

Technical Commission, with such adjustments as may be considered necessary.

5. For the duration of the interim period, *the Secretariat of the Authority shall perform the preparatory functions necessary for the commencement of the functioning of the Enterprise*. These shall include the monitoring of developments in the deep seabed mining sector, in particular the prevailing conditions in the world metal market, developments in deep seabed mining technology, and data and information on the environmental impact of the activities in the Area.
6. As far as pioneer investors are concerned, *their rights and obligations shall be governed by the provisions of Resolution II and the related understandings*.
7. As far as the applicants referred to in Resolution II, paragraph 1, (a), (ii) are concerned, *approval of an application for pioneer activities shall be facilitated provided that they assume the same obligations as those of the applicants referred to in the understanding on the implementation of Resolution II* contained in LOS/PCN/L. 41/ Rev. 1 (Annex of 11 September 1986).
8. The requirements contained in Resolution II, paragraph 7 (b) and 8, shall be waived with respect of any applicant for pioneer activities.

Article 5 Financial Arrangements

1. In accordance with paragraph 14 of Resolution I, *the expenses of the Commission shall continue to be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations*.
2. The Commission may raise additional funds for specified activities as they may evolve.

Article 6 Review Conference

1. *Upon notification to the Commission from a pioneer investor of his intention to commence commercial exploitation within three years, a Review Conference shall be convened*.
2. *The Review Conference shall review those provisions of Part XI and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area in the light of the scientific, technological,*

and economic reality of that future time and in consideration of the experience, the methodologies developed, and the activities conducted in an evolutionary manner during the interim regime.

Article 7 Dispute Settlement

The question of adjustment of the Seabed Dispute Chamber of the International Tribunal for the Law of the Sea, during the Interim Regime, pending the feasibility of commercial seabed mining, should be determined by the State Parties at the Meeting to be convened pursuant to Article 4 of Annex VI to the Convention.)

ANNEXURE B
November 1993

(THE BOAT PAPER)

The original version of this document was prepared in August 1993 by representatives of several developed and developing States as a contribution to the process of consultations relating to outstanding issues in Part XI of the 1982 United Nations Convention on the Law of the Sea. The document has been revised in the light of discussions during the Secretary-General's informal consultations held in November 1993.

DRAFT RESOLUTION FOR ADOPTION BY THE GENERAL ASSEMBLY

The United Nations Convention on the Law of the Sea

The General Assembly

Recalling resolution (48/...of....December 1993) on the Law of the Sea.

Recalling that Part XI and related provisions of the 1982 United Nations Convention on the Law of the Sea (the Convention) established a regime for the international seabed area ("the Area") and its resources Reaffirming that the Area and its resources are the common heritage of mankind,

Recognizing that political and economic changes, including in particular a growing reliance on market principles, show the need to re-evaluate some aspects of the regime,

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

Welcoming the report of the Secretary-General pursuant to General Assembly resolution (48/....) and, in particular, the results of the Secretary-General's informal consultations set out in paragraphs () of the report.

Taking note of the report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea,

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 and related provisions of the Convention and to give effect to the results of the Secretary-General's informal consultations,

1. *Endorses* the results of the Secretary-General's informal consultations set out in paragraphs (.....) of the report of the Secretary-General;
2. *Adopts* the Agreement relating to the Implementation of Part XI and related provisions of the Convention ("the Agreement"), the text of which is attached to this resolution;
3. *Considers* that future ratifications or formal confirmations of or accessions to the Convention should be taken to relate to the Convention together with the Agreement;
4. *Calls* on States and other entities referred to in Article 3 of the Agreement to act in accordance with the object and purpose of the Agreement pending its entry into force;
5. *Requests* the Secretary-General to transmit certified copies of the Agreement to the States and the other entities referred to in Article 3 thereof, with a view to facilitating universal participation in the Convention together with the Agreement.

AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The States Parties to this Agreement,

Recognizing the significant contribution of the 1982 United Nations Convention on the Law of the Sea ("the Convention") to the maintenance of peace, justice and progress for all peoples of the world;

Having considered the report of the Secretary-General of the United

Nations on the results of the informal consultations held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention ("Part XI");

Wishing to take account of important political and economic developments affecting the implementation of those provisions, in order to facilitate universal participation in the Convention;

Considering that an Agreement relating to the implementation of the 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 Part XI and this Agreement shall be interpreted and applied together as one single instrument. In the event of any inconsistency, 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.
3. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall represent also an accession to this Agreement.

Article 3 Accession

This agreement shall be open for accession by those States and other entities referred to in Article 305 of the Convention which have ratified, formally confirmed or acceded to the Convention or which are simultaneously ratifying, formally confirming or acceding to the Convention and this Agreement. Accession by the entites referred to in Article 305, paragraph 1 (f) of the Convention shall be in accordance with Annex IX of the Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 4
Simplified Procedure

A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification, formal confirmation or accession in respect of the Convention shall be considered to be a party to this Agreement if that State has not notified the Depositary within (.....) months of the adoption of this Agreement that it is not having resources to the simplified procedure set out in this Article. In the event of such a notification being made, accession to this Agreement shall take place in accordance with Article 3.

Article 5
Entry into force

1. This Agreement shall enter into force on the day of deposit of the (.....) instrument of accession to this Agreement, provided at least (.....) of those instruments have been deposited by States to which paragraph 1 (a) (i), (ii) or (iii) of Resolution II of the Third United Nations Conference on the Law of the Sea ("Resolution") applies.
2. For each State acceding to the Agreement after its entry into force, the Agreement shall come into force on the date of deposit by such State of its instrument of accession.
3. States which have recourse to the simplified procedure in Article 4 shall be regarded as having acceded upon expiry of the period of (.....) months specified in that Article, or upon entry into force of this Agreement in accordance with paragraph 1, whichever is later.

Article 6
States Parties

For the purposes of this Agreement, "States Parties" means States and entities which have consented to be bound by this Agreement and for which it has entered into force.

Article 7
Depositary

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

Article 8
Authentic Texts and Depositary

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Secretariat of the United Nations.

**SECTION 1. COSTS TO STATES PARTIES AND
INSTITUTIONAL ARRANGEMENTS**

1. The Authority is the organization through which States Parties to the Convention shall, in accordance with the regime for the international seabed area ("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 the activities of the Area.
2. In order to minimize costs to State 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, length and scheduling of meetings.
3. The setting up and the operation of the various organs and subsidiary bodies 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 functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the Finance Committee, which shall work in accordance with Section 9 of this Annex. 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. The Assembly and the Council, as well as their respective subsidiary bodies, shall meet only as frequently as required for the adequate and timely performance of their functions.
6. 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) monitoring of compliance with plans of work for exploration approved in the form of contracts;

- (c) implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (Preparatory Commission) relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with the provisions of Article 308, paragraph 5 of the convention and Resolution II, paragraph 13;
- (d) 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;
- (e) 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 the activities in the Area;
- (f) acquisition of scientific knowledge and the monitoring of the development of marine technology relevant to the activities in the Area;
- (g) adoption of rules, regulations and procedures, including those relating to the protection and preservation of the marine environment, necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, Article 17(2) (b) and (c) of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the changed economic circumstances since the Convention was adopted, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;
- (h) 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;
 - (i) assessment of available data relating to prospecting and exploration; and
 - (j) timely elaboration of rules, regulations and procedures for exploitation.

- 7. (a) The application for the 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 the approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including its Annex III, and this Agreement, provided that:
 - (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 I, paragraph 1(a) (ii) and (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to entry into force of the Convention or their successors 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 certifies 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 ten (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, notwithstanding the provisions of Section 3, paragraph 10 of this Annex.
 - (ii) upon the request of a registered pioneer investor, its plan of work for exploration consisting of documents, reports and other data submitted to the Preparatory Commission before and after registration together with an indication of plans for future activities, if any, shall be approved in the form of a contract by the Council in accordance with Part XI and this Agreement, notwithstanding the provisions of Section 3, paragraph 10 of this Annex. Resolution II, paragraph 8(c) shall not apply and a request for approval of a plan of work for exploration of a registered pioneer investor may be made by a sponsoring State Party or as a provisional member of the Authority pursuant to paragraph 14. The fee to be paid by a pioneer investor upon application for a plan of work, in accordance with the provisions of Resolution II, paragraph 7(a), and Annex III, Article 13, paragraph 2 of the Convention,

shall be deferred until the pioneer investor submits a plan of work for exploitation, taking into account the \$250,000 fee paid pursuant to Resolution I, paragraph 7(a), which shall be deemed to be the fee relating to the exploration phase pursuant to Section 8, paragraph 3 of this Annex. The period following entry into force of the Convention within which a registered pioneer investor may request approval of a plan of work pursuant to Resolution II, paragraph 8(a) shall be extended from six months to twenty-four months; and

(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 (i) above, shall include arrangements which shall be similar to and no less favourable than those agreed with any State or entity or any component of such entity referred to in (ii) above. In the case of contracts with the State or entities or any components of such entities referred to in (ii) above, the Council shall make such adjustments, as are equitable, to the rights and obligations assumed by them under Resolution II and the decisions of the Preparatory Commission.

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

8. Applications for approval of plans of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities in accordance with the rules, regulations and procedures adopted by the Authority.
9. Applications for the approval of plans of work for exploration other than those referred to in paragraph 7 shall be processed in accordance with the procedures set out in Section 3, paragraph 10 of this Annex.
10. A plan of work for exploration shall be approved for a period of ten years. Upon the expiration of a plan of work for exploration the contractor shall apply for the plan of work for exploration unless the contractor has received 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 good faith efforts 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 the prevailing economic circumstances have not justified proceeding to the exploitation stage.

11. The reference in the last sentence of 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 despite written warning or warnings from the Authority to the contractor to comply therewith.

12. 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, as follows:

(a) The Council may undertake such elaboration at any time it deems 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 is in a position 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 such a request.

(c) If the Council has not completed rules, regulations and procedures relating to exploitation within the prescribed time, and an application for the approval of a plan of work for exploitation is pending, it shall nonetheless 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.

13. The Authority shall have its own budget. The administrative expenses of the Authority shall be met (by assessed contributions of its members, including its provisional members, in accordance with Article 173 of the Convention and this Agreement) (through the budget of the United Nations) until such time as the Authority becomes self-financing. The Authority shall not exercise the power referred in Article 174, paragraph 1 of the Convention to borrow funds to finance its administrative budget.

14. States and entities referred to in Article 305 of the Convention which have not established their consent to be bound by it shall be eligible to become provisional members of the Authority on the following basis;
- (a) Such membership shall take effect upon notification to the depositary of the Convention by a State or entity of its intention to participate as a provisional member of the Authority and shall terminate two years after the date of entry into force of the Convention or upon ratification or formal confirmation of, or accession to, the Convention and this Agreement by such a State. The Council may, upon request of the State or entity concerned, extend provisional membership by up to two years if the Council is satisfied that the State or entity has been making efforts in good faith to become a party, provided that provisional membership shall not extend beyond four years after the date of entry into force of the Convention.
 - (b) Provisional members shall apply the terms of Part XI and this Agreement provisionally and shall have the same rights and obligations as other members, including:
 - (i) the obligation to contribute to the budget of the Authority based on assessed contributions, in accordance with their national laws, regulations and annual budgetary appropriations; and
 - (ii) the right to sponsor an application for the 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 provisional members or States Parties.
 - (c) Notwithstanding the provisions of paragraph 10, an approved plan of work for exploration which is sponsored by a provisional member in accordance with subparagraph b(ii) shall terminate if such member ceases to be a provisional member and has not become a State Party.
 - (d) If the Assembly decides that a provisional member has failed to comply with its obligations in accordance with this paragraph, its provisional membership shall be terminated.
15. 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.

16. The relevant provisions of Part XI, Section 4 shall be interpreted and applied in accordance with this Agreement.

SECTION 2. THE ENTERPRISE

1. The Enterprise shall conduct its initial operation through joint ventures. It shall commence its functioning upon the issuance of a directive by the Council pursuant to Article 170, paragraph 2 of the Convention.
2. The obligations 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 to the Convention shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint venture arrangements.
3. The Secretariat of the Authority shall perform the preparatory functions necessary for the commencement of the functioning of the Enterprise. These shall include the monitoring of developments in the deep seabed mining sector, in particular the prevailing conditions in the world metal market, developments in deep seabed mining technology, and data and information on the environmental impact of activities in the Area.
4. The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of Article 153, paragraph 3 of the Convention, 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 shall have priority to enter into a joint venture arrangement with the Enterprise for exploration and exploitation of that area, subject to agreement on the terms and conditions of the joint venture arrangement. If the Enterprise does not commence activities on such a reserved area within ten years of the commencement of its functioning or within ten 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 to include the Enterprise as a joint 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 Part.

SECTION 3. DECISION-MAKING

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.
2. Decision-making in the organs of the Authority, as a general rule, should be by consensus and there should be no voting until all efforts to reach by a consensus have been exhausted.
3. If consensus cannot be reached, decisions by voting in the Assembly on matters of procedure shall be taken by a majority of States present and voting, and decisions on matters of substance shall be taken by a two-thirds majority of States present and voting, as provided for in Article 159, paragraph 3 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. Decisions by the Council or the Assembly having financial or budgetary implications shall be based on the recommendations of the Finance Committee.
6. The major categories of interests identified in paragraph 14 (a) to (c) shall be treated as chambers for the purposes of decision-making in the Council. Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for the membership in the interest groups identified in sub-paragraphs 14 (a) to (d). If a country fulfils the criteria for membership in more than one interest group, it may only be proposed by one interest group for election to the Council and it shall represent only that interest group in voting in the Council.
7. Each interest group identified in paragraph 14(a) to (d) shall be represented in the Council by those members nominated by that interest group. Each interest group shall only nominate as many candidates as the number of seats that are required to be filled by that group. When the number of potential candidates in each of the categories referred to

in paragraph 14(a) to (c) exceeds the number of seats available in each of those respective categories, as a general rule, the principle of rotation shall apply. States members of each of those categories shall determine how this principle shall apply in those categories. This principle however, shall not apply to the two States specifically referred to in paragraph 14(a).

8. 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 above.
9. The Council may decide to postpone 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.
10. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-third 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 normal rules of procedure on matters of substance.
(b) The provisions of Article 162, paragraph 2(j) of the Convention shall not apply.
11. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement mechanism contained in the Convention.
12. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.