COMMENTS ON THE COMPROMISE FORMULA, THIRD REVISION.

The suggested compromise formula, third revision, judiciously incorporates many of the amendments and suggestions made during the discussions since the distribution of the second revision. A number of such suggestions, however, could not be included because they were clearly incompatible. While the new text, in some aspects, brings us closer to a generally acceptable compromise, it must be admitted, in all frankness, that, in other aspects, the lines appear to have been hardening. Also, the changes introduced in the new text are not numerous, and some of them are small, or of a drafting nature. Some of the major objections have not been met. As Ambassador Richardson put it in his statement of June 10, we "may be in the process of designing a system of piecemeal compromises which, when viewed as a whole, is a fundamentally unrealistic system -- a system which, were it to come into effect, could prove to be a system of non-exploitation...." The few changes made in the new test, we are afraid, have not alleviated the gravity of this concern.

Let me now proceed article by article:

Article 9

Paragraph 1, first line: The new text adds the words "in accordance with the provisions on this part of the Convention". This is no substantial change. While apparently intended to avoid the "possibility of misinterpretation" troubling some Delegations, it is doubtful whether this addition will in fact assuage these troubles.

Sub-paragraph (a) omits the words "and rational management" which would have gone a long way towards meeting the demands of the Group of 77, while not really causing any serious difficulty to any one. It is indeed hard to see who could be against a rational management of the area and its resources, particularly since, even in the text of the Group of 77, it is not claimed in any way that such management must be monopolized in the hands of the Enterprise or of the Authority. It could be joint management, cooperative management, parallel, coordinated management, or what not. But certainly, one of the major purposes of the establishment of the Authority is to assure rational management of the Area and its resources. The wilful omission of this phrase has something ominously irrational.

Sub-paragraph (d): There have been some drafting changes: the words "increasing availability of raw materials" have been added. This is a clear and useful concept. The meaning of the sub-paragraph as a whole, however, is not rendered any clearer by this addition. One wonders whether the purpose of increasing the availability of raw materials can really be ("in order to") "to secure adequate supplies to consumers of such minerals originating in the Area as are also produced outside the Area." It seems to my Delegation that an overcondensation of concepts has taken place here which makes the sub-paragraph practically ununderstandable. Some simpli-

fication -- or expansion -- seems called for. My Delegation would suggest the cancellation of the words "of such minerals originating in the Area as are also produced outside the Area."

Paragraph 2: The chapeau of paragraph 2 and the text of paragraph 3 seem repetitious. Perhaps paragraph 3 could be condensed, after the third line, by a simple reference to paragraph 2: e.g., "...who suffer significant adverse effects of the kind referred to in paragraph 2."

Sub-paragraph (a): The text does not include a sentence, proposed by the 77 text, to the effect that "In carrying out the decisions taken by such organs, the Authority shall assure the uniform and non-discriminatory implementation of such decisions in respect to all production in the Area of the minerals concerned." It seems to my Delegation that everybody would stand to gain from such an anti-discrimination clause: nobody would lose.

Sub-paragraph (b), (c), and (d).

Mr. Chairman: My country is a net importer of minerals and, obviously, we are interested in increased production and prices fair to consumers. We do not, however, have any a priori ideological objection to production controls. If the majority of members of the Co ference can go along with the provisions of sub-paragraphs (b), (c), and (d) of paragraph 2, Article 9 of the compromise text, thess provisions would be acceptable to us. However, we feel, in all frankness, compelled to make the following observations:

1. The provisions are exceedingly complex. Unquestionably they would give rise to the establishment of an important committee or commission of international civil servants and their supporting staff, to study the effects of the paragraphs, observance by States, consequences, implications, etc. It would add substantially to the budget of the Authority and consume a lot of administrative time.

2. We are concerned that the compromise is now such that it may not be acceptable either to the technologically advanced States who will do the seabed mining, nor to the land-based producers;

3. And this, in the view of my Delegation, is the most important point: Any formula that may be agreed upon may have either one of two effects, but not the effect that it purports to be designed for: Either it will not limit production: Article 9 of the RSNT was in fact designed not to limit production. The Delegate of Canada brilliantly demonstrated this defect of the RSNT during the meeting of the Evensen Group in Geneva last March. All one has to do, furthermore, to understand this point is to look at the production plans of the major international Consortia which aim at a total cumulative production of 12 million tons of nodules by 1985, providing, by 1985, 1,500 thousands of short tons of manganese, 180 thousands of short tons of copper; 79,500 thousands of pounds of

thousands of pounds of cobalt, and 420 millions of pounds of Nickel; and, by the year 2000, 15,000 thousands of short tons of manganese, 900 thousands of short tons of copper, 405,000 thousands of pounds of cobalt, and 2,100 millions of pounds of nickel. This would fit well within the limits set by Article 9 of the RSNT and, although my Delegation has not had time to make a detailed study of the provisions of the revised compromise proposal, very likely it would also fit within the limits set by this Article.

Alternatively, one might assume that the provisions will effectively limit production within the area, in which case they will merely serve to stimulate production outside of the Area.

Mr. Chairman, it is by now no longer a secret that a considerable part of prime nodules will be mined in areas which, in accordance with the provisions of Part II of the Convention, will be under national jurisdiction. Attention has recently been drawn to the area under the jurisdiction of Clipperton Island which will include prime mining sites. The Micronesian Archipelagos, French Polynesia, Hawaii, and the Economic Zone of Mexico, may be equally blessed. If production in the international area is limited and this limit falls below the technological and financial capacity of the countries and companies geared to deep-seabed mining, they will shift their capacities to these areas under national jurisdiction. Also, it is easy to predict that these areas will be further extended to meet rising needs and the requirements of advancing technology. Thus production control in the international area will not serve to protect the interests of land-based producers. It will not serve to maintain prices at a level higher than those set by the market. It will simply put the Authority out of competition with private industry under national jurisdiction.

While ready to support the decision of the majority of States on this extremely difficult problem, my Delegation wishes nevertheless to go on record as having suggested the deletion of subparagraphs (b), (c), and (d), and their replacement with provisions giving the Authority flexible powers to plan and coordinate production in the Area. If the Authority becomes in effect a producer and if it profits from the rational exploitation of the Area, it is then indeed not likely that it will price itself out of competition or abdicate in favor of private enterprise under national jurisdiction.

Article 11. No changes have been made. The article has been taken over from the proposal submitted by Ambassador Castaneda in Geneva in March this year. The intentions of these provisions are certainly excellent. They go as far as they can go within the institutional framework as now conceived -- and that is not very far. In other words: they are of an exhortatory nature, in line with analogous provisions of Part III of the Convention: not likely to impose undue burdens on the technologically developed States, nor to lead to spectacular gains by the developing States or the Authority.

COMPROMISE FORMULA THIRD REVISION

Article 22 has remained basically unchanged. The place of the words "on the Authority's behalf" has been changed in response to suggestions by some Delegations; but this does not basically change the structure of the Article; in paragraph 2(ii) the words "State enterprises" have been replaced by "State Entities" -- again, no basic change.

In paragraph 3 one may wonder why the "plan of work" must be reviewed by the Technical Commission rather than by the Economic Planning Commission: one more illustration of the fact that the competences of the Commissions ought to be more precisely defined.

Paragraph 4 of the second revision has been omitted in the third revision -- apparently in response to the very strong objection by the American Delegation on June 10. One may wonder, in fact, why the U.S. Delegation took such a strong position against this paragraph, whose omission in the Third Revision does not, in fact, change in any fundamental way the structure and function of Article 22. As a member of the Group of Landlocked and Geographically Disadvantaged States, my Delegation rather deplores the omission of this paragraph which would have tended to strengthen our rights to participate in the activities in the Area.

Articles 23, 41, and 49 remain unchanged.

My Delegation has no basic difficulties with Articles 64 and 65. As we had already occasion to observe previously, however, we do not think it serves any purpose to turn a "review Article" into a declaration of principles or, worse, of unfulfilled principles; and to try to tie the hands of posterity is, in any case, a futile exercise. We still feel Article 65 could be condensed and simplified.

There are no changes in Annex I, Paragraph 8 (new), and only minor changes in paragraph 8(bis) (Selection of Applicants) responding to suggestions made during the discussion by some Delegations. My Delegation is ready to support these changes.

My Delegation has previously stated its position on the "banking system," and I do not want to repeat here our arguments. It is clear that subparagraph (j)(i) further diminishes the value of the system to the Authority and developing countries: for it may put the burden of prospecting, evaluation and exploration on the Authority: which would have to undertake this costly job before deciding which of the two areas under consideration it would want to reserve for its own use. The paragraph is somewhat ambiguous as to who is to pay for this prospecting evaluating and exploring, which may give rise to additional difficulties and disputes. My Delegation therefore feels that subparagraph (j)(i) makes the banking system still more inoperable than it was in the previous revision.

COMPROMISE FORMULA THIRD REVISION

The Financing provisions of Annex II have been further weakened. Sub-paragraph 6 (a)(v) now has become 6 (c)(iii), and the "mandatory contributions" by Members, on the basis of the U.N.'s scale of assessment, of the former text have become guarantees by member States, on the basis of the same scale, for debts incurred by the Enterprise. Mr. Chairman, we envisage here a scenario, all too familiar on the scene of international financing, of debts being paid off by incurring new debts, of interests rising and swallowing any gains or profits or grants.

It seems to my Delegation that the financial provisions, as they now stand, while still burdensome to the industrialized States, are too weak to get the Authority's Enterprise off the ground. Neither the U.S.A. proposals, on one extreme, or the Indian proposals, on the other, have been, or could have been, taken into any account, and on this point it would not appear that we are nearer to a solution of the problem, which I prefer to saying, "nearer to a compromise."

For this seems to my Delegation still the main weakness of the whole approach: that we are laboring hard to find a "compromise" and we are not working hard enough to find solutions to the problems before us.

Thank you Mr. Chairman.

Comments on the Statute of the Enterprise

The few o bservations my Delegation wishes to submit today are based on

(a) Annex II of the RSNT

(b) the "Agreed Text" on the Enterprise submitted by the Group of 77 on 20 May 1977.

The main differences between the two texts are two:

1. Under the RSNT, the Enterprise "shall possess full juridical personality" (paragraph 9(b)); under the proposal of the Group of 77, the Enterprise shall "within the framework of the international legal personality of the Authority, have such legal capacity and functions as provided for in the Statute", etc. (Art. 41).

2. Under the RSNT, the Governing Board of the Enterprise consists of 36 members, elected according to the same formula as the members of the Council; under the proposal of the Group of 77, the Governing Board shall be composed of 15 highly qualified and competent members elected by the Assembly, this election being based on the principle of equitable geographic representation, taking into account the special interests referred to in Article 27.

It seems to my Delegation that the two changes proposed by the Group of 77 constitute improvements, making for streamlining, simplification and better integration of the Enterprise into the Authority.

Neither Annex II nor the text of the Group of 77, however, come to grips with the basic structural problems of the Enterprise which, in the view of my Delegation, are the real root of the difficulties of the Enterprise. These difficulties are compounded by the financial and technological problems we have been discussing during the past weeks. But the basic problems are structural and institutional. I would like to concentrate on a few basic points:

1. The Enterprise is no longer the organ of the Authority which shall conduct activities in the Area directly. This statement is obsolete in every one of its components. The Enterprise is the organ of the Authority which, in cooperation with po or countries, shall conduct activities in reserved areas or reservations of the Area. As my Delegation had occasion to point out previously, there are no real economic incentives in the world economy of today for this kind of enterprise, since (a) the industrialized nations do their own mining outside of the reservations; (b) the mineral-exporting developing countries do not need seabed mining; (c) the mineral-importing developing nations are such minor importers that they do not need seabed mining either; (d) the acquisition and development of seabed-mining technology thus cannot be given priority in the development plan of any developing country.

STATUTE OF THE ENTERPRISE

2. The Enterprise is no longer the operational arm of the Authority. Lacking capital, technology, and managerial skill, the Enterprise, at least as long as we can foresee, must rely on service contracts, production sharing contracts, or joint ventures with the same States or companies who will explore and exploit the Area outside the reservations. In other words: the Enterprise is a poorman's replica of the Authority itself.

3. This is reflected in the structure itself of the Enterprise which faithfully dupplicates, in all details, the structure of the Authority. What we get, in fact, is not an Enterprise, but a non-operational Authority within a non-operational Authority: both dependent on contracts with States and Companies.

4. The Enterprise is no longer the organ that earns an independent income for the Authority for the benefit of all mankind, especially for the poorer nations -- as still reflected in paragraph 5(g) (Allocation of income); it has instead become an organ that will be a constant drain on the Authority and has to be financed in accordance with the new paragraph 6 (finances).

5. If what we want is an operational Enterprise -- even in the context of a parallel system -- this Enterprise must, at least be structured in such a way as to incorporate real economic forces and interests; it cannot be a political, intergovernmental agency, employing a host of international civil servants and dependent on grants and loans and assessments.

6. Even within a parallel system as embodied in the compromise proposal, third revision, my Delegation would urge a restructuring of the Enterprise along the following lines:

(a) The Enterprise is financed by the Authority and by associating Entities. At least 52 percent of the investment capital (inclusive of the imputed value of the nodules in situ which are a common heritage of mankind) must be provided by the Authority. Up to 48 percent of investment capital must be provided by the associating entities. Profits shall be divided between the Authority and the associating Entities in proportion to capital investment.

(b) The Governing Board of the Enterprise shall consist of 25 members. To assure the control of the Authority and the maximum participation of countries, especially developing countries, these members of the Board shall be designated in the following manner;

(i) 12 Board Members shall be designated by the Entities which have the largest investment shares in the Enterprise;

(ii) 13 Board Members shall be elected by the Assembly of the Authority on nomination by the Council, taking into account the principle of equitable geographical representation, with due regard to the interests of developing countries.

(c) Each Board Member belonging to category (i) shall have a voting participation equivalent to the investment shares represented. Each Board Member belonging to category (ii) shall have a voting participation equivalent to 4 percent of the investment. Members of category (ii) thus will have a total voting participation of 52 percent equivalent to the investment share of the Authority.

(d) The Governing Board of the Enterprise makes such provision for staff as may appear appropriate. The staff of the Enterprise are not international civil servants. The Enterprise, in accordance with the provisions of Annex...must undertake the obligation to recruit and train persons from developing countries.

7. The Enterprise could start operating immediately under such an arrangement. The difficulties of financing it would be cut in half. Instead of making huge financial contributions, States could encourage their companies or other entities to enter into a first project with the Enterprise under these terms.

8. The associated Entities would have a direct economic interest in making this first project a success. They would lose money if the project lost money. The associated Entities would also be instrumental in processing and marketing the minerals.

9. As the Enterprise gains experience and accumulates capital, it can, under the same formula, initiate a project 99% owned and controlled by the Authority, in cooperation with one or more developing countries. In the meantime, however, it is not an idle international bureaucracy, nor a poorman's replica of a non-operational Authority, but the operational arm of the Authority providing a new form of cooperation for developed and developing countries, accumulating anything from 52 to 99 percent of the profits from its operations, for the benefit of mankind, in particular for the developing countries.

10. For the time being we wish to leave in abeyance the question whether the Authority should be able to launch one such Enterprise at a time -- or several, if this turned out to be useful and practical. We also want to stress again that while, obviously, this approach to the Enterprise problem would be most successful and most beneficial to the Authority if it were pursuit as a unitary approach, a Statute, based on these principles, could be substituted in the Text without conflicting with the compromise proposal for a parallel system.

PROPOSAL

In consideration of the difficulties that appear to have arisen on the compromise proposal on a system of exploitation, we wish to submit the following alternative compromise proposal.

A.

The proposal is designed to

1. embody and articulate the principle of the Common Heritage of Mankind;

2. assure the effective control of the Authority over all activities in the area;

3. guarantee access to States and the active participation of the industrialized States and their companies;

4. assure the fullest participation of developing countries in all activities in the area;

5. provide a framework for cooperation rather than competition with established industry;

6. reduce and simplify the problem of financing and technology transfer;

7. reduce the burden of investment for States and companies;

8. maximize financial benefits for the Authority and for developing countries;

9. be applicable immediately while not foreclosing any options for the future;

10. unify planning and control while diversifying and decentralizing operations;

11. be flexible enough to adapt to changing circumstances, and so that it can be applied both in the international area and, if desired and with some simple adaptations, in areas under national jurisdiction adjacent to the international area;

12. reduce the need for huge international bureaucracies and ensure the establishment of an operational and functional enterprise system.

B.

The proposal is based on the following principles:

I.

The Authority is composed of States Members. States Members are

represented on the organs of the Authority (Assembly, Council, Dispute Settlement Organ).

The Enterprise system is composed of entities, public or private, designated by States Members and engaging in activities in the area in association with the Authority.

II.

The Enterprise system is the operational arm of the Authority and subject to its full control.

III.

Any State Member, having designated an Entity that meets the standards and requirements of the Convention, has the right, subject to an anti-monopoly clause, to establish an Enterprise in association with the Authority.

IV.

1. Each Enterprise is financed by the Authority and by the designated Entities with which the Authority is engaging in activities.

2. At least 52 percent of the investment capital (inclusive of the imputed value of the nodules in situ which are a common heritage of mankind) must be provided by the Authority. Up to 48 percent of investment capital must be provided by the entities engaging in activity in the area in association with the Authority.

3. Profits shall be divided between the Authority and the Entities associated with it in proportion to capital investment.

V.

1. Each Enterprise is governed by its own Governing Board.

2. The Governing Board of an Enterprise shall consist of twenty-five members. To assure the control of the Authority and the maximum participation of countries, especially developing countries, these members of the Board shall be designated in the following manner:

(a) 12 Board Members shall be designated by the Entities or groups of Entities engaged in activities in the Area in association with the Authority which have the largest investment shares in the Enterprise;

(b) 13 Board Members shall be elected by the Assembly of the Authority on nomination by the Council, taking into account the principle of equitable geograpnical representation, with due regard to the interests of developing countries.

3. Each Board Member belonging to category (a) shall have a voting participation equivalent to the investment shares represented. Each Board Member belonging to category (b) shall have a voting participation equivalent to 4 percent of the investment. Members of category (b) thus will have a total voting participation of 52 percent equivalent to the investment share of the Authority.

VI.

The Governing Board of each Enterprise makes such provision for staff as may appear appropriate. The staff of each Enterprise are not international civil servants. Each enterprise, in accordance with the provisions of Annex... must undertake the obligation to recruit and train persons from developing countries.

VII.

Each Enterprise makes its own production plans which must be submitted to the Economic and Planning Commission of the Authority (or the Council). The Economic and Planning Commission co-ordinates production plans and makes plans for the production of the Area.

C.

If a proposal of this kind were to be considered, the relevant parts of Article 22 would have to be adjusted as follows:

Article 22

1. Activities in the Area shall be organized and controlled exclusively by the Authority as determined by this Convention and in accordance with its resource policy as defined in Article 9.

2. Activities in the Area shall be conducted by Enterprises established by the Authority in association with States Parties through their designated Entities (State Enterprises, or persons natural or juridical which possess the nationality of States Parties or are effectively controlled by them or their nationals, when designated by such States, or any group of the foregoing, in accordance with the provisions of this Convention and with the Statute for Enterprises.

I would like to say just a few words today with regard to two statements made here at our last meeting by the Delegations of Singapore and Iraq. These statements were important, both with regard to strategy and substance.

The essence of the proposals was that we should link our strategies in Committees I and II so that they can reinforce each other and become more effective.

This might be done in either one of two ways: We might look for a subject common to both Committees; or we might try to establish cooperation, or build an alliance on certain Committee I matters, which would then effectively carry over into Committees II and III. Or we might, most effectively, combine both methods.

I myself have made a suggestion of this kind during the Fifth Session, and am therefore particularly glad that it appears now that the moment is ripe for action in this direction.

The first question, then is: Is there a subject that cuts across the Committees on which we could establish effective cooperation with coastal States, or at least with some of the more important ones? I think there is.

There is one fundamental interest that unites geographically disadvantaged -- including landlocked -- and economically disadvantaged States in this Conference. And that is that both groups need strong international institutions to be able to share in the benefits of ocean exploration and exploitation. Without strong international institutions, these benefits will remain, and increasingly become, the monopoly of a few highly developed coastal States.

Since it is Committee II that is charged with the particular task of international institution building, it is in this Committee that this cooperation should be established. Since the main attention of the Conference is now on Committee I matters, the moment for building this alliance is now.

We have among us, among the landlocked States, some of the economically most disadvantaged States. On the subject

of building a strong International Seabed Authority, the landlocked States certainly count on the full cooperation of the coastal States among the Group of 77. We also can establish effective cooperation with the Delegations of Canada and Scandinavia.

It seems to me these possibilities should be further explored. While I would not like to pursue the matter much further at this point, I do want to draw your attention to Enclosure VI of the Evensen Report, dealing our proposal in Geneva to further explore, and structure, the joint-venture approach to the Enterprise system. We have had inquiries from many delegations regarding this proposal. It is just possible -- in the light of Chairman Engo's introductory statement at this Session and of the new paper released by the Secretariat (A/CONF.62/C.1/L.19) that an idea of this kind might form an acceptable basis for cooperation between our Group and such coastal States as Canada, Norway, Mexico, and Australia.

The principle of cooperation toward strengthening international institutions for the common benefit of the geographically and the economically disadvantaged States, if successfully established in the First Committees, could well be carried over to the other Committees, considerably enhance our position and give us quid pro quos also in other areas.

Any comment on the structure and functions of the organs of the International Seabed Authority can, at this time, be merely preliminary.

It was indeed a wise decision to deal first with the stystem of exploitation. Had this system been agreed upon, our task now would have been made much easier and could have been absolved with more definity.

To give just one example of this interdependence: The RSNT provides for a Council and a Enterprise Governing Board which are both structured according to the same principle. As long as we do not know how the Enterprise will be structured, it is difficult to discuss the structure of the Council. We might want to change the structure of the Council to adapt to changes in the structure of the Governing Board. If certain principles -- e.g., the representation of interest groups -- are effectively embodied in the Governing Board, we might want to complement, rather than duplicate them, in the Council. These structural problems are interrelated, and given the lack of progress in the discussion on the structure of the system of exploitation, it is impossible to make any final recommendation.

What we can do in the present situation, isto examine Articles 25 through 32 in their own terms and ask ourselves whether they are indeed likely to fulfil the tasks for which they are being established in an efficient and rational way.

In making this assessment, we must, however base our reasoning on either one of two assumptions.

We may assume that we have a workable and acceptable system of exploitation which discharges the operational function of the Authority. The political machinery, in this case, which should regulate and coordinate the operational system, should be, on the one hand, as streamlined and simple as possible, avoiding the setting upof huge international bureaucracies, and, on the other hand, it should be as particirational as possible, offering equal opportunity to all countries, regardless of their geographic or economic condition, to participate in the making of decisions affecting the common heritage of mankind.

In such a perspective, the Assembly described in Article 26 as "the supreme organ of the Authority," can only be structured as it is now in the RSNT. My delegation has no major objection to the powers and functions of the Assembly as enumerated in Article 26.

My Delegation does have, however, some serious difficulties with the procedure described in Article 25, especially in paragraphs 8,9, and 11. While sympathizing with the intention which, obviously inspired the drafting of these paragraphs --that it, to prevent a large, unwieldy body like the Assembly from rushing into decisions which may create difficulties for the Council, my Delegation doubts whether these provision would serve this purpose. It would appear that we might be "emptying the xxxxx baby with the bath", that is, these provisions might prevent the Assembly from making any decisions at all.

Mr. Chairman, if 15 representatives -- i.e., less than one tenth of the membership, can defer the taking of a vote from one session to the next; if one third of the members plus one can, over the head and outside of the Assembly stop any decision on any important question; if one fourth of the membership can defer a vote, possibly until the next following session: we may indeed end up with a paralyzed Assembly. To establish an Assembly as the supreme organ

of the Authority, and then to proceed to paralyze it, Mr. Chairman, cannot be the aim of this Conference.

Mr. Chairman, my Delegation is willing to discuss other measures to avoid that the Assembly should be liable to rush into important decisions, but we would strongly urge the deletion of paragraphs 8, 9, and 11.

Mr. Chairman, our argument is still based on the assumption that we have established a workable and acceptable system of exploitation, and that the Council therefore is not an operational organ but, as defined in Article 28, "the Executive organ of the Authority." On this assumption, including the assumption that interest groups, changing as they may be with changing times, will be effectively represented on the Governing Board of the Enterprise, we would suggest that the structure of the Council could be greatly simplified and that it is indeed not advisable to freeze changeable interest groups into the permanent structure of an organization intended to last at least some fifty years. The distinguished Chairman of the First Committee himself has pointed this out in his introcution to the SNT in Geneva.

All we can do at this moment, however, is to raise the issue. The solution will have to be sought in the context of an agreement on the system of Exploitation.

My Delegation has no basic difficulty with Article 28, defining the powers and functions of the Council, except for sub-paragraph 2 (xii). This way of by-passing the Assembly would not seem to accord with the principle that the Assembly is "the supreme organ of the Authority."

With regard to the organs of the Council, my Delegation agrees with the usefulness of establishing an Economic Planning Commission. Such a commission is needed if the activities in the Area are to be rationally managed and coordinated.

We do have some difficulties with the other two commissions whose responsibilities seem to overlap, and which may tend to complicate rather than simplify the work of the Council.

Considering the responsibilities of the Authority for scientific research, there would seem to be a need for a scientific and technical commission. It would appear difficult, however, to mix the responsibilities of such a commission with that of inspecting and auditing all books, records and accounts -- a task more properly to be entrusted to an Auditor.

We are in favor of keeping the number of commissions to a minimum, at least during the initial stage, and would like to re-examine the question whether there really is a need to set up a hird, special commission on rules and regulations with the duty, among others, or preparing special studies. Here we may be conjuring up the spector of proliferation of bureaucrats and paperwork. If there were to be a third commission, immediately or later on, we would suggest that it be a legal commission in the broader sense: a commission with the responsibility of further developing the law of the seabed and harmonizing it with the law of the sea. The responsibilities of the three commissions -- on economic planning, on science and technology, and on ~~the~~ legal matters (including rules and regulations) would then be clearly separated and complementary.

Let me conclude with just a few words, based on the second of my two assumptions: that there is no agreement on the establishment of an effective operational arm of the Authority. In this case, obviously, the Council would have to be burdened with a double function: It would have to be the executive and operational organ of the Authority. This would raise quite diffe ent questions with regard to its composition and its relation to the Assembly. One might have to look at different models. At this point, however, it would be a waste of time to pursue this matter further.

2. The second point concerns the proposals for financing the Enterprise. It should be noted that, according to paragraph 2 (bis) of Article 41, what will be available for the financing of the Enterprise will be a part, earmarked for the Enterprise, of the income of the Authority from fees, taxes, and other revenues. This is undoubtedly realistic insofar as a substantial part of these revenues will be needed to pay for the costs of the Authority which, according to the excellent paper prepared by the Secretariat, will amount to over sixteen million dollars a year. How much more will be available? In more general terms, is it realistic to finance a highly capital-intensive new enterprise from the levies on the revenues of half a dozen established enterprises which have themselves invested huge amounts of capital in their operations? If this were possible, it would be without precedent.

Can we add figures to the Castañeda-Evensen suggestions analogous to those provided by the Secretariat?

3. My third point is more general. The Chairman's compromise text provides for a system -- no matter whether we call it parallel, dual, mixed, or, as the distinguished Delegate of the USSR defined it yesterday, unitary -- a system under which the Authority's Enterprise, no matter how aided and supported, must compete successfully with established industry. This, it seems to me, is the main weakness of paragraph 2 of Article 22. For as long as this is the case, the Enterprise is bound to fail. Only a system of which established industry is a built-in, integral part, only a system based on cooperation, not on competition with the established industry, can give us the stability, strength and continuity that we all desire.

This part of compromise articles seems to me far more successful than the first batch, dealing with the system of exploitation. Certainly, there remain some rather basic problems and, as a whole, the text is closer to the points of view of the 77 and the USSR than to the Western countries. It may well be rejected by the US and the EEC.

Article 24 judiciously incorporates the suggestions made during the discussions. I would not expect any major problems with this Article.

Article 25: No problems until paragraph 6. In paragraph 6, it seems to me a fair compromise has been found. There are a number of precedents for this kind of arrangement.

Paragraph 8 had to be cancelled. It was rather an absurdity. It was, furthermore -- a point not generally noted -- in contradiction with paragraph 6.

Paragraph 9 also was a very unusual paragraph. 15 representatives, i.e., less than one tenth of the members, could block any vote. The new text says, one-fifth, which certainly is an improvement. And maybe acceptable, considering that they can hold up voting for only five days and are no longer in a position to delay voting until the next following session, since the proposal of the 77 on this point has been taken into account.

A more serious problem is posed by paragraph 11: that one fourth of the members of the Authority should be in a position at any time to postpone a vote, possibly until another, or a special session, may cause serious problems. The new text has modified the RSNT on this point, taking over the proposal of the 77 so that, politically, not much opposition is to be expected. It is to be questioned, however, whether the paragraph is functional and operational.

Article 26, again, seems to strike a fair compromise. The most important change is in subparagraph (xiii), which follows the change in Article 28 (w)(xii), which indeed needed changing.

Article 27 reflects a number game, based on the general acceptance of the principle that representation in the Council must, to some extent, be based on special interests. I still think this principle is not a sound one. It is based on a confusion of ideas regarding the relations between the Authority and the Enterprise. The responsibility of the Enterprise is resource management and production. It is fair that special interests should be represented on its Board. The Authority has far broader responsibilities, including not only resource policy but scientific research, environmental conservation, the disposal of archeological treasures, the conservation of human lives, the relations between seabed mining and other uses of the seabed, the coordination between seabed activities and other uses of ocean space. These, clearly, are the responsibility of the whole international community, and not of interest groups. The representation of interest groups on the Council (1) complicates the election of Council members; (2) complicates the decision-making process; (3) distorts decision-making on issues that are the concern and the responsibilty of the whole international community. It would be far referable to base representation in the

Council on geographic distribution alone.

Paragraph 6 may have a crippling effect on decision-making. This is an executive body, and decision-making should be as simple and streamlined as possible.

Article 28 concentrates too much on nodule mining. The Authority, to be distinguished in this respect fro the Enterprise, has broader responsibilities, enumerated in Articles 1-10, and these are in no way reflected or articulated in the powers and functions of the Council. The question whether the Authority is a Seabed Authority or a Seabed Resource Authority remains unanswered.

Article 25, paragraph 4, provides that the Assembly shall elect its President.

An analogous provision should be made for the Council. The Council must elect its Chairman or president. Supposedly it is merely an oversight that there is, at present, no such provision.

Articles 22 and 23 are the heart of Part I of the Convention. If an agreement can be reached on the mode of exploration and exploitation of the area, the rest of Part I would fall easily into place.

In trying to reach an agreement on Articles 22 and 23, two purposes must be kept in mind. First, as the distinguished Delegate of the USSR pointed out yesterday, the text must be acceptable to all Members of the Conference. Second, the emerging system of exploration and exploitation must be viable.

The text proposed by you, Mr. Chairman, goes a long way toward meeting the first criterion. All of us here who were present during the Geneva negotiations conducted by you must appreciate the fairness and comprehensiveness with which the new text attempts to synthesize all the views expressed by members during those negotiations.

But we have yet to apply ourselves to a thorough and unsparing analysis of the question: is the emerging system really viable? To make the system viable is a goal that unites all of us here: Developed and developing States, free-enterprise and socialist States, coastal or landlocked and geographically disadvantaged States. None of us would gain anything from a system that turns out to be unstable and prone to continuous financial and organizational crises.

Success or failure, in this respect, is determined by the structure described in paragraph 2 of Article 22. This paragraph states that activities in the Area shall be conducted either directly through the Enterprise or in association with the Authority and on its behalf by States Parties, etc.

Every one at this Conference agrees that both parts of this structure, both modes of operation, must be viable for the system as a whole to be stable. Every one at this Conference knows the difficulties besetting the Enterprise in its efforts to compete successfully with the industrialized States and their companies which presently own the requisite mining technology.

To fully grasp the difficulties involved, paragraph 2 of Article 22 has to be read in the context of paragraph 8 (bis) (i) and the amendments suggested by Ambassador Castaneda in Geneva and further developed in Mr. Evensen's new draft. Fot these texts represent the most advanced and elaborate attempts to solve the basic difficulties of the Enterprise and insure its viability.

Mr. Chairman, I will restrict my analysis to three simple points arising in this connection.

1. Paragraph 8 (bis) (i) describes the so-called banking system. This should assure to the Authority and its Enterprise a number of sites reserved solely forthe conduct of activities by the Authority through the Enterprise or in association with developing countries. What is more, these sites should be explored by, and at the expense of, Contractors acquiring sites for exploitation under paragraph 2 (ii) of Article 22.

This system would undoubtedly be beneficial to the Authority in a situation where sites and resources would be scarce while technology, capital, and managerial skills were abundant. In such a situation excess capital, technology and managerial skill would be motivated to cooperate with the Enterprise in the development of these sites.

The situation that will prevail for the foreseeable future, however, is the opposite: it is one of abundance of sites and resources, and a scarcity of capital, technology and managerial skill which are concentrated in a very few countries and companies. There will be absolutely no economic incentive to work with the Enterprise on the development of the reserved areas as long as unreserved areas are plentiful: unless the conditions offered by the Enterprise were equivalent to those offered by the Authority for the nonreserved areas -- in which case the whole system would be meaningless.

So my first point is that the banking system is relatively meaningless in a situation of resource abundance and scarcity of capital, technology, and managerial skills.

2. The second point concerns the proposals for financing the Enterprise. It should be noted that, according to paragraph 2 (bis) of Article 41, what will be available for the financing of the Enterprise will be a part, earmarked for the Enterprise, of the income of the Authority from fees, taxes, and other revenues. This is undoubtedly realistic insofar as a substantial part of these revenues will be needed to pay for the costs of the Authority which, according to the excellent paper prepared by the Secretariat, will amount to over sixteen million dollars a year. How much more will be available? In more general terms, is it realistic to finance a highly capital-intensive new enterprise from the levies on the revenues of half a dozen established enterprises which have themselves invested huge amounts of capital in their operations? If this were possible, it would be without precedent.

Can we add figures to the Castañeda-Evensen suggestions, analogous to those provided by the Secretariat?

3. My third point is more general. The Chairman's compromise text provides for a system -- no matter whether we call it parallel, dual, mixed, or, as the distinguished Delegate of the USSR defined it yesterday, unitary -- a system under which the Authority's Enterprise, no matter how aided and supported, must compete successfully with established industry. This, it seems to me, is the main weakness of paragraph 2 of Article 22. For as long as this is the case, the Enterprise is bound to fail. Only a system of which established industry is a built-in, integral part, only a system based on cooperation, not on competition with the established industry, can give us the stability, strength and continuity that we all desire.

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