of the consultations was to achieve wider participation in the Convention from the major industrialized States in order to reach the goal of universality. Accordingly, it is with satisfaction that I report to the General Assembly that these consultations, initiated by my predecessor and continued by me, have led to a result which in my view could form the basis of a general agreement on the issues that were the subject of the consultations. In the light of the outcome, I consider that I have fulfilled my mandate.

Notes

1/ See A/45/721 and A/46/724.

2/ Informal consultations were held on the following dates: 19 July 1990; 30 October 1990; 25 March 1991; 23 July 1991; 14 and 15 October 1991; 10 and 11 December 1991; 16 and 17 June 1992; 6 and 7 August 1992; 28 and 29 January 1993; 27 and 28 April 1993; 2-6 August 1993; 8-12 November 1993; 31 January-4 February 1994; 4-8 April 1994; and 31 May-3 June 1994.

3/ General Assembly resolution 48/28.

ANNEX I

Draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

I. INTRODUCTION

This is a revised version of document SG/LOS/CRP.1/Rev.1 of 3 June 1994. It incorporates the changes made during the last meeting of the final session of the informal consultations, held on 3 June 1994. In addition to a few purely editorial corrections, the changes are:

(a) Page 8, article 10

At the end of the article, add the following

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

DONE AT NEW YORK, this ... day of July, one thousand nine hundred and ninety-four.

(b) Page 20, section 6, paragraph 1 (d), line 2

Delete those derived

(c) Page 20, section 6, paragraph 1 (d) (ii), line 1

Delete to markets

(d) Page 22, section 8, paragraph 1 (e), line 1

Delete financial

(e) Page 23, section 8, paragraph 3, last line

Delete for each phase.

II. DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The General Assembly,

Prompted by the desire to achieve universal participation in the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Convention") 1/ and to promote appropriate representation in the institutions established by it,

Reaffirming that the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the "Area"), as well as the resources of the Area, are the common heritage of mankind, 2/

Recalling that the Convention in its Part XI and related provisions (hereinafter referred to as "Part XI") established a regime for the Area and its resources,

Taking note of the consolidated provisional final report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, 3/

Recalling its resolution 48/28 of 9 December 1993 on the law of the sea,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, have necessitated the re-evaluation of some aspects of the regime for the Area and its resources,

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

Welcoming the report of the Secretary-General on the outcome of his informal consultations, including the draft of an agreement relating to the implementation of Part XI,

Considering that the objective of universal participation in the Convention may best be achieved by the adoption of an agreement relating to the implementation of Part XI,

Recognizing the need to provide for the provisional application of such an agreement from the date of entry into force of the Convention on 16 November 1994,

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1/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

2/ General Assembly resolution 2749 (XXV); article 136 of the United Nations Convention on the Law of the Sea.

3/ LOS/PCN/130 and Add.1.

/...

1. Expresses its appreciation to the Secretary-General for his report on the informal consultations;

2. Reaffirms the unified character of the United Nations Convention on the Law of the Sea of 10 December 1982;

3. Adopts the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Agreement"), the text of which is annexed to the present resolution;

4. Affirms that the Agreement shall be interpreted and applied together with Part XI as a single instrument;

5. Considers that future ratifications or formal confirmations of or accessions to the Convention shall represent also consent to be bound by the Agreement and that no State or entity may establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention;

6. Calls upon States which consent to the adoption of the Agreement to refrain from any act which would defeat its object and purpose;

7. Expresses its satisfaction at the entry into force of the Convention on 16 November 1994;

8. Decides to fund the administrative expenses of the International Seabed Authority in accordance with section 1, paragraph 14, of the annex to the Agreement;

9. Requests the Secretary-General to transmit immediately certified copies of the Agreement to the States and entities referred to in article 3 thereof, with a view to facilitating universal participation in the Convention and the Agreement, and to draw attention to articles 4 and 5 of the Agreement;

10. Also requests the Secretary-General to open the Agreement for signature in accordance with article 3 thereof immediately after its adoption;

11. Urges all States and entities referred to in article 3 of the Agreement to consent to its provisional application as from 16 November 1994 and to establish their consent to be bound by the Agreement at the earliest possible date;

12. Also urges all such States and entities that have not already done so to take all appropriate steps to ratify, formally confirm or accede to the Convention at the earliest possible date in order to ensure universal participation in the Convention;

13. Calls upon the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea to take into account the terms of the Agreement when drawing up its final report.

III. DRAFT AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982

The States Parties to this Agreement,

Recognizing the important contribution of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Convention") to the maintenance of peace, justice and progress for all peoples of the world,

Reaffirming that the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as "the Area"), as well as the resources of the Area, are the common heritage of mankind,

Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment,

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

Noting the political and economic changes, including market-oriented approaches, affecting the implementation of Part XI,

Wishing to facilitate universal participation in the Convention,

Considering that an agreement relating to the implementation of Part XI would best meet that objective,

Have agreed as follows:

Article 1

Implementation of Part XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.

2. The Annex forms an integral part of this Agreement.

Article 2

Relationship between this Agreement and Part XI

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

/...

between this Agreement and Part XI, the provisions of this Agreement shall prevail.

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

Article 3

Signature

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1 (a), (c), (d), (e) and (f), of the Convention for 12 months from the date of its adoption.

Article 4

Consent to be bound

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

2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.

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

(a) Signature not subject to ratification, formal confirmation or the procedure set out in article 5;

(b) Signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;

(c) Signature subject to the procedure set out in article 5; or

(d) Accession.

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

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

Article 5

Simplified procedure

1. A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification or formal confirmation of or accession to the Convention and which has signed this Agreement in accordance with article 4, paragraph 3 (c), shall be considered to have established its consent to be bound by this Agreement 12 months after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article.

2. In the event of such notification, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3 (b).

Article 6

Entry into force

1. This Agreement shall enter into force 30 days after the date on which 40 States have established their consent to be bound in accordance with articles 4 and 5, provided that such States include at least seven of the States referred to in paragraph 1 (a) of resolution II of the Third United Nations Conference on the Law of the Sea (hereinafter referred to as "resolution II") and that at least five of those States are developed States. If these conditions for entry into force are fulfilled before 16 November 1994, this Agreement shall enter into force on 16 November 1994.

2. For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7

Provisional application

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:

(a) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;

(b) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;

/...

(c) States and entities which consent to its provisional application by so notifying the depositary in writing;

(d) States which accede to this Agreement.

2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.

3. Provisional application shall terminate upon the date of entry into force of this Agreement. In any event, provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven of the States (of which at least five must be developed States) referred to in paragraph 1 (a) of resolution II has not been fulfilled.

Article 8

States Parties

1. For the purposes of this Agreement, "States Parties" means States which have consented to be bound by this Agreement and for which this Agreement is in force.

2. This Agreement applies mutatis mutandis to the entities referred to in article 305, paragraph 1 (c), (d), (e) and (f), of the Convention which become Parties to this Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Article 9

Depositary

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

Article 10

Authentic texts

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

DONE AT NEW YORK, this ... day of July, one thousand nine hundred and ninety-four.

/...

ANNEX

SECTION 1. COSTS TO STATES PARTIES AND INSTITUTIONAL ARRANGEMENTS

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

2. In order to minimize costs to States Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, duration and scheduling of meetings.

3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.

5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

(a) Processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;

(b) Implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as "the Preparatory Commission") relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;

(c) Monitoring of compliance with plans of work for exploration approved in the form of contracts;

(d) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;

(e) Study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

(f) Adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17, paragraph 2 (b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;

(g) Adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment;

(h) Promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;

(i) Acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(j) Assessment of available data relating to prospecting and exploration;

(k) Timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.

6. (a) An application for approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including Annex III thereof, and this Agreement, and subject to the following:

(i) A plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1 (a) (ii) or (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to the entry into force of the Convention, or its successor in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work if the sponsoring State or States certify that the applicant has expended

an amount equivalent to at least US$ 30 million in research and exploration activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(ii) Notwithstanding the provisions of resolution II, paragraph 8 (a), a registered pioneer investor may request approval of a plan of work for exploration within 36 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfilment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11 (a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered pioneer investor in accordance with Part XI and this Agreement. The fee of US$ 250,000 paid pursuant to resolution II, paragraph 7 (a), shall be deemed to be the fee relating to the exploration phase pursuant to section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(iii) In accordance with the principle of non-discrimination, a contract with a State or entity or any component of such entity referred to in subparagraph (a) (i) shall include arrangements which shall be similar to and no less favourable than those agreed with any registered pioneer investor referred to in subparagraph (a) (ii). If any of the States or entities or any components of such entities referred to in subparagraph (a) (i) are granted more favourable arrangements, the Council shall make similar and no less favourable arrangements with regard to the rights and obligations assumed by the registered pioneer investors referred to in subparagraph (a) (ii), provided that such arrangements do not affect or prejudice the interests of the Authority;

(iv) A State sponsoring an application for a plan of work pursuant to the provisions of subparagraph (a) (i) or (ii) may be a State Party or a State which is applying this Agreement provisionally in accordance with article 7, or a State which is a member of the Authority on a provisional basis in accordance with paragraph 12;

(v) Resolution II, paragraph 8 (c), shall be interpreted and applied in accordance with subparagraph (a) (iv).

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

7. An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.

8. An application for approval of a plan of work for exploration, subject to paragraph 6 (a) (i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.

9. A plan of work for exploration shall be approved for a period of 15 years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

10. Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan of work for exploration and exploitation.

11. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.

12. Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending its entry into force for such States and entities, in accordance with the following subparagraphs:

(a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to participate as members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate either on 16 November 1996 or upon the entry into force of this Agreement and the Convention for such member, whichever is earlier. The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity

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concerned has been making efforts in good faith to become a party to the Agreement and the Convention;

(b) If this Agreement enters into force after 15 November 1996, such States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the State or entity has been making efforts in good faith to become a party to the Agreement and the Convention;

(c) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including:

(i) The obligation to contribute to the administrative budget of the Authority in accordance with the scale of assessed contributions;

(ii) The right to sponsor an application for approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis;

(d) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to subparagraph (c) (ii) by a State which was a member on a provisional basis shall terminate if such membership ceases and the State or entity has not become a State Party;

(e) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.

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

14. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force, the administrative expenses of the Authority shall be met through the budget of the United Nations. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with articles 171, subparagraph (a), and 173 of the Convention and this Agreement, until the Authority has sufficient funds from other sources to meet those expenses. The Authority shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.

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

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

(b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2 (o), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request;

(c) If the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work for exploitation is pending, it shall none the less consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

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

17. The relevant provisions of Part XI, section 4, of the Convention shall be interpreted and applied in accordance with this Agreement.

SECTION 2. THE ENTERPRISE

1. The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of these functions by the Secretariat.

These functions shall be:

(a) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;

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(b) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;

(c) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;

(d) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(e) Evaluation of information and data relating to areas reserved for the Authority;

(f) Assessment of approaches to joint-venture operations;

(g) Collection of information on the availability of trained manpower;

(h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.

2. The Enterprise shall conduct its initial deep seabed mining operations through joint ventures. Upon the approval of a plan of work for exploitation for an entity other than the Enterprise, or upon receipt by the Council of an application for a joint-venture operation with the Enterprise, the Council shall take up the issue of the functioning of the Enterprise independently of the Secretariat of the Authority. If joint-venture operations with the Enterprise accord with sound commercial principles, the Council shall issue a directive pursuant to article 170, paragraph 2, of the Convention providing for such independent functioning.

3. The obligation of States Parties to fund one mine site of the Enterprise as provided for in Annex IV, article 11, paragraph 3, of the Convention shall not apply and States Parties shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint-venture arrangements.

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

5. A contractor which has contributed a particular area to the Authority as a reserved area has the right of first refusal to enter into a joint-venture arrangement with the Enterprise for exploration and exploitation of that area. If the Enterprise does not submit an application for a plan of work for activities in respect of such a reserved area within 15 years of the commencement of its functions independent of the Secretariat of the Authority or within 15 years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be

entitled to apply for a plan of work for that area provided it offers in good faith to include the Enterprise as a joint-venture partner.

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

SECTION 3. DECISION-MAKING

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

2. As a general rule, decision-making in the organs of the Authority should be by consensus.

3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, as provided for in article 159, paragraph 8, of the Convention.

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

5. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.

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

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

8. The provisions of article 161, paragraph 8 (b) and (c), of the Convention shall not apply.

9. (a) Each group of States elected under paragraph 15 (a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15 (d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.

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(b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15 (a) to (d). If a State fulfils the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.

10. Each group of States in paragraph 15 (a) to (d) shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15 (a) to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups.

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

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

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

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

14. Part XI, section 4, subsections B and C, of the Convention shall be interpreted and applied in accordance with this section.

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

(a) Four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and

the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;

(b) Four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;

(c) Four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(d) Six members from among developing States Parties, 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, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;

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

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

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SECTION 5. TRANSFER OF TECHNOLOGY

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

(a) The Enterprise, and developing States wishing to obtain deep seabed mining technology, shall seek to obtain such technology on fair and reasonable commercial terms and conditions on the open market, or through joint-venture arrangements;

(b) If the Enterprise or developing States are unable to obtain deep seabed mining technology, the Authority may request all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating the acquisition of deep seabed mining technology by the Enterprise or its joint venture, or by a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;

(c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes in marine science and technology and the protection and preservation of the marine environment.

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

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:

(a) Development of the resources of the Area shall take place in accordance with sound commercial principles;

(b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements shall apply with respect to activities in the Area;

(c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);

(d) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:

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(i) By the use of tariff or non-tariff barriers; and

(ii) Given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

(e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;

(f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b):

(i) Where the States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;

(ii) Where one or more of the States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention;

(g) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1 (b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1 (b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

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

5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1 (b) to (d).

6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, including relevant rules, regulations and procedures governing the approval of plans of work.

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7. The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2 (q), article 165, paragraph 2 (n), and Annex III, article 6, paragraph 5, and article 7, of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

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

(a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;

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

(c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

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

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

SECTION 8. FINANCIAL TERMS OF CONTRACTS

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

(a) The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;

(b) The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;

(d) An annual fixed fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of the fee shall be established by the Council;

(e) The system of payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;

(f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

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

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

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.

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

3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15 (a), (b), (c) and (d), of this Annex shall be represented on the Committee by at least one member. Until the Authority has

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sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include representatives of the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group, without prejudice to the possibility of further members being elected from each group.

4. Members of the Finance Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of the death, incapacity or resignation of a member of the Finance Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

6. Members of the Finance Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) Draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;

(b) Assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2 (e), of the Convention;

(c) All relevant financial matters, including the proposed annual budget prepared by the Secretary-General of the Authority in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;

(d) The administrative budget;

(e) Financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;

(f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

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

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

ANNEX II

Informal Understanding to be read by the President of the General Assembly at the time of the adoption of the resolution

Once there is a widespread participation in the International Seabed Authority and the number of members of each regional group participating in the Authority is substantially similar to its membership in the United Nations, it is understood that each regional group would be represented in the Council of the Authority as a whole by at least three members.
