

THE ENTERPRISE SYSTEM

A WORKING PAPER

## Introduction

1. The purpose of the present paper is to suggest an alternative system of exploration and exploitation of the minerals of the international seabed area, based on the Nigerian proposal (statement by the Hon. Dan Ibekwe, September 17, 1976) and the Austrian proposal (statement by Ambassador Karl Wolf, intersession~~ing~~ working session, Geneva, March 1977; see Minister Evensen's report on that meeting, Annex).

2. The proposal aims at meeting the main objectives and objections set forth by various groups of States in the course of the negotiations, as well as greatly simplifying the structure of Part XI of the Informal Composite Negotiating Text, which has become overly complex as a result of compromise building.

3. Objectives and objections, as summarized here, refer only to the system of production. Although the issues arising from the system of production are closely related to those arising from the political structure of the Seabed Authority, these latter have been left out ~~here~~ for the sake of conciseness.

4. The paper is divided into three parts. The first sets forth the main objectives and objections of various groups of States; the second gives an outline of the new system proposed; the third tests the new proposals against the objectives and objections listed in the first part.

### I. Objectives and objections of different groups of States

A. The objectives and objections of industrialized States and their companies can be summarized as follows:

1. The system must provide access to States and State-sponsored entities on a reasonably assured basis.
2. The terms of contract between the Authority and State-sponsored entities must be clearly defined.
3. The terms of contract must not impose undue financial burdens on States and State-sponsored entities.
4. The terms of contract must not mandate technology transfers as a condition for access.
5. In the context of financial arrangements, emphasis should be on risk- and profit-sharing rather than on royalties.
6. The terms of contract must assure security of tenure to States and State-sponsored entities.
7. Efficiency of management must be assured and arbitrary

interference in management decisions from the political organs of the Authority must be avoided.

8. If there are joint ventures, contracts must assure fair valuation of equity interests, continuing protection of contractors' interests, and continuing protection of rights of access.

9. Management decisions must be geared to production, not to non-production and to an agreed minimum rate of return.

10. Free-market conditions must determine the level of de-monopolization: no anti-monopoly clause is required.

B. The objectives and objections of developing States can be summarized as follows:

1. The system must provide access to small States and to developing States.

2. Since, practically, these can participate in seabed mining activities only through the Authority, the Authority's Enterprise must be in a position to operate on a basis of equality with industrialized States and their companies.

3. Financial burdens on States and State-sponsored entities must be substantial enough to generate funds enabling the Enterprise to initiate operations.

4. The system must ensure technology transfers enabling the Enterprise to operate.

5. Since statements on profits are highly manipulable, emphasis should be on royalties rather than on profit-sharing.

6. The system must be subject to re-evaluation and revision after an initial period of 25 years.

7. Developing countries must be fully represented on the controlling organs of the Enterprise. The Authority must at all times exercise full control over the decisions and operations of States and State-sponsored entities.

8. Joint ventures should be encouraged by offering financial and other advantages to contractors.

9. The system must provide for production controls. Production must be limited if this is necessary to protect the interests of developing countries who are land-based producers and exporters of minerals also produced in the international area. ↑

\* Canada, although an industrialized State, takes the position of the developing countries on this point.

10. The system must provide effective anti-monopoly measures.

C. The objectives and objections of the Socialist States coincide, on the whole, with those of the developing States. Their main emphasis, however, has been on two points:

1. Access to States and State enterprises.
2. Anti-monopoly provisions.

## II. The Enterprise System: an outline

1. The present proposal is based on the assumption that

(a) the Authority is a political intergovernmental organization with broad responsibilities for the management of a significant segment of ocean space and resources, viz., the international seabed area and its resources which are the common heritage of mankind. All States participate in the Authority on the basis of sovereign equality.

(b) The Enterprise system is a system of commercial Enterprises whose responsibility is limited to the exploration and exploitation of the area. All States have access to the Enterprise system through entities designated by them, whether public (State enterprises) or private (companies, consortia); participation, i.e., voting rights and profits, are proportionate to investment.

2. Each designated entity, or group of designated entities (consortia) forms an Enterprise with the Authority, i.e., a joint venture, with its own Governing Board and Directorate, headed by a Director General. Each Enterprise will be based on the following principles:

(a) The Authority must provide <sup>at least</sup> half the investment capital, including the value of the nodules in situ, which are the common heritage of mankind; the designated entity or group of entities must provide the ~~other half~~; <sup>remaining portion</sup>

(b) The Authority appoints <sup>at least</sup> half the members of the Board of Governors of each Enterprise; the entity or entities participating in the Enterprise appoint the ~~other half~~. <sup>remaining portion</sup> In case of a consortium of designated entities, these entities will divide the number of votes in proportion to their investment.

(c) Profits will be shared in proportion to investment: i.e., the Authority will take <sup>at least</sup> half of all profits of any Enterprise.

3. There may be some slight variations within this system: i.e., to insure full Authority control, the minimum

*with regard to the minimum role of the Authority*

investment by the Authority may be raised to 52 percent; in this case, the Authority would be entitled to appoint 13 out of 25 members of the Board and to receive 52 percent of all profits; or the division may be 50 percent to 50 percent; or 49 percent to 49 percent, with 2 percent of the investment, and 2 votes on the Board reserved to an outside institution, e.g., the World Bank or the Fund.

4. If and when the Authority has accumulated sufficient capital and know-how, and if it were felt to be advantageous to the Authority and to developing countries, the Authority could, under the same formula, establish an Enterprise of its own, e.g., in joint venture with one developing country, and 99 percent owned and controlled by the Authority. Such an Enterprise would then have to be in a position to compete effectively with the other Enterprises of the system. It is not likely that the Authority would want to establish such an Enterprise for many years to come, that is, as long as the problem of financing such an Enterprise and getting the requisite technology is as unsurmountable as it is under the "parallel system." Theoretically, however, the possibility of establishing a practically wholly Authority owned and controlled Enterprise remains unchanged.

5. It is likely that, between 1985 and the end of this century, the number of Enterprises established by the Authority in joint venture with designated entities or groups of entities will be between 6 and 12: one for each of the established Consortia; one for an entity designated by the Soviet Union, either alone or in cooperation with other Socialist States of Eastern Europe; one for an entity designated by the Peoples Republic of China.

6. Since the members of the Board appointed by the designated entities will all represent companies and come from industrialized countries, the members appointed by the Authority should all come from developing and some small developed countries.

7. Supposing there were 12 Enterprises, each with a Board of 25 members of which the Authority should appoint 13, as many as 156 board members would be appointed from small and developing countries. No other system would provide so broad a participation of developing countries in the management of seabed mining.

8. The Authority would coordinate and harmonize production plans of all Enterprises.

9. While working within the general policy laid down by the Authority, each Enterprise would function autonomously; the system would be decentralized, flexible, and dynamic, and there would be no huge international bureaucracies.

10. The system could be easily adapted to operate in areas under national jurisdiction. Here the coastal State could have

the controlling shares and the controlling votes. Half of the profits, however, would be plowed back into the Authority, for the benefit of all mankind, especially of poor nations.

11. For the sake of illustration, the following Board procedures might be considered: The Board of each Enterprise should endeavor to take decisions unanimously. If unanimous agreement cannot be reached, decisions should be taken as follows: Decisions on substantive matters should be taken by a majority of the Board members representing at least  $2/3$  of the total voting participation. Decisions on procedural matters should be taken by a simple majority of members present and voting, each having one vote. Disputes whether a specific matter is procedural or substantive should be decided by the Chairman of the Board. The decisions of the Chairman may be overruled by a two-thirds majority of members present and voting, each having one vote. The Board may adopt a different voting procedure for the election of its officers.

12. As an anti-monopoly measure, no member of the Board shall have more than 25 percent of the total voting participation of an Enterprise. If any designated entity represented on the Board is entitled, based on its investment share, to a voting participation in excess of 25 percent, it may offer to other designated Entities any or all of its investment shares in excess of 25 percent.

13. To the extent that a designated Entity should decide not to offer its excess investment shares to other designated Entities, the corresponding voting participation of that designated Entity in excess of 25 percent shall be distributed equally to all other members of the Board.

14. A quorum for any meeting of the Board should consist of a majority of the members, representing at least two-thirds of the total voting participation represented on the Board.

15. The functions of the Board should include the following:

- (a) Adoption of production programmes;
- (b) adoption and implementation of management arrangements which shall require the Director General to contract for technical and operational functions whenever this is more advantageous to the Enterprise;
- (c) adoption of procurement procedures, regulations and contract terms and approval of procurement contracts consistent with the Convention;
- (d) adoption of financial policies, approval of financial regulations, annual budget and annual financial statements and decisions with respect to all other financial matters,

including investment shares and capital ceilings;

(e) submission of the production programmes to the Council of the Seabed Authority;

(f) submission of an annual report and recommendations to the Assembly of the Seabed Authority, in accordance with Article...of the Convention;

(g) Designation of an arbitrator where the Enterprise is a party to arbitration;

(h) oversight over the activities of the Enterprise to ensure full public disclosure of all information not protected under Article...

(i) Exercise of any other functions conferred upon it in any other Article of the Convention or its Annexes or any other function appropriate for the achievement of the purposes of the Enterprise.

16. The Director General should be appointed, from among candidates proposed by the Council of the Seabed Authority, by the Board, subject to confirmation by the Assembly. The appointment should be deemed confirmed unless within sixty days more than one-third of the members of the Assembly have informed the Board in writing of their objection to the appointment. The Director General should assume his functions after the appointment, and pending confirmation.

17. The term of office of the Director General should be six years. However, the Board should be able to remove the Director General earlier on its own authority. The Board should have to report the reasons for the removal to the Assembly of the Authority.

18. The Director General is the chief executive and legal representative of the Enterprise and is responsible to and under the direction of the Board.

19. The structure, staff levels and standard terms of employment of officials and employees and of consultants and other advisers to the Directorate should be subject to approval by the Board.

20. The Director General should appoint the members of the Directorate. The appointment of senior officials reporting directly to the Director General should be subject to approval by the Board.

21. The paramount consideration in the appointment of the Director General and other personnel of the Directorate must be the necessity of ensuring the highest standards of integrity, competency, and efficiency.

22. A provision on procurement could be taken over, with minor changes, from the Composite Text.

23. The Authority and each designated Entity should be assigned a part of the products for processing and marketing, in accordance with the investment share in the Enterprise.

24. Transfer of technology, in the form of inventions and technical information, shall be subject to the following principles:

(a) An Enterprise, in connection with any work performed by it or on its behalf at its expense, shall acquire in inventions and technical information those rights, but no more than those rights, which are necessary and in the common interests of the Enterprise and of the designated Entities in their capacity as such. In the case of work done under contract, any such rights shall be on a non-exclusive basis.

(b) For the purpose of the above paragraph, an Enterprise, taking into account its principles and objectives and generally accepted industrial practices, shall, in connection with such work involving a significant element of study, research or development, ensure for itself:

(i) the right to have disclosed to it without payment all inventions and technical information generated by such work;

(ii) the right to disclose and to have disclosed to Parties and designated Entities and others within the jurisdiction of any Party such inventions and technical information and to use and to authorize and to have authorized Parties and designated Entities and such others to use such inventions and technical information without payment in connection with the exploration and exploitation of the nodules on the deep seabed;

(c) In case of work done under contract, ownership of the rights in inventions and technical information generated under the contract shall be retained by the contractor.

(d) An Enterprise shall also ensure for itself the right, on fair and reasonable terms and conditions, to use and to have used inventions and technical information directly utilized in the execution of work performed on its behalf but not included in paragraph (b), to the extent that such use is necessary for the reconstruction or modification of any product actually delivered under a contract financed by the Enterprise, and to the extent that the person who has performed such work is entitled to grant such right.

(e) The Board may in individual cases approve a deviation from the policies described above, where in the course of negotiation it is demonstrated to the Board that failure to deviate would be detrimental to the interests of the Enterprise.



(f) The Board may also, in individual cases where exceptional circumstances warrant, approve a deviation from the policy prescribed where all the following conditions are met:

(i) it is demonstrated to the Board that failure to deviate would be detrimental to the interests of the Enterprise;

(ii) the Board determines that the Enterprise should be able to ensure patent protection in any country;

(iii) where, and to the extent that, the contractor is unable or unwilling to ensure such patent protection within the time required.

(g) With respect to inventions and technical information in which rights are acquired by an Enterprise otherwise than pursuant to paragraph (b), the Enterprise, to the extent that it has the right to do so, shall upon request:

(i) disclose or have disclosed such inventions and technical information to any Party of designated Entity subject to reimbursement of any payment made by or required of the Enterprise in respect of the exercise of the right of disclosure;

(ii) make available to any Party or designated Entity the right to disclose or have disclosed to others within the jurisdiction of any Party and to use and to authorize and to have authorized such others to use such inventions and technical information:

(.)without payment in connection with the exploration and exploitation of the nodules of the deep seabed;

(..) for any other purpose, on fair and reasonable terms and conditions to be settled between designated Entities or others within the jurisdiction of any Party and the Enterprise or the owner of the inventions and technical information or any other authorized entity or person having a property interest therein, and subject to reimbursement of any payment made or required of the Enterprise in respect of the exercise of these rights.

(h) The disclosure and use, and the terms and conditions of disclosure and use, of all inventions and technical information in which an Enterprise has acquired any rights shall be on a non-discriminatory basis with respect to all designated Entities and others within the jurisdiction of Parties.

(i) Nothing in these provisions shall preclude an Enterprise, if desirable, from entering into contracts with persons subject to domestic laws and regulations relating to the disclosure of technical information.

25. The accounts of the Enterprises shall be audited annually by an independent Auditor appointed by the Council of the International Seabed Authority. Any Party or designated Entity shall have the right to inspect the accounts of the Enterprises.

26. For the purpose of their proper functioning, the Enterprises shall have the capacity to contract, to acquire, lease, hold and dispose of movable and immovable property, to be a party to legal proceedings and to conclude agreements with States or international organizations.

27. The seat of the Enterprises shall be at the seat of the International Seabed Authority or at the seat of any of the regional centers or offices established by the Seabed Authority in accordance with Article of this Convention.

28. The articles on privileged and immunities might be taken over from the Composite Text.

29. Any designated Entity should be liable to pay damages for any action of his or his subcontractor injurious to any Enterprise arising from gross negligence or injury by malice aforethought.

30. Parties are not, in their capacity as such, liable for the acts and obligations of the Enterprises, except in relation to non-Parties or natural or juridical persons they might represent insofar as such liability may follow from Treaties in force between the Party and the Non-Party concerned. However, the foregoing does not preclude a Party which has been required to pay compensation under such a Treaty to a non-Party or to a natural or juridical person it might represent from invoking any rights it may have under that Treaty against any other Treaty.

31. There should be standard article on Withdrawal, suspension and termination, and Dissolution.

32. An article on Dispute Settlement can be drawn from the provisions of Parts XI and XV of the Composite Text.

### III. Does the new proposal meet the stated objectives?

1. The system does indeed provide access to States and State-sponsored entities on an assured basis. In view of the present economic situation of the real world, it is not likely that there is going to be a rush for contracts. How many States are able and willing to invest half a billion dollars in deep-sea mining? It is not likely that, to start with, there would be more than six. The number may rise to a dozen by the end of the century. By far the greater number of States would participate in the Enterprises through appointment to the Governing

9. The question of production controls should be dealt with separately from that of the structure of the system of production. It certainly would be easier to deal with in the context proposed here. Under the parallel system, there would be exploitation in (a) reserved areas; (b) non-reserved areas; (c) areas under national jurisdiction; (d) on land. It would be extremely difficult to device efficient production controls under such a scheme. The system proposed in this paper is applicable to three of these four areas. This facilitates the framing of an efficient resource policy.

10. Efficient anti-monopoly measures can easily be built into the system proposed here.

11. Under no other system would there be as wide an access to developing States and small States.

12. The Authority would not be put into a position where it would have to compete with established industry. It would have to cooperate with established industry. Established industry would be built into the system.

#### Conclusion

The proposed system meets the objectives and objections of all groups of States. It would make it possible, furthermore, to simplify the text of the Convention in several ways: The composition of the Council might be simplified by omitting the representation of interest groups. The section on financing could be omitted. Transfer of technologies would fall into established patterns and not raise any particular problems. All of Annex II (Basic Conditions) could be omitted. Resource policy would be simplified. The revision clause would be simplified. The Common Heritage of Mankind would not be divided into "reserved" and "nonreserved" areas -- a violation of the principle -- but would be managed rationally, for the benefit of all mankind, but with particular regard for the needs, interests, and capacities of developing countries.

Austrian  
working paper

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A Working Paper

## Introduction.

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4. The paper is divided into three parts. The first sets forth the main objectives and objections of various groups of States; the second gives an outline of the new system proposed; the third tests the new proposals against the objectives and objections listed in the first part.

5. Initial and informal reactions, both from developing and from industrialized countries, have been encouraging. The footnotes indicate areas where details will have to be elaborated to satisfy commercial criteria. This could be done in the "Model Statute for Enterprises" which ought to be annexed to the Convention.

I. Objectives and objections of different groups of States.

A. The objectives and objections of industrialized States and their companies can be summarized as follows:

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6. The terms of contract must assure security of tenure to States and State-sponsored entities.
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9. Management decisions must be geared to production, not to non-production and to an agreed minimum rate of return.
10. Free-market conditions must determine the level of de-monopolization: no anti-monopoly clause is required.

B. The objectives and objections of developing States can be summarized as follows:

1. The system must provide access to small and landlocked and to developing States.

2. Since, practically, these can participate in seabed mining activities only through the Authority, the Authority's Enterprise must be in a position to operate on a basis of equality with industrialized States and their companies.
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9. The system must provide for production controls. Production must be limited if this is necessary to protect the interests of developing countries who are land-based producers and exporters of minerals also produced in the international area.\*
10. The system must provide effective anti-monopoly measures

C. The objectives and objections of the Socialist States coincide, on the whole, with those of the developing States. Their main emphasis, however, has been on two points:

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\*Canada, although an industrialized State, takes the position of the developing countries on this point.



II. The Enterprise System: an outline.

- A. The present proposal is based on the assumption that:
1. The Authority is a political intergovernmental organization with broad responsibilities for the management of a significant segment of ocean space and resources, viz., the international seabed area and its resources which are the common heritage of mankind. All States participate in the Authority on the basis of sovereign equality.
  2. The Enterprise system is a system of commercial Enterprises whose responsibility is limited to the exploration and exploitation of the area. All States have access to the Enterprise system through entities designated by them, whether public (State enterprises) or private (companies, consortia); participation, i.e., voting rights and profits, are proportionate to investment.
- B. Each designated entity, or group of designated entities (consortia) forms an Enterprise with the Authority, i.e. a joint venture, with its own Governing Board and Directorate, headed by a Director General. Each Enterprise will be based on the following principles:
1. The Authority must provide at least half the investment capital, including the value of the nodules in situ, which are the common heritage of mankind; the designated entity or group of entities must provide the remaining portion. ✓
  2. The Authority appoints at least half the members of the Board of Governors of each Enterprise; the entity or entities participating in the Enterprise appoint the remaining portion. In case of a consortium of designated entities, these entities will divide the number of votes in proportion to their investment.
  3. Profits will be shared in proportion to investment, i.e., the Authority will take at least half of all profits of any Enterprise.
- C. There may be some slight variations within this system, with regard to the minimum role of the Authority, i.e., to insure full Authority control, the minimum investment by the Authority may be raised to 52 percent; in

this case, the Authority would be entitled to appoint 13 out of 25 members of the Board and to receive 52 percent of all profits; or the division may be 50 percent to 50 percent; or 49 percent to 49 percent, with 2 percent of the investment, and 2 votes on the Board reserved to an outside institution, e.g., the World Bank or the Fund.

- D. If and when the Authority has accumulated sufficient capital and know-how, and if it were felt to be advantageous to the Authority and to developing countries, the Authority could, under the same formula, establish an Enterprise of its own, e.g. in joint venture with one developing country, and 99 percent owned and controlled by the Authority. Such an Enterprise would then have to be in a position to compete effectively with the other Enterprises of the system. It is not likely that the Authority would want to establish such an Enterprise for many years to come, that is, as long as the problem of financing such an Enterprise and getting the requisite technology is as unsurmountable as it is under the "parallel system." Theoretically, however, the possibility of establishing a practically wholly Authority owned and controlled Enterprise remains unchanged.
- E. It is likely that, between 1985 and the end of this century, the number of Enterprises established by the Authority in joint venture with designated entities or groups of entities will be between 6 and 12: one for each of the established Consortia; one for an entity designated by the Soviet Union, either alone or in cooperation with other Socialist States of Eastern Europe; one for an entity designated by the Peoples Republic of China.
- F. Since the members of the Board appointed by the designated Entities will all represent companies and come from industrialized countries, the members appointed by the Authority should all come from developing and some small developed countries.
- G. Supposing there were 12 Enterprises, each with a Board of 25 members of which the Authority should appoint 13, as many as 156 Board members would be appointed from small and developing countries. No other system would provide so broad a participation of developing countries in the management of seabed mining.
- H. The Authority would coordinate and harmonize production plans of all Enterprises.

- I. While working within the general policy laid down by the Authority, each Enterprise would function autonomously; the system would be decentralized, flexible, and dynamic, and there would be no huge international bureaucracies.
- J. The system could be easily adapted to operate in areas under national jurisdiction. Here the coastal State could have the controlling shares and the controlling votes. Half of the profits, however, would be plowed back into the Authority, for the benefit of all mankind, especially of poor nations.
- K. For the sake of illustration, the following Board procedures might be considered: The Board of each Enterprise should endeavor to take decisions unanimously. If unanimous agreement cannot be reached, decisions should be taken as follows: Decisions on substantive matters should be taken by a majority of the Board members representing at least 2/3 of the total voting participation. Decisions on procedural matters should be taken by a simple majority of members present and voting, each having one vote. Disputes whether a specific matter is procedural or substantive should be decided by the Chairman of the Board. The decisions of the Chairman may be overruled by a two-thirds majority of members present and voting, each having one vote. The Board may adopt a different voting procedure for the election of its officers.
- L. As an anti-monopoly measure, no members of the Board shall have more than 25 percent of the total voting participation of an Enterprise. If any designated entity represented on the Board is entitled, based on its investment share, to a voting participation in excess of 25 percent, it may offer to other designated Entities any or all of its investment shares in excess of 25 percent.
- M. To the extent that a designated Entity should decide not to offer its excess investment shares to other designated Entities, the corresponding voting participation of that designated Entity in excess of 25 percent shall be distributed equally to all other members of the Board. <sup>12</sup>
- N. A quorum for any meeting of the Board should consist of a majority of the members, representing at least two-thirds of the total voting participation represented on the Board.
- O. The functions of the Board should include the following:

1. Adoption of production programmes;
  2. Adoption and implementation of management arrangements which shall require the Director General to contract for technical and operational functions whenever this is more advantageous to the Enterprise;
  3. Adoption of procurement procedures, regulations and contract terms and approval of procurement contracts consistent with the Convention;
  4. Adoption of financial policies, approval of financial regulations, annual budget and annual financial statements and decisions with respect to all other financial matters, including investment shares and capital ceilings; approval of investments, even if generally approved under this paragraph, if they exceed...; otherwise, if they exceed...; approval of credits and loans in excess of...unless covered by the general credit ceiling applying to daily operations, subject to the decisions of the Board; approval of loan requests;
  5. Submission of the production programmes to the Council of the Seabed Authority;
  - 6.6 Submission of an annual report and recommendations to the Assembly of the Seabed Authority, in accordance with Article...of the Convention;
  7. Designation of an arbitrator where the Enterprise is a party to arbitration;
  8. Initiation of law suits, when claims are in excess of \$..., as well as the renunciation or settlement of claims, if the amount to be renounced is in excess of \$...;
  9. Delegation of authority and issuance of powers of attorney;
  10. The appointment and dismissal of staff members and employees whose annual salary exceeds...
  11. Oversight over the activities of the Enterprise to ensure full public disclosure of all information not protected under Article...;
  12. Exercise of any other functions conferred upon it in any other Article of the Convention or its Annexes or any other function appropriate for the achievement of the purposes of the Enterprise.
- P. The Director General should be appointed, from among candidates proposed by the Council of the Seabed

Authority, by the Board, subject to confirmation by the Assembly. The appointment should be deemed confirmed unless within sixty days more than one-third of the Members of the Assembly have informed the Board in writing of their objection to the appointment. The Director General should assume his functions after the appointment, and pending confirmation. Dir

- Q. The term of office of the Director General should be six years. However, the Board should be able to remove the Director General earlier on its own authority. The Board should have to report the reasons for the removal to the Assembly of the Authority
- R. The Director General is the chief executive and legal representative of the Enterprise and is responsible to and under the direction of the Board.
- S. The paramount consideration in the appointment of the Director General and other personnel of the Directorate must be the necessity of ensuring the highest standards of integrity, competency, and efficiency.
- T. A provision on Procurement could be taken over, with minor changes, from the Composite Text.
- U. The Authority and each designated Entity should be assigned a part of the products for processing and marketing, in accordance with the investment share in the Enterprise.
- V. Designated Entities participating in an Enterprise shall not participate in any other deepsea mining enterprise, not even through subsidiaries, unless specially authorized by the Board.

Entities participating in an Enterprise shall maintain secrecy with regard to all activities of the Enterprise, whether of a technical or economic or juridical nature. The extent to which the Authority can utilize such information for its own purposes and in cooperation with third parties, is determined by the "Secrecy Agreement" annexed to the Model Statute for Enterprises.

- W. The accounts of the Enterprises shall be audited annually by an independent Auditor appointed by the Council of the International Seabed Authority. Any Party or designated Entity shall have the right to inspect the accounts of the Enterprises.

X. For the purposes of their proper functioning, the Enterprises shall have the capacity to contract, to acquire, lease, hold and dispose of movable and immovable property, to be a party to legal proceedings and to conclude agreements with States or international organizations.

Y. The seat of the Enterprises shall be at the seat of the International Seabed Authority or at the seat of any of the regional centers or offices established by the Seabed Authority in accordance with Article ... of this Convention.

Z. The articles on privileges and immunities might be taken over from the Composite Text.

A'. Any designated Entity should be liable to pay damages for any action of his or his subcontractor injurious to any Enterprise arising from gross negligence or injury by malice aforethought.

B'. Parties are not, in their capacity as such, liable for the acts and obligations of the Enterprises, except in relation to non-Parties or natural or juridical persons they might represent insofar as such liability may follow from Treaties in force between the Party and the Non-Party concerned. However, the foregoing does not preclude a Party which has been required to pay compensation under such a Treaty to a non-Party or to a natural or juridical person it might represent from invoking any rights it may have under that Treaty against any other Treaty.

C'. There should be standard article on Withdrawal, suspension and termination, and Dissolution.

D'. An article on Dispute Settlement can be drawn from the provisions of Parts XI and XV of the Composite Text.

### III. Does the new proposal meet the stated objectives?

A. The system does indeed provide access to States and State-sponsored entities on an assured basis. In view of the present economic situation of the real world, it is not likely that there is going to be a rush for contracts. How many States are able and willing to invest half a billion dollars in deep-sea mining? It is not likely that, to start with, there would be more than six. The number may rise to a dozen by the end of the century. By far the greater number of States would participate in the Enterprises through appointment

to the Governing board by the Authority.

- B. The terms of contract between the Authority and States and State-sponsored entities would be clearly defined in accordance with commercial practices.
- C. The contract would not impose undue financial burdens on States and State-sponsored entities; on the contrary, the investment burden would be cut by at least 50 per cent.
- D. Technology transfers would follow practices already established in joint ventures.
- E. There would be risk and profit sharing.
- F. Security of tenure would be assured to States, State-sponsored entities as well as to the Authority. Of course, in these times of rapid change and technological obsolescence, any Treaty ought to contain a revision clause; any Treaty ought to be brought up to date periodically. If, however, the international community gets, in the Convention, today what, in the Composite Text, it hoped to get 25 years from now, the Revision Clause can be kept in very simple general terms. It need not be a catalogue of unfulfilled promises.
- G. The Authority would control production in the international area in two ways: Through the appointment of members to the Governing Board of all Enterprises, and through its political organs, the Assembly and the Council. Operationally, however, the Enterprise system would be decentralized, and integrity of management would be assured.
- H. The assessment of the value of the nodules in situ will raise certain problems. On the other hand, the value of the technologies, contributed by the designated entities, will also have to be fairly assessed. The value of the technology may balance the value of the resource, and capital investment may still have to be divided fifty to fifty.
- I. The question of production controls should be dealt with separately from that of the structure of the system of production. It certainly would be easier, however, to deal with in the context proposed here. Under the parallel system, there would be exploitation in (1) reserved areas; (2) non-reserved areas; (3) areas under national jurisdiction; (4) on land. It would be extremely difficult to devise efficient production controls under such a scheme. The system proposed in this paper is applicable to three of these four areas. This facilitates the framing of an efficient resource policy.

- J. Efficient anti-monopoly measures can easily be built into the system proposed here.
- K. Under no other system would there be as wide an access to developing States and small States.
- L. The Authority would not be put into a position where it would have to compete with established industry. It would have to cooperate with established industry. Established industry would be built into the system.



Conclusion.

The proposed system meets the objectives and objections of all groups of States. It would make it possible, furthermore, to simplify the text of the Convention in several ways: The composition of the Council might be simplified by omitting the representation of interest groups. The section on financing could be omitted. Transfer of technologies would fall into established patterns and not raise any particular problems. All of Annex II (Basic Conditions) could be omitted. Resource policy would be simplified. The revision clause would be simplified. The Common Heritage of Mankind would not be divided into "reserved" and "non-reserved" areas -- a violation of the principle -- but would be managed rationally, for the benefit of all mankind, but with particular regard for the needs, interests, and capacities of developing countries.

Notes

1. Upon request by the Director General, capital contributions, in the currency agreed upon, shall be deposited in the account specified, within...weeks. In case of failure to meet this deadline, an interest of...percent shall be charged to the delinquent Entity. If payment has not been received...weeks after the passing of the deadline, the delinquent Entity shall be solicited once more in writing to make payment within...weeks. If also the second deadline passes without payment having been made, the other designated entities shall be entitled to take over the shares of the delinquent Entity whose participation in the Enterprise shall thereby be terminated. Besides the interest due, the terminating Entity, shall pay an indemnity in the amount of...percent of its shares. In calculating the final indebtedness, any partial payments made by the delinquent Entity shall be taken into due account. If the delinquent partner is the Authority itself, the procedure of Art.... shall apply, and the Enterprise shall be terminated.

The designated Entities shall, in accordance with decisions of the Board of the Enterprise, extend loans to the Enterprise, in proportion to their investment shares, up to...percent of their respective shares. Such loans shall bear an interest of... percent, unless the Board decides otherwise. Securities for such loans can be offered only insofar as they are not needed by the Enterprise for other activities.

An Entity which fails to fulfil its obligation with regard to a loan to the Enterprise shall refund to the Enterprise the cost that may arise from a loan from a third party, no matter whether such a loan is actually contracted or not. The Enterprise may, furthermore, set a new deadline for the delinquent Entity. If also this deadline is missed, the delinquent Entity's participation in the Enterprise may be terminated.

A part of the investment capital may be contributed in kind rather than in cash. The value of the contribution in kind <sup>to</sup> must be assessed by internationally recognized experts; in case can it be given a higher value than that determined by such experts. This applies also to the nodules in situ, which are the common heritage of mankind.

2. An Entity which wants to sell its shares shall notify its intention to the other members of the Enterprise in writing. The other members shall be entitled to assume these shares in proportion to their own investment shares. They shall notify their intention within three weeks and initiate negotiations. The terms and conditions of the sale must be the same for all members.

If the members of the Enterprise are not willing to assume all offered shares, the selling Entity may offer them to a third party. As soon as an agreement with a third party has been reached, the name of the party and the terms of the sale and other related information shall be communicated in writing to the Enterprise. The other participating Entities have a right to

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to buy the shares on the terms agreed upon with the third party. They must notify their intention within four weeks. If they fail to do so, their silence is to be interpreted as a rejection of the offer. In the case of rejection, an additional waiting period of three weeks shall apply. After this period the selling Entity may sell its shares on the agreed terms and conditions to the third party which, in this case, shall be bound to enter the contract.