UNCED Conference had generated the Commission for Sustainable Development and added a new dimension to the UN structure.

The *Delegate of Ghana* stated that there was a lesson to be learnt from the impasse in the election of the members of the Council of the International Seabed Authority. The lesson for the developing countries was that they should endeavour to ensure that their interests are adequately considered and accepted in the formulation of international instruments that affect their interests. The interests of the developing countries should not be ignored and conclusions arrived at.

The *Delegate of India* endorsed the views expressed by the Chairperson of the International Ocean Institute and said that the International Seabed Authority was the embodiment of the principle of Common Heritage of Mankind. He emphasized that the impasse in the election of the Members of this Council of the Seabed Authority was bewildering. He took the view that the developing countries should not allow the Seabed Authority to dissipate and that the AALCC could play a significant role in this matter.

The *Representative of the Legal Counsel of the United Nations* stated that the election of the judges of the International Tribunal for the Law of Sea would be held in 1996 and that the Secretariat of the UN had already circulated a note inviting nominations from Member States of the UN.

(ii) Decision on the "Law of the Sea"

(Adopted on 22nd April 1995)

The Asian-African Legal Consultative Committee at its Thirty-fourth Session:

Having considered the Secretariat Brief on "The Law of the Sea" contained in documents number AALCC/XXXIV/DOHA/95/5 and 5A.

Having heard the comprehensive statement of Mrs. Elizabeth Mann Borgese the Chairperson of the International Ocean Institute;

1. *Notes* with great satisfaction that the United Nations Convention on the Law of the Sea entered into force on 16 November 1994;
2. *Notes* also the Establishment of the International Seabed Authority;
3. *Satisfied* with the decision relating to the Establishment of the International Tribunal for the Law of the Sea;
4. *Urges* the Member States who have not already done so to consider ratifying the Convention on the Law of the Sea;
5. *Expresses* its appreciation to the Secretariat of the Asian-African Legal Consultative Committee for the comprehensive brief and for its representation at the resumed sessions of the International Seabaed Authority held in March 1995;
6. *Urges* the full and effective participation of the Member States in the International Seabed Authority so as to ensure and safeguard the legitimate interests of the developing countries, and for the development of the principle of the Common Heritage of Mankind;

7. *Reminds* Member States to give timely consideration to the need for adopting a common policy and strategy for the interim period before the commercial exploitation of the deep seabed minerals becomes feasible, and for the this purpose urges member States to take an evolutionary approach especially to the "initial function" of the Authority so as to make the International Seabed Authority useful to the international community and developing countries during this initial period;

8. *Urges* Member States to co-operate in regional initiative for the securing of practical benefits of the new ocean regime;

9. *Directs* the Secretariat to continue to co-operate with such international organiations as are competent in the fields of ocean and marine affairs and to consider assisting Member States in their representation at the ISBA.

10. *Decides* to inscribe on the agenda of its Thirty-fifth Session an item entitled "Implementation of the Law of the Sea Convention, 1982".

(iii) Secretariat Brief
The Agreement Relating to Part XI of the Convention on the Law of the Sea

The item "Law of the Sea" has been on the agenda of the General Assembly since its thirty-seventh session (1982) when it (the General Assembly) *inter alia* approved the assumption by the Secretary-General of the responsibilities entrusted to him under the United Nations Convention on the Law of the Sea, 1982, and the related resolutions adopted by the Third United Nations Conference on the Law of the Sea (hereinafter called UNCLOS III) in December 1982. By its resolution 37/66 the General Assembly authorized the Secretary-General to convene the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as the Preparatory Commission or PREPCOM) as provided for in Resolution I adopted by UNCLOS III and approved the financing of the expenses of the PREPCOM from the regular budget of the United Nations. The General Assembly has thereafter continued its consideration of the question at its successive sessions.

In the course of its consideration of the item at its forty-eighth session, the General Assembly had *inter alia* expressed its satisfaction at the increasing support for the Convention as evidenced by the one hundred and fifty-nine signatures and sixty ratifications or accessions required for entry into force of the Convention[1]. The Convention entered into force on

1. The Convention has since its adoption in 1982, been ratified by 71 States viz. Angola, Antigua and Barbuda, Australia, Bahamas, Bahrain, Barbados, Belize, Bouwana, Brazil, Bosnia and Herzegovina, Cameroon, Cape Verde, Comoros, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Djibouti, Dominica, Egypt, Fiji, Gambia, Germany, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Honduras, Iceland, Indonesia, Iraq, Jamaica, Kenya, Kuwait, Macedonia, former Yugoslav Republic

November 16, 1994 and it may be stated that the resolution adopted by the forty-ninth session of the General Assembly *inter alia* expressed its profound satisfaction at the entry into force of the Law of the Sea Convention. By its resolution 49/28 the General Assembly called upon all States that had not already done so to become parties to the Convention and the Agreement Relating to the Implementation of Part XI of the Convention[2] in order to achieve the goal of universal participation. The Assembly while reaffirming the unified character of the Convention called upon States to harmonize legislation with the provisions of the Convention and to ensure consistent application of those provisions. The General Assembly also expressed its satisfaction at the establishment of the International Seabed Authority and at the progress being made in the establishment of the International Tribunal for the law of the Sea and the Commission on the Limits of the Continental Shelf.

General Assembly resolution viz. 48/28 had noted with appreciation the developments and the active participation of States in the consultations convened under the auspices of the Secretary-General aimed at promoting a dialogue and addressing issues of concern to some States in order to achieve universal participation in the Convention. The General Assembly resolution had then invited all States to participate in the consultations held under the asupices of the Secretary-General and to increase efforts to achieve universal participation in the Convention as early as possible. Paragraph 20 of that resolution had requested the Secretary-General to "continue and to accelerate the consultations in order to achieve universal participation in the Convention, as early as possible".

Pursuant to that mandate the Secretary-General convened consultations during 1994. At the end of the round of consultations held between May 30 and June 3 1994 the Member States indicated that they wished to convene a resumed forty-eighth session of the General Assembly of the United Nations from 27 July to 29 July, 1994 for the adoption of a resolution. They also wished that following the adoption of the resolution the "Agreement" be immediately opened for signature. Accordingly, a resumed forty-eighth session of the General Assembly was convened and

of, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia Federal States of, Namibia, Nigeria, Oman, Paraguay, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent & The Grenadines, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone Singapore, Somalia, Sri Lanka, Sudan, Togo, Trinidad and Tobago, Tunisia, Uganda, Uruguay, United Republic of Tanzania, Vietnam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

2. The Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea was adopted by General Assembly Resolution 48/263 on July 28, 1994.

by its resolution 48/263 adopted the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, 1982 (hereinafter referred to as the Agreement) the text of which (Agreement) was annexed to the resolution.[3] The Resolution *inter alia* called upon States which consent to the adoption of the Agreement to refrain from any act which would defeat its object and purpose and decided to fund the administrative expenses of the International Seabed Authority in accordance with section I Paragraph 14 of the Annex to the Agreement. This note endeavours to furnish an overview of the Agreement adopted by the resumed forty-eighth session of the General Assembly and the subsequent developments.

THE AGREEMENT

The Agreement relating to the implementation of Part XI of the UNCLOS *inter alia* signed by 68 States[4] and one international organization[5] calls upon the States Parties to the Agreement, to undertake to implement Part XI of the UN Convention on the Law of the Sea, in accordance with the Agreement. It stipulates that the Annex to the Agreement forms an integral part of the Agreement.[6]

The driving spirit of the articles and the Annex thereto may be found in preambulatory paragraphs 5, 6 and 7 of the Agreement wherein the States Parties noting the political and economic changes, including market-oriented approaches, affecting the implementation of Part XI of the Convention, and wishing to facilitate universal participation in the Convention, consider that an agreement relating to the implementation of Part XI would best meet that objective. Article 8 of the Agreement describes the term "States Parties" to this Agreement to mean States which have consented to be bound by this Agreement and for which (States) this

3. The resolution was adopted by a vote of 121 in favour none against and 7 abstentions.

4. The States Signatories to the Agreement are:—
Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Brazil, Canada, Cape Verde, China, Cyprus, Czech Republic, Denmark, Fiji, Finland, France, Germany, Greece, Grenada, Guinea, Iceland, *India, Indonesia*, Iceland, Italy, Jamaica, *Japan, Kenya*, Laos (People's Democratic Republic), Luxembourg, *Malaysia*, Maldives, Malta, Mauritania,Micronesia (Federated States of), *Mongolia*, Morocco, Namibia, Netherlands, New Zealand, *Nigeria, Pakistan*, Paraguay, *Philippines*, Poland, Portugal, *Republic of Korea, Senegal*, Seychelles, Slovakia, South Africa, Spain, *Sri Lanka, Sudan*, Swaziland, Sweden, Switzerland, Togo, Trinidad and Tobago, *Uganda*, United Kingdom, *United Republic of Tanzania*, United States of America, Uruguay, Vanuatu, Zambia, and Zimbabwe.

5. The European Community.

6. See Article I of the Agreement entitled "Implementation of part XI.

Agreement is in force. Paragraph 2 of Article 8 of the Agreement further provides that the Agreement applies *mutatis mutandis* to the following viz. (i) Self-governing associated States; (ii) all territories which enjoy full internal self-government; and (iii) relevant international organizations which become parties to the Agreement in accordance with the conditions relevant to each.

Article 2 of the Agreement defines the Relationship between the Agreement and Part XI. Paragraph 1 of Article 2 of the Agreement stipulates that the provisions of the Agreement be interpreted and applied together as a single instrument. It further provides that "in the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail". The present Agreement, therefore, explicitly restricts its ambit and scope of application to Part XI of the Convention and the Annexes III and IV related thereto. A careful perusal of both the resolutions adopted by the General Assembly and the provisions of the Agreement as adopted in July 1994 would reveal that the remaining sixteen parts of the Convention remain unaffected and shall continue to be the governing principles and rules relating to such maritime areas as the territorial seas and contiguous zones of coastal States, the exclusive economic zone, the continental shelf, and the high seas as well as such issues as the right of access of land-locked States to and from the sea and freedom of transit, the protection and preservation of the marine environment; marine scientific research and the settlement of disputes. Nor do the provisions of the current Agreement affect the general or final provisions of the Convention. On the contrary, the Agreement explicitly refers to several provisions of Part XVII of the Convention (Final Provisions) as being applicable to it. The sum and substance of the foregoing is that the rights, and of course the concomitant obligations, that States derived from the UN Convention on the Law of the Sea 1982 remain unaltered. It is the provisions relating to the exploration and exploitation of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction—commonly referred to as the Area—alone, viz., Part XI which are to be interpreted and applied together with the present Agreement as a single instrument. It may be stated that it follows therefrom that the Agreement *per se* does not seek to alter, amend, add or subtract from the provisions of the UN Convention on the Law of the Sea relating to the *nature* of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction. This Area as well as of the resources thereof shall, as heretofore, continue to be the common heritage of mankind. It may be recalled that preambulatory paragraph 2 both of the resolution adopted by the General Assembly at its resumed forty-eighth session, as well as of the Agreement relating to the Implementation of Part XI of the Convention reaffirm the principle of 'common heritage of mankind' and lend credence to the above inference.

Paragraph 2 of Article 2 of the Agreement then goes on to stipulate that the provisions of Article 309 (Reservation and Exceptions); Article 310 (Declarations and Statements); Article 311 (Relation to other conventions and other international agreements); Article 312 (Amendment); Article 313 (Amendment by simplified procedure); Article 314 (Amendments to the provisions of this Convention relating exclusively to activities in the Area); Article 315 (Signature, ratification of, accession to and authentic texts of amendments); Article 316 (Entry into force of amendments); Article 317 (Denunciation); Article 318 (Status of Annexes); and Article 319 (Depositary) of Part XVII (Final Provisions) of the United Nations Convention on the Law of the Sea, 1982 shall apply to this Agreement as they do to the Convention. Some observations on the provisions of the Annex may be found in the next section of this brief.

The pith and substance of Article 2 of the Agreement is that it effectively amends the deep seabed mining provisions in Part XI of the United Nations Convention on the Law of the Sea, having stipulated that the provisions of the Annex to the Agreement relating to nine matters listed in the Annex viz. (i) Costs to State Parties and Institutional Arrangements; (ii) The Enterprise; (iii) Decision-making; (iv) Review Conference; (v) Transfer of Technology; (vi) Production Policy; (vii) Economic Assistance, (viii) Financial Terms of Contract; and (ix) the Finance Committee, shall prevail (upon the existing provisions of Part XI of the Convention).

Article 3 of the Agreement provides that the Agreement shall remain open for signatures at the United Nations Headquarters by States and entities referred to in Article 305 of the UN Convention on the Law of the Sea, 1982, for twelve months from the date of its adoption. The Agreement, it may be recalled, was adopted in July 1994 and has been signed by some 68 States. Only France, Italy, Japan, and the European Community have indicated their intention to provisionally apply the Agreement. Paragraph 3 of Article 4 of the Agreement entitled 'consent to be bound' stipulates that a State or entity may express its consent to be bound by this Agreement by a signature not subject to ratification, formal confirmation or the procedure set down 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) accesion.

The reference to "the procedure set out in Article 5" in subparagraphs

(a) and (c) above is the "Simplified Procedure" set out in Arrticle 5(1) of the Agreement whereby a State or an entity which has, before the date of adoption of the present Agreement, ratified or acceded to the Convention and which has signed this Agreement 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 Secretary-General of the United Nations in writing before that date that it is not availing itself of the simplified procedure. Paragraph 2 of Article 5 further stipulates that where a State or entity notifies the Secretary-General in writing that it is not availing itself of the simplified procedure as set out in paragraph 1 of Article 5 its consent to be bound by the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea, 1982 shall be effected by an act of ratification or formal confirmation. All instruments of ratification, formal confirmation or accession are to be deposited with the Secretary-General of the United Nations.

It would have been observed that the simplified procedure is essentially designed for those States which have ratified the Convention on the Law of the Sea prior to the date of adoption of the present Agreement. Such States, as have ratified the Convention on the Law of the Sea, and signed the Agreement shall be considered to have established their consent to be bound by this Agreement 12 months after the date of its adoption unless such States notify in writing that their consent to be bound by the present Agreement is subject to an explicit act of ratification or formal confirmation in that regard.

The General Assembly had in operative paragraph 5 of its resolution 48/263 considered that future ratification or formal confirmation of or accessions to the Convention on the Law of the Sea 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 on the Implementation of Part XI unless it had previously or simultaneously established its consent to be bound by the Convention. Paragraphs 1 and 2 of Article 4 of the Agreement (entitled Consent to be bound) make this explicit stipulation in respect of these two categories of States. Whilst paragraph 1 of Article 4 provides that any instrument of ratification or formal confirmation or accession after the adoption of this Agreement shall also represent consent to be bound by the Agreement, paragraph 2 of the Article reads "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."

The Agreement is to enter into force 30 days after 40 States have

established their consent to be bound by the Agreement. Article 6 paragraph 1 explicitly provides in this regard that the States which establish their consent to be bound by this Agreement must include at least 7 of the States referred to in paragraph 1(a) of Resolution II of the UNCLOS-III and that at least five(5) of these States shall be developed States. If these conditions for entry into force are fulfilled before 16 November 1994, the Agreement is to enter into force on that date viz. the date of entry into force of the Convention. For States and entities establishing their consent to be bound by this Agreement after the abovementioned requirements have been fulfilled, the Agreement shall enter into force on the 30th day following the date of establishment of their consent to be so bound by the Agreement.

It would have been observed that Article 6 sets out three explicit requirements for the Agreement's entry into force viz. (1) that it must be ratified by 40 States; (2) that the States ratifying this Agreement should include at least 7 of the States referred to in paragraph 1(a) of Resolution II of UNCLOS-III; and (3) that at least five of these States should be developed States. It may be recalled in this regard that the States referred to in paragraph 1(a) of Resolution II on 'Governing Preparatory Investment in Pioneer Activities Relating to Polymetallic Nodules' adopted by the UNCLOS-III are: the pioneer investors and include Belgium, Canada, France, Germany, India, Italy, Japan, the Netherlands, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Some States, such as China and the Republic of Korea, although registered pioneer investors, are not mentioned in the said Resolution.

Article 7 of the Agreement had stipulated that if on 16 November 1994 the 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; b) States and entities which sign the Agreement; c) States and entities which consent to its provisional application by so notifying the Secretary-General in writing; and d) States which accede to the Agreement.

The provisional application of the Agreement is to terminate upon the date of entry into force of the Agreement. It is expressly provided that "In any event provisional application shall terminate on 16 November 1998 if at that date the requirement relating to 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". Pending the termination of the provisional application

of the Agreement, all States and entities which consent its provisional application are obliged to apply this in accordance with their national or internal laws and regulations.

The Annex to the Agreement; an overview

It may be recalled that Article 1 of the Agreement on the implementation of Part XI stipulates that the "Annex form an integral part of this Agreement. The Annex to the Agreement relates to nine matters viz. (i) Costs to State parties and Institutional Arrangements; (ii) The Enterprise; (iii) Decision-making; (iv) Review Conference; (v) Transfer of Technology; (vi) Production Policy; (vii) Economic Assistance; (viii) Financial Terms of Contracts; and (ix) the Finance Committee. This part of the brief furnishes an overview of the nine sections of the Annex to the Agreement.

A. Costs to State Parties and Institutional Arrangements

It may be stated that the Agreement on the Implementation of Part XI the Convention adopted by the General Assembly on July 28, 1994 was negotiated over a period of four years in the course of informal consultations convened by the Secretary-General of the United Nations. The informal consultations had sought to overcome those difficulties that had stood in the way of universal participation in the Convention. They (the consultations) had addressed in particular the detailed seabed mining provisions of the Convention, replacing them with general principles geared more towards the emerging global consensus around market-oriented economic policies. In the course of informal consultations held it was generally agreed that:

1. Costs to State parties should be minimized;
2. The establishment and the operation of the various institutions should be based on an evolutionary approach, taking into account the functional needs of the institutions concerned in order to effectively discharge their responsibilities;
3. All institutions to be established under the Convention including the International Tribunal for the Law of the Sea—shall be cost-effective and no institution should be established which is not required: and
4. The meetings of the various institutions should be streamlined so as to reduce costs. This is to apply to the structure, size and functions of the institutions including the need to phase in the subsidiary bodies and to the frequency and scheduling of meetings of the various organs.

The other but by far the most significant provision in this regard is that States Parties shall not be under an obligation to fund a mining operation of the Enterprise. The Section on Cost to States Parties and Institutional Arrangements accordingly provides that the International Seabed Authority is the organization through which States Parties shall organize and control activities in the Area particularly with a view to administering the resources thereof. In addition to the powers and functions expressly conferred by the Convention the Authority is to have such incidental powers as are implicit in and necessary for the exercise of those powers and functions with respect to the activities in the Area.

Paragraph 2 of the Section 1 on Costs to States Parties and Institutional Arrangements provides that in order to minimize costs all organs and subsidiary bodies the agreement, shall be cost-effective. The principle of cost effectiveness is to apply also to the frequency, duration and schedule of meetings. It has further been agreed to apply an evolutionary approach to the setting up and the functioning of the organs and subsidiary bodies of the Authority. To this end the early functions of the Authority are to be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Committee and the Finance Committee. The functions of the Economic and Planning Commission are to be performed by the Legal and Technical Commission until either the Council decides otherwise or until the approval of the first plan of work for exploitation.

The Authority is to have its own budget but until one year after the Agreement comes 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 are to be met by assessed contributions of its members including provisional members.

B. The Enterprise

In the course of the consultation during January 1993 a question was raised as to whether there would be an Enterprise or whether it would be replaced by some royalty system. The majority of the participants had then favoured the establishment of an Enterprise. Section 2 of the Annex to the Agreement accordingly provides that the Secretariat of the Authority shall perform the function of the Enterprise until it begins to operate independently of the Secretariat. It is further provided that the Secretary-General of the Authority shall appoint an interim Director-General to oversee the performance of the functions of the Secretariat relating *inter alia* to the trends and developments relating to deep seabed mining activities

and the assessment of the results of the conduct of marine scientific research with respect to activities in the area.

The Enterprise is to conduct its initial deep seabed mining operations through joint ventures. The issue of functioning of the Enterprise independently of the Secretariat of the Authority will however, be taken up upon the approval of a plan of work for the exploitation for an entity other than the Enterprise or upon receipt by the Council of the application for joint ventures operations with the Enterprises. In the event that the joint venture operations with the Enterprise accord with sound commercial principles the Council shall in accordance with article 170 paragraph 2 of the Convention issue directive for the independent functioning of the Enterprise. It is further provided that the obligation applicable to contractors shall apply to the Enterprise and an approved plan of work for the Enterprise shall be in the form of a contract between the Authority and the Enterprise.

The funding obligations for the first mining operation of the Enterprise will not arise since the exploitation is to be carried out in the initial phase through joint ventures and funds shall be provided pursuant to the provisions of joint venture arrangements. It is understood, however, that the fact that the operations of the Enterprise shall begin by joint venture shall be without prejudice to the future options of the Enterprise. However, the Enterprise shall always be free to revert to joint venture arrangements.

C. Decision-Making

The industrialized countries, had raised the issue of the procedure to be followed by the Assembly in respect of certain specific decisions which may require prior recommendations of the Council and where the Assembly does not agree with that recommendation. Section 3 of the Annex to the Agreement provides that the general policies of the Authority shall be established by the Assembly in collaboration with the Council. This section stipulates that decision-making in the organ of the Authority shall be by consensus. Where all efforts to reach a decision have been exhausted decision by voting in the Assembly on question of procedure are to be taken by a majority of members present and voting while the decision on the question of the substance, on the other hand, are to be taken by a two-third majority of Members present and voting as stipulated in Article 159 paragraph 8 of the Convention on the Law of the Sea.

The industrialized countries had raised the issue of procedure to be followed by the Assembly in respect of administrative, budgetary and

financial matters which may require prior recommendations of the Council. It is now agreed that the decisions of the Assembly on these matters shall be based on the recommendations of the Council. If the Asssembly does not accept the recommendations of the Council on any matter it is to return the matter to the Council for further consideration and the latter shall reconsider the matter in the light of the view expressed by the Assembly.

The Council would consist of 36 members elected by the Assembly according to a formula set out in the Convention. Half of the number would come from the four major interest groups, while the rest would be elected in such a way as to ensure equitable geographical representation in the Council as a whole. The four interest groups are: the largest investors in sea-bed mining (four States), the major consumers or importers of minerals found on the sea-bed (four States), major land-based exporters of the same minerals (four States) and "special interests" among the developing countries (six States). The "special interests" category of developing countries would include States with large populations, the landlocked or geographically disadvantaged, major mineral importers, potential producers of the minerals in questions, and the least developed States. No over-all geographical distribution is specified, but at least one country from each region would be represented among the 18 members chosen on the basis of geography.

With regard to decision-making in the Council it is agreed that in the event that voting is necessary, decisions on question of procedure shall be taken by a majority of members and that decisions on questions of substance shall be taken by a two-third majority of the members present and voting provided that such decisions are not opposed by the majority in any one of the chambers. Decisions within each chamber on matters of substance shall be taken by a simple majority. Further a special procedure for the approval of a plan of work is to apply which envisages that 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. Where the Council does not take a decision on a recommendation for approval of a plan of work within 60 days, the recommendation is deemed to have been approved by the Council at the end of that 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.

D. Review Conference

Section 4 of the Annex, is addressed to one of the most keenly debated issues viz. Review Conference. The provision of this section expressly stipulates the non-applicability of the provisions of paragraphs 1, 2 and 4 of Article 155 of the Convention and then goes on to provide that notwithstanding the provisions of Article 314, paragraph 2 of the Convention, the Assembly, on the recommendation of Council may undertake at any time a review of the matters referred to in Article 155 (1) of the Convention. Amendments relating to the present Agreement and Part XI of the Convention, by the Review Conference, shall be subject to the procedures incorporated in articles 314, 315 and 316 provided *inter alia* that the principle of the common heritage of mankind, the international regime of designed to ensure equitable exploitation of the Area for the benefit of all countries, especially the developing countries, and an Authority to organize, conduct and control activities in the area shall be maintained. The section also provides that the amendment adopted by the Review Conference shall not effect the rights acquired under existing contracts.

E. Transfer of Technology

Section 5 of the Annex is addressed to the question of transfer of technology and adds to Article 144 of the Convention on the Law of the Sea by stipulating that the Enterprises shall seek to obtain the technology required for its operations on fair and reasonable commercial terms and conditions on the open market or through joint venture arrangements. It also provides that if the technology is not available on the open market, the Authority may request all or any of the contractors or their respective sponsoring States or States to cooperate with it is facilitating acquisitions of technology or its joint venture on fair and reasonable commercial terms and conditions consistent to the effective protection of intellectual property rights. States Parties are to 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.

F. Production Policy

Section 6 of the Annex to the Agreement relating to Part XI of the Convention amends the seabed production policy as incorporated in the Convention on the Law of the Sea. This section of the Annex to the

Agreement which outlines the principles on which the production policy of the Authority is to based stipulates *inter alia* that the development of the resources in the area be in accordance with sound commercial policies. The other principles enumerated in the section provide that:

(a) 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;

(b) There shall be no subsidization of production of minerals from the deep seabed. As far as anti-subsidy provisions are concerned, the application of the GATT rules shall be considered;

(c) There shall be no discrimination between minerals from land and from the deep seabed. There shall be no discrimination between seabed miners and land-based miners, nor between seabed miners. In particular, there shall be no preferential access to markets for minerals derived from the deep seabed by use of tariff or non-tarif barriers or for imports of commodities produced from such minerals, nor shall any preference be given by States to minerals derived from the deep seabed by their nationals;

(d) The plan of work approved by the Authority in respect of each mining area shall indicate a production schedule which shall include the estimated amounts of minerals that would be produced per year under that plan of work; and

(e) States parties which are Parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements. States which are not Parties to such agreements shall have recourse to the dispute-settlement procedures provided for under the Convention.

It is further provided that the plan for 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 that plan of work. The provisions of article 151, papragraphs 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.

G. Economic Assistance

Section 7 of the Annex endeavour to find solutions to the vexing question of economic assistance to developing countries which suffer

serious adverse effects on their export earnings or economics resulting from a reduction in the price of an affected mineral, or in the volume of exports to the extent that such reduction is caused by activities in the area. In this regard 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. 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.

The Authority shall provide assistance from the economic assistance fund to adversely affected developing land-based producer States where appropriate in cooperation with existing global or regional development organs which have the infrastructure and expertise to carry out such assistance programmes. The extent and duration 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 adversely affected developing land-based producer States.

H. Financial Terms of Contract

Section 8 of the Annex enumerates the 5 principles for the financial terms of contract for the commercial production of deep seabed minerals. These include:

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

(ii) 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 seabed miners an artificial competitive advantage, or imposing on them an competitive disadvantage.

(iii) The system should not be complicated and should not impose major administrative costs on the Authority or on the Contractor. Consideration is to be given to the adoption of a royalty system or a combination of royalty and profit sharing system. Any subsequent change in choice between the alternative systems is to be made by agreement between the Authority and the Contractor.

(iv) An annual fixed fee shall be payable from the date of commencement of commercial production. Such a fee shall be adjusted at the time of the approval of the plan of work in order to take account of the anticipated delay in reaching the exploitation stage and the risks involved in establihsing an industry in a new and unstable environment.

(v) The system of financial 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.

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

In the application of the above provisions Articles 13 of the Annex III of the Convention shall not apply.

I. The Finance Committee

Section 9 of the Annex establishes a fifteen-member finance committee as a subsidiary body. 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 the Section 3 of the Annex viz. the largest consumers, the largest investors, major net exporters and developing State parties representing special interests shall be represented on the Committee by at least one member. Until the Authority has 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 that the PREPCOM had envisaged the establishment of a finance committee. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee.

Meeting of the International Seabed Authority

The final session of the PREPCOM was held in New York in August 1994. The PREPCOM had two substantive items in its agenda viz. the implementation of Resolution II of UNCLOS and had then considered Matters arising from the imminent entry into force of the United Nations Convention on the law of the Sea. On the question of Implementation of Resolution II of the UNCLOS the PREPCOM *inter alia* considered (i) the relinquishment of pioneer areas; (ii) compliance with understanding on the fulfillment of obligations by the registered pioneer investor, Inter-Oceanmetal Organization (IOM) and its certifying States; (iii) waiver of