

PERSONAL AND STRICTLY CONFIDENTIAL.

Introductory remarks: Some important industrialized countries take the view that an agreement could be reached on the basis of the Revised Single Negotiating Text; that, by refusing to accept it the developing nations are "throwing away" the common heritage of mankind; that there is no alternative now; that it is too late to prepare another text; and that the treaty will have to be based merely on Parts II and III of the Text.

This position can hardly be considered as genuine. The technical literature in this country during the last few months clearly indicates that industry would not go along with the present version of the Text. It is therefore not likely that the U.S. delegation would really vote for it in the end; if it did, the Treaty might not be ratified in any case.

The present text was hailed by Ocean Science News as a "turn to the right." In the opinion of this writer, it is not even that. It cannot be considered as a serious attempt at compromise: It appears as though somebody had taken the Geneva text and simply garbled it so as to make it inoperative. Such as it is, the Text does not serve anybody's interest, because it cannot work. Of course, in this sense it serves the interests of those who do not want any rule or any law at all and who thrive on the persistence of chaos.

To meet the strategy of the industrialized nations, it is essential immediately to introduce a text as basis for the discussion. This can be done by

(a) pruning the Revised Text down to its bare essentials. This is necessary since the discussion of useless detail which, as your delegation pointed out, was engaged in to avoid the real political issues, has overburdened the text to the point of absurdity.

(b) returning to the Geneva version where the Revised Text has diluted the Declaration of Principles which was adopted by the General Assembly unanimously;

(c) introducing new approaches only where the original approach has led to failure and to basically nonviable and absurd conclusions.

I have tried to extract such a text from the available material and added my comments. This may merely serve as an illustration. It is a very raw draft. But something of this radical sort will have to be done: otherwise we will have lost our chance, and it may not recur for a long time.

REDUCED SINGLE NEGOTIATING TEXT

PART I

DEFINITIONS

Article 1

For the purpose of this Part of the Convention:

- (i) "States Parties" to this Convention means Contracting Parties.
- (ii) "Activities in the Area" means all activities in which States of juridical persons engage in the area.
- (iii) "Resources" means living and nonliving resources in situ.
- (iv) Nonliving resources means
 - (a) liquid or gaseous substances such as petroleum gas, condensate, helium, nitrogen, carbon dioxide, water, steam, hot water, and also sulphur and salts extracted in liquid form in solution;
 - (b) useful minerals occurring on the surface of the seabed or at depths of less than three metres beneath the surface and also concretions of phosphorites and other minerals;
 - (c) solid minerals in the ocean floor at depths of more than three metres from the surface;
 - (d) ore-bearing silt and brine.
- (v) Living resources consist of living organisms which, at the harvestable stage either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

THE AREA AND ITS LIMITS

Article 2

1. This Part of the Convention shall apply to the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, hereinafter called the "Area."
2. The limits of national jurisdiction shall be determined in accordance with the provisions of Part II of this Convention. They shall be shown on charts of a scale or scales adequate for determining them. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be sub-

stituted for such outer limit lines or lines of delimitation. States shall give due publicity to such charts or lists and shall deposit a copy with the Secretary General of the Seabed Authority.

3. The Authority shall register and publish such notification in accordance with the rules adopted by it for the purpose.

4. Nothing in this article shall affect the validity of any agreement between States with respect to the establishment of limits between opposite or adjacent States.

COMMON HERITAGE OF MANKIND

Article 3

The Area and its resources are the common heritage of mankind.

NO CLAIM OR EXERCISE OF SOVEREIGNTY OR OTHER RIGHTS

Article 4

No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or person, natural or juridical, appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights, nor such appropriation shall be recognized.

GENERAL CONDUCT IN THE AREA AND IN RELATION TO THE AREA

Article 5

States shall act in, and in relation to, the Area in accordance with the provisions of this Convention and the United Nations Charter in the interests of maintaining international peace and security and promoting international cooperation and mutual understanding.

ACTIVITIES IN THE AREA

Activities in the Area shall be governed by the provisions of this Part of the Convention.

BENEFIT OF MANKIND AS A WHOLE

Article 7

Activities in the Area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States and taking into particular consideration the interests and needs of the developing countries as specifically provided for in this Part of the Convention.

USE OF THE AREA EXCLUSIVELY FOR PEACEFUL PURPOSES

Article 8

1. The Area shall be reserved exclusively for peaceful purposes.
2. The Area shall be open to use exclusively for peaceful purposes by all States Parties without discrimination, in accordance with the provisions of this Convention, and regulations made thereunder.

GENERAL PRINCIPLES REGARDING ECONOMIC ASPECTS
OF ACTIVITIES IN THE AREA

Article 9

Activities in the Area shall be undertaken in such a manner as to:

1. Foster the healthy development of the world economy and a balanced growth in international trade, and to promote international cooperation for the over-all development of all countries, especially of developing countries;
2. Expand opportunities for all States Parties to participate in the development of the resources of the Area;
3. Increase availability of resources to meet world demands;
4. Protect against the adverse economic effects of a substantial decline in the mineral export earnings of developing countries for whom export revenues from minerals or raw materials also under exploitation in the Area represent a significant share of their gross domestic product or foreign exchange earnings, when such decline is caused by activities in the Area, by:

- (i) facilitating, through existing forums or such new arrangements or agreements as may be appropriate and in which all affected parties participate, the growth, efficiency and stability of markets for those classes of commodities produced from the Area, at prices remunerative to producers and fair to consumers; the Authority shall have the right to participate in any commodity conference dealing with the categories of minerals produced in the Area. The Authority shall have the right to become a party to any such arrangement or agreement resulting from such conferences as are referred to above. The participation by the Authority in any organs established under the arrangements or agreements referred to above shall be in respect of the production in the Area and in accordance with the rules of procedure established for such organs. In carrying out the decisions taken by such organs, the Authority shall assure the uniform and nondiscriminatory implementation of such decisions in respect of all production in the Area of the minerals concerned. In doing so, the Authority shall act in a manner consistent with the terms of existing contracts;

- (ii) a compensatory system of economic adjustment assistance in respect of the adverse effects referred to in this paragraph.
5. Ensure their safe, orderly and efficient conduct and, in accordance with commonly used principles of conservation, the avoidance of unnecessary waste;
6. Ensure equitable sharing in and distribution of financial and other benefits among States Parties from the activities in the Area, taking into particular consideration the interests and needs of the developing countries.

SCIENTIFIC RESEARCH

Article 10

1. Scientific research in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole. The Authority shall promote and encourage the conduct of scientific research in the Area. In this the Authority shall cooperate with the appropriate international organization.
2. The Authority may itself conduct scientific research in the Area and may enter into agreements for that purpose with States, competent scientific institutions or the appropriate international organization.
3. Research projects undertaken in the area must be approved and registered either by the Scientific and Technical Commission or by IOC.
4. States Parties shall promote international cooperation in scientific research in the Area exclusively for peaceful purposes by:
- (a) participation in international programmes and encouraging cooperation in scientific research by personnel of different countries and of the Authority;
 - (b) ensuring that programmes are developed, through the Authority or other international bodies as appropriate, for the benefit of developing countries and technologically less developed countries with a view to
 - (i) strengthening their research capabilities;
 - (ii) training their personnel and the personnel of the Authority in the techniques and applications of research;
 - (iii) fostering the employment of their qualified personnel in activities of research in the Area;

(c) effective dissemination of the results of research and analysis when available, through the Authority or IOC or other international channels as appropriate.

TRANSFER OF TECHNOLOGY

Article 11

The Authority, the Regional Institutions referred to in Articles 87 and 88 in Part III of this Convention, and States Parties shall cooperate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that all States benefit therefrom. In particular, they shall promote:

(a) Programmes for the promotion of transfer of technology to developing countries with regard to activities in the Area, including, inter alia, facilitating the access of developing countries to the relevant technology, under just and reasonable conditions;

(b) Measures directed towards the advancement of domestic technology of developing countries, particularly through the opening of opportunities to personnel from developing countries for training in marine science and technology and their full participation in activities in the Area.

PROTECTION OF THE MARINE ENVIRONMENT

Article 12.

In accordance with the provisions of Part III of this Convention, the Authority shall adopt rules, regulations and procedures to ensure effective protection for the marine environment from harmful effects which may arise from activities in the Area.

PROTECTION OF HUMAN LIFE

Article 13.

With respect to activities in the Area, necessary measures shall be taken in order to ensure effective protection of human life. To that end, the Authority shall adopt appropriate rules, regulations and procedures to supplement existing international law as reflected in specific treaties which may be applicable.

STATIONARY AND MOBILE INSTALLATIONS

Article 14

Stationary and mobile installations in the Area shall be subject to the following conditions:

(i) Installations shall be erected, emplaced and removed solely in accordance with the provisions of this Part of the Convention and subject to rules and regulations

adopted by the Authority. The erection, emplacement and removal of installations shall be the subject of timely notification through Notices to Mariners or other generally recognized means of notification;

- (ii) Installations shall not be located in the Area where they may obstruct passage through sea lanes of vital importance for international shipping or in areas of intense fishing activity;
- (iii) Safety zones shall be established around installations with appropriate markings to ensure the safety both of the installations themselves and of shipping. The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes;
- (iv) Installations shall be used exclusively for peaceful purposes;
- (v) Installations shall not possess the status of islands. They shall have no territorial sea, nor shall their presence affect the determination of territorial or jurisdictional limits of any kind.

LAYING OF CABLES AND PIPELINES

Article 15

To avoid conflicts between the laying of cables and pipelines and other uses of the area, the laying of cables and pipelines in the area is subject to regulation by the Authority.

ARCHEOLOGICAL AND HISTORICAL OBJECTS

Article 16

1. All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of by the Authority for the benefit of the international community as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archeological origin.
2. The recovery and disposal of wrecks and their contents more than 50 years old found in the Area shall be subject to regulation by the Authority without prejudice to the rights of the owner thereof.
3. Any dispute with regard to a preferential right under paragraph 1 or a right of ownership under paragraph 2, shall, on the request of either party, be subject to the procedure for settlement of disputes provided for in this Convention.

ACCOMODATION OF ACTIVITIES IN THE AREA AND IN
THE MARINE ENVIRONMENT AS A WHOLE

Article 17

1. Activities in the Area shall be carried out with reasonable regard to other activities in the marine environment.
2. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.

LEGAL STATUS OF THE SUPERJACENT WATERS
AND AIR SPACE

Article 18

Neither the provisions of this Part of the Convention nor any rights granted or exercised pursuant thereto shall affect the legal status of the waters superjacent to the Area or that of the air space above those waters.

RIGHTS OF COASTAL STATES

Article 19

1. Activities in the Area, with respect to resource deposits in the Area which lie across limits of national jurisdiction, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such resources lie.

Consultations, including a system of prior notification, shall be maintained with the State concerned, with a view to avoiding infringement of such rights and interests. In cases where activities in the Area may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State concerned shall be required.

2. Neither the provisions of this Part of the Convention nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part III of the Convention as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastlines or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by activities in the Area.

RESPONSIBILITY TO ENSURE
COMPLIANCE AND LIABILITY FOR DAMAGE

Article 20

1. States Parties shall have the responsibility to ensure that activities in the Area, engaged in by them or their nationals shall be carried out in conformity with the provisions of this Part of the Convention.
2. A group of States Parties or a group of international organizations, acting together, shall be jointly and severally responsible under this article.
3. States Parties shall take appropriate measure to ensure that the responsibility provided for in paragraph 1 of this article shall apply mutatis mutandis to international organizations.

PARTICIPATION OF DEVELOPING
COUNTRIES

Article 21

Effective participation in the activities in the Area of developing countries shall be promoted as specifically provided for in this Part of the Convention, having due regard to their special needs and interests.

ESTABLISHMENT OF THE INTERNATIONAL SEABED AUTHORITY

Article 22

1. There is hereby established the International Seabed Authority which shall function in accordance with the provisions of this Part of the Convention.
2. All States Parties to this Convention are ipso facto members of the Authority.
3. The seat of the Authority shall be at....
4. The Authority may establish such regional centres or offices as it deems necessary for the performance of its functions.

FUNDAMENTAL PRINCIPLES

Article 23

1. The Authority is the organisation through which States Parties shall administer the Area, manage its resources and control the activities in the area in accordance with the provisions of this Convention.

2. The Authority is based on the principle of the sovereign equality of all of its Members.

3. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with this Convention.

EXPLORATION OF THE AREA AND EXPLOITATION OF ITS RESOURCES

Article 24

1. The exploration of the Area and the exploitation of its resources shall be conducted

(a) directly by the Authority; or

(b) by States in association with the Authority in accordance with the provisions of Article 13; or

(c) by Enterprises under Charter by the Authority in accordance with Article 14.

2. The exploration of the area and the exploitation of its resources shall be carried out in accordance with a formal written plan of work in accordance with Annex I and approved by the Economic and Planning Commission in accordance with Article 14.

3. The Authority shall exercise control over activities in the Area for the purpose of securing effective compliance with the relevant provisions of this Convention.

Article 25

1. The Authority shall avoid discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area, except as specifically provided for in this part of the Convention. All rights granted under it shall be fully safeguarded in accordance with the provisions of this Part of the Convention.

2. Special consideration for developing countries specifically provided for in this Part of the Convention shall not be deemed to be discrimination.

ORGANS OF THE AUTHORITY

Article 26

1. There are hereby established as the principal organs of the Authority, an Assembly, a Council, and a Secretariat.

2. In accordance with needs and opportunities, an Enterprise or Enterprises will be established by the Assembly in accordance with the provisions of Article 17.

3. Such subsidiary organs as may be found necessary may be established in accordance with this Part of the Convention.

4. A special committee for dispute settlement will be established in accordance with the provisions of Annex II, Part IV, of this Convention.

5. The principal organs shall each be responsible for exercising those powers and functions which have been provided to them and shall, except as otherwise specified in this Part of the Convention, avoid taking any actions which may impede the exercise of specific powers and functions entrusted to another organ.

THE ASSEMBLY

Article 27

1. The Assembly shall consist of all the members of the Authority.

2. The Assembly shall meet in regular session every year and in such special sessions as may be determined by the Assembly, or convened by the Secretary-General at the request of the Council or of a majority of the members of the Authority.

3. Sessions shall take place at the seat of the Authority unless otherwise determined by the Assembly. At such sessions, each member shall have one representative who may be accompanied by alternates and advisers.

4. The Assembly shall elect its President and such other officers as may be required at the beginning of each session. They shall hold office until the new President and other officers are elected at the next following session.

5. Each member shall have one vote.

6. All decisions on questions of substance and the question whether a question is one of substance or procedure, shall be made by a two-thirds majority of the members of the Authority.

7. Decisions relating to questions other than those specified in paragraph 6 above, including the decision to convene a special session of the Assembly, shall be made by a majority of the members present and voting.

8. Two thirds of the members of the Assembly shall constitute a quorum.

POWERS AND FUNCTIONS OF THE ASSEMBLY

Article 28

1. The Assembly shall be the supreme policy-making organ of the Authority. It shall have the power to prescribe the general guidelines and issue directions of a general character as to the

policy to be pursued by the Council or other organs of the Authority on any questions or matters within the scope of this Convention. It may also discuss any questions or matters within the scope of this Part of the Convention and make recommendations thereon.

2. In addition, the powers and functions of the Assembly shall include:

- (i) Election of the members of the Council in accordance with Article;
- (ii) appointment, upon the recommendation of the Council, of the Secretary General of the Authority;
- (iii) appointment, upon recommendation of the Council, of ^{at least} one half plus one of the Governing Board of Enterprises under Charter by the Authority;
- (iv) Establishment, as appropriate of such subsidiary organs as may be found necessary for the performance of its functions in accordance with the provisions of this Part of the Convention;
- (v) Approval of comprehensive economic plans, upon recommendation by the Council;
- (vi) Approval of the budget of the Authority on its submission by the Council;
- (vii) Assessment of the contributions of States Parties to the administrative and operational budget of the Authority, in accordance with an agreed general assessment scale until the Authority shall have sufficient income for meeting its expenses;
- (viii) Adoption of the financial regulations of the Authority upon the recommendations of the Council
- (ix) Adoption of its rules of procedures;
- (x) Request and consideration of special reports from the Council and from the other organs of the Authority on any matter within the scope of this Part of the Convention;
- (xi) Studies and recommendations for the purpose of promoting international cooperation concerning activities in the Area and encouraging the progressive development of international law relating thereto and its codification;
- (xii) Adoption of criteria, rules, regulations and procedures for the equitable sharing among States Parties of financial and other benefits derived from the exploitation of the resources of the Area, taking into particular consideration the interests and the needs of developing countries;

- (xiii) Receipt of reports from the Enterprise or Enterprises;
- (xiv) Suspension of members pursuant to Article...

3. In exercising its powers and functions, the Assembly shall have regard to Article 26.5.

THE COUNCIL

Article 29

1. The Council shall consist of 36 members of the Authority elected by the Assembly on a regional basis. Six additional members of the Council shall be elected by the Assembly at large, so that the total membership of the Council shall be 42.

2. Elections shall take place at regular sessions of the Assembly, and each member of the Council shall be elected for a term of four years. In the first election of members of the Council, however, 20 shall be chosen for a period of two years.

3. Members shall be eligible for re-election; but due regard should as a rule, be paid to the desirability of rotating seats.

4. The Council shall function at the seat of the Authority, and shall meet as often as the business of the Authority may require, but not less than three times a year.

5. Each member of the Council shall have one vote.

6. Decisions on important questions shall be made by a two-thirds plus one majority of the members present and voting. The decision on an issue as to whether or not a matter is an important question shall be taken by a two-thirds majority. Decisions on other questions shall be made by a majority of the members present and voting.

7. The Council shall establish a procedure whereby a member of the Authority not represented on the Council may send a representative to attend a meeting of the Council when a request is made by such member, or a matter particularly affecting it is under consideration. Such a representative shall be entitled to participate in the deliberations and he shall have the right to vote. The number of such representatives shall be limited to not more than four at any session.

POWERS AND FUNCTIONS OF THE COUNCIL

Article 30

1. The Council shall be the executive organ of the Authority. It shall have the power to prescribe the specific policies to be pursued by the Authority on any questions or matters within the competence of the Authority and in a manner consistent with the general policies prescribed by the Assembly.

- (xiv) Approval of agreements with the United Nations or other intergovernmental organizations on behalf of the Authority, upon recommendation by the Council;

2. The Council shall:

- (i) Supervise and coordinate the implementation of the provisions of this Part of the Convention and, whenever it deems it appropriate, invite the attention of the Assembly to cases of noncompliance;
- (ii) recommend to the Assembly candidates for the office of Secretary General of the Authority;
- (iii) recommend to the Assembly candidates for appointment to the Governing Boards of the Enterprises;
- (iv) Establish, as appropriate, and with due regard to economy and efficiency, in addition to the Commissions provided for in Article 31 (1), such subsidiary organs as may be found necessary for the performance of its functions in accordance with the provisions of this Part of the Convention. In the composition of such subsidiary organs, emphasis shall be placed on the need for members highly qualified and competent in the relevant technical matters dealt with by such organs and having due regard for the principle of equitable geographical distribution.
- (v) Adopt its rules of procedure;
- (vi) Elect its Chairman and such other officers as may be required at the beginning of the first session of every year. They shall hold office until the new Chairman and other officers are elected at the first session of the next following year;
- (vii) Enter into agreements with the United Nations or other intergovernmental organizations on behalf of the Authority subject to approval by the Assembly;
- (viii) Transmit to the Assembly the reports of the Enterprises with its recommendations;
- (ix) Transmit to the Assembly the comprehensive economic plan with its recommendations;
- (x) Transmit to the Assembly annual reports and such special reports as the Assembly may request;
- (xi) Issue general policy directives to the Enterprise;
- (xii) Exercise control over activities in the Area in accordance with Article 23 (1)
- (xiii) adopt, in accordance with paragraph 4 of Article 9, necessary and appropriate measures to protect against adverse economic effects specified therein;

- (xiv) Review the collection of all payments to be made by or to the Authority in connexion with operations pursuant to this Part of the Convention;
- (xv) Make recommendations to States concerning the policies and measures required to give effect to the principles of this Part of the Convention;
- (xvi) Make recommendations to the Assembly concerning suspension of the privileges and rights of membership for gross and persistent violations of the provisions of this Part of the Convention upon a finding by the dispute settlement committee.

ORGANS OF THE COUNCIL

Article 31

1. There are hereby established as organs of the Council:
 - (a) an Economic Planning Commission, composed in accordance with Article 32;
 - (b) a Scientific and Technical Commission, composed in accordance with Article 33.
2. Each of these Commissions shall be composed of 18 members appointed by the Council with due regard to not only the need for members highly qualified and competent in the technical matters which may arise in such organs but also to the principle of equitable geographical distribution.
3. The Council shall invite States Parties and international organizations to submit nominations for appointment to each of the Commissions referred to in paragraph 1 above.

[The remainder of the Article remains as is.]

THE ECONOMIC PLANNING COMMISSION

Article 32

1. Members of the Economic Planning Commission shall have appropriate qualifications and experience relevant to mining and the management of mineral/and other/ resource activities and international trade and finance.
2. The Economic Planning Commission, in consultation with the competent organs of the United Nations and the specialized agencies, shall review the trends of, and factors affecting, supply, demand and prices of raw materials which may be obtained from the Area and, bearing in mind the interests of both consuming and land-based mineral producing countries, and in particular the developing countries among them, make recommendations to the Council, prepare short-range and long-range projections, and submit a comprehensive/economic plan

3. Any State Party to this Convention whose economy substantially depends on the export of minerals and other products originating in its territory which are also derived from minerals under exploitation in the Area may bring to the attention of the Economic Planning Commission a situation which is likely to lead to a substantial decline in its mineral export earnings. The Commission shall forthwith investigate this situation and shall make recommendations, in consultation with parties to this Convention and with the competent intergovernmental organizations to the Council.

THE SCIENTIFIC AND TECHNICAL COMMISSION

Article 33

1. Members of the Technical Commission shall have appropriate qualifications and experience in marine sciences and technology, maritime safety and resource management.

2. The Scientific and Technical Commission shall:

[The remainder of the Article remains as is, except that I would take the book-keeping responsibilities out. That would not seem an appropriate part of the activities of a scientific and technical commission. If necessary, it would be better to add a third commission or Comptroller's office; but this function could also be properly exercised by the Secretariat.]

THE ENTERPRISES

Article 34

1. The exploration and exploitation of the common heritage of mankind is reserved to Enterprises operating under a charter from the Authority.

2. Enterprises chartered by the Authority are governed by a Board whose members are appointed in the following manner:

(a) At least one half plus one of the members are appointed by the Assembly of the Authority, upon recommendation by the Council, in accordance with Article 28, (2) (iii). *^*

(b) up to one half minus one of the members are appointed by States, Parties, or State enterprises, or persons natural or juridical which possess the nationality of States Parties or are effectively controlled by them or their Nationals, or any group of the foregoing, in proportion to their investment in the Enterprise.

3. The Authority must provide at least 51 % of the investment capital for any Enterprise operating under a Charter from the Authority.

4. Profits will be apportioned between the Authority and the associated States or enterprises in proportion to their investment.

Resolution

On its appointments, the Assembly shall give special regard to the participation of developed countries and of representative commercial and labor in the Board.

5. Enterprises shall have international legal personality and such legal capacity as may be necessary for the performance of their functions and the fulfilment of their purposes. Enterprises shall function in accordance with their Statutes as set forth in the Annex to this Part of the Convention, and shall in all respects be governed by the provisions of this Part of the Convention.

6. Enterprises shall have their principal seat at the seat of the Authority or at any of the regional centers or offices established by the Authority.

DISPUTE SETTLEMENT

Article 35

1. Any dispute between two or more Contracting Parties concerning the application or interpretation of this Part of the Convention, shall be submitted, if not settled by recourse to the provisions of Section I, Part IV, of this Convention, to the following procedures:

- (a) If the Parties to the dispute agree, to a special committee of five members appointed by agreement between the parties and selected from a list of experts on scientific, technical, economic, and legal aspects of resource management established by the Authority;
- (b) If the Parties to the dispute do not agree, to the appropriate special Chamber of the Law of the Sea Tribunal, in accordance with Part IV of this Convention.

2. Failing agreement within a period of three months among parties who have chosen to proceed under provision 1 (a) above, the members of the special committee shall, at the request of any party to the dispute, be appointed within a further period of three months by the Secretary-General of the Authority.

3. Each contracting Party may designate, for inclusion in the list of experts established by the Authority, three persons whose competence in the field of resource management, economics, and international law is established and generally recognized.

4. The committee shall so organize its own procedure as to ensure that each party has the opportunity to be heard and to present its case. Failing agreement by the parties, it shall also decide how the costs and expenses are to be apportioned between the parties to the dispute.

5. The special committee shall, upon the request of a party to the dispute, have the power to prescribe, if it considers that circumstances so require and after giving the parties to the dispute

an opportunity to be heard, such provisional measures as it considers appropriate to be taken to preserve the respective rights of the parties to the dispute or to prevent harm to the marine environment, pending its final decision. These measures shall be binding on the parties.

6. The special committee shall give its decision within five months of having been set up. In an emergency, this period may be reduced by agreement between the parties or by a decision of the committee.

7. In reaching its decisions, the special committee shall comply with these articles, the present Convention, the rules of general international law and any special agreement reached between the parties to the dispute with a view to settling the dispute.

8. The decisions of the special committee shall be adopted by a majority vote and shall be binding on the parties to the dispute.

9. The parties concerned may agree to request the special committee to carry out an investigation and establish the facts giving rise to any dispute concerning the interpretation or the application of the provisions of the articles relating to this Part of the Convention. In this case, the findings of the special committee shall be considered as conclusive. The special committee may, on this occasion, formulate recommendations which, without having the force of a decision, shall constitute the basis for a review, by the parties concerned, of the question giving rise to the dispute.

THE SECRETARIAT

[This section remains as is]

FINANCE

Article 36

The Assembly shall establish the General Fund of the Authority.

All receipts of the Authority arising from the exploration of the Area and the exploitation of its resources, including the Authority's share of the profits from the Enterprises, States' contributions, grants and loans, shall be paid into the General Fund.

Article 37

The Council shall submit for the approval of the Assembly annual budget estimates for the expenses of the Authority. To facilitate the work of the Council in this regard, the Secretary-General shall initially prepare the budget estimates.

COMMENTS:

Article 1: The usual term seems to be "Definitions" rather than "Interpretation." The Interpretation of the Convention is another matter.

Many of the difficulties of the text arose from the inadequate definition of "Activities." "Activities" in the Text means only activities of exploration for, and exploitation, of the resources of the area. The Chairman's introductory note, however, explains that they include a great many other things. The Text itself mentions also scientific research, archeological activities, the protection of the environment and of human life, and technology transfer, among other things. The machinery, however, is geared only to resource exploration and activities.

In this draft, we have defined "activities" comprehensively as covering all activities in the area. They are then specified as "exploration of the area and exploitation of its resources," or as other activities, from article to article.

"Resources" in the Text means only "mineral resources." There is no reason for this restriction. We have included living resources, in a formulation that is analogous to that applied to the continental shelf. It is not likely that the living resources of the international seabed will amount to anything of economic significance in the near future, but there is no reason for forgetting about them.

Article 2. The boundary definition in the Text is dangerously open-ended. In the first place, it is States, unilaterally, that simply notify their own decisions in this regard. Secondly, there is nothing in the article preventing States to make not one, but repeated notifications: i. e., if they develop a new technology, or discover new resources near their boundaries, they may simply notify the Authority that their boundaries have been changed so as to include new areas. The Article must be made more precise, and must be harmonized with Part II.

Article 4 : The distinction between resources and minerals seems unnecessarily complicated. The meaning of the first part of Article 4 is perfectly clear. In the way in which the exploration and exploitation of the resources of the Area are conceived under this Draft, no difficulties can arise with regard to the commercial activities.

Articles 5 and 6. The Geneva version was stronger and clearer.

Article 8: The Geneva version was stronger and clearer. Not only the activities must be restricted to peaceful use, also the Area. Otherwise there is a loop hole for military activities (not covered by the term "activities" in the Text) in the Area.

Article 9: We have left paragraphs 2 and 3, to satisfy the desires

of the industrialized countries. The only important change in this Article is the cancellation of 4 (ii) which, as I have shown elsewhere, is totally deceptive. With the powers that the Authority has under this draft with regard to resource planning, I personally do not feel it necessary to impose an a priori limitation on production. It might turn out as an unnecessary and impractical limitation on the Authority. If, however, it were decided to keep the idea of an a priori limitation, such a limitation would have to be based on cobalt, not on Nickel, to be meaningful for developing States, who would be the only ones to have an interest in the limitation.

Article 10: The Text provides for a duplication of efforts with IOC. If IOC were properly restructured and strengthened, it could well become the scientific organ of the community of ocean institutions in the U.N. system. In this case it would be useless to duplicate its effort (and expenses) by providing that the Authority itself should coordinate all research in the area, etc. I think the link with IOC should already be indicated here: perhaps IOC could even be enjoined to do certain things -- just as Part IV enjoins IOC to assume new functions and add to its structure.

Article 11: The new draft links the transfer of technology also to the new regional centers, established under Part III of the Convention. These Centers, if established, and integrated properly with IOC could indeed play a very useful role in the transfer of technology. Again, however, one should guard against duplication of efforts and strive for coordination and integration within the whole system.

Article 12: This is uselessly long and complicated, since these matters are taken care of in Part III. It is enough to establish the principle and link the Article with Part III of this Single Convention.

From here on, we proposed some change in the order of the articles, to make the sequence more logical. We are dealing first with all activities of the Authority

Article 16 of the Text (now Article 14 and 17 in the Draft) covered two disparate matters: Installations, and the interaction of uses). We propose to separate these in two Articles.

"Installations" in the Text refer only to installations used for resource exploration and exploitation. In the Draft all installations are covered. There should be no loop hole for military installations.

Article 15 (of the Draft): The Single Negotiating Text forgot about cables and pipelines. Since Part II explicitly provides for the freedom of laying pipelines and cables under the High Seas, and

such freedom might conflict with the operations and installations of the Authority, something will have to be done to take care of the problem (Article 76 of Part II should be amended: paragraph 1 (c) should read: "Freedom to lay submarine cables and pipelines, subject to Chapters I and IV").

Article 16 (new draft): We have re-instated the Geneva version, which was clearer.

Article 18 (all references are to the new Draft). We have left it in, as it is in accordance with the Declaration of Principles. In practice, the article is untenable. E.g., Article 99 of Part II of the Revised Text, dealing with the Right to Hot Pursuit, provides that "Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself...that the ship pursued...is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone, or above the continental shelf." This would seem to imply that the coastal State's rights over the continental shelf affect the legal status of the superjacent waters. By implication the same applies, inevitably, to the international area. The application of totally different regimes to the seabed and the superjacent waters is untenable a fact which usage and time will make increasingly obvious.

Article 21: We have omitted special reference to landlocked States. The references to landlocked States is a carry-over from the work of Committees II and III. In Parts II and III of the Text, in fact vital interests of landlocked and geographically disadvantaged States must be protected. Clearly they find themselves in a disadvantaged position vis-a-vis coastal States. This difference simply does not apply to Part I -- where, in fact, there has been no conflict of interests between land-locked and coastal States. Landlocked States have the same rights and the same obligations and the same opportunities as coastal States in the Authority. To single them out for special treatment would be as meaningful as singling them out in an expedition to the moon. One might of course reason that because they are disadvantaged in Parts II and III, they should have special advantages over other States in the Seabed Authority. This logic is not cogent, however. The fact is that by introducing the concept of interest groups in Part I, one wrecks the political viability and stability of the Text. Part I should be based on the sovereign equality of all States. The only conflict that arises with regard to Part I is that between poor States and rich States: between States who own the technology to exploit the resources of the Area, and States who don't. The goal of making Part I a part and building block of the New International Economic Order takes care of that.

Article 22: (3) The decision of the Group of 77 will undoubtedly be accepted by the Conference. Since, however, the subject has not yet been discussed by the Conference, it seems premature to insert Jamaica in the text at the present stage.

Article 23: The Geneva version was more in keeping with the Declaration of Principles.

Article 24 (Article 22 of the Revised Text) must be read in conjunction with Article 34 (Article 41 of the Revised Text). Article 34 provides the only practical method I can think of to bring all production in the Area under the effective control of the Authority and to assure the Authority the larger part of all profits. On the other hand, it is a simple and businesslike arrangement, tested by joint-venture arrangements between multinationals and socialist States like Yugoslavia.

Article 24 (22) is so worded that it should satisfy the opponents of the Enterprise system. Also Article 25 is a concession to those States who are particularly concerned with free access to the resources of the area. There is nothing wrong with it, however, as long as it is accepted (Article 34) that the exploration and exploitation of the common heritage of mankind is reserved to Enterprises operating under a charter from the Authority and such Enterprises are formed by the Authority, holding the majority of votes, and the controlling share of investment and profits, and States or enterprises, etc. The proposal is likely to be violently opposed by the industrialized States; yet, their companies have operated under analogous arrangements in a number of countries, and they will have to accept the Statute for European companies which puts quite a few restraints on them, including participation of workers on the Board, etc.

Article 27: Paragraphs 8,9, and 11 of Article 25 of the Revised Text are unacceptable. They paralyse the Assembly. They should be simply deleted. To avoid too easy decisions, it would perhaps be better to require two thirds of the members for a quorum than one-half.

Article 28: The Geneva Text has been re-instated. Among the additional powers and functions, (v) has been added to harmonize the article with the section on the Economic Planning Commission: the planning function has been strengthened. This seems important, although it is clear that plans can be merely indicative; the financial provisions have been grouped together; and (xiv) has been added to harmonize with paragraph 2 (vii) on the functions and powers of the Council. This had been forgotten in the Single Negotiating Text.

Article 29: The Council. The formula arrived at in the Single Negotiating Text for the composition of the Council is unfortunate. It confuses politics and economics. The Council is partly like the Board of a Corporation, partly a political organ. To make things worse, the economic aspect of it is not based on realistic business principles, but on conceptual, weak, and transitory interest constellations. The relationship between consumer and producer nations are not going to remain what they are, considering that all producer nations will be consumers as well. Also the relation between poor and rich nations will be shifting, changing, and diversifying. It is not realistic to freeze these relationships into a Convention. The relationship between nations in the Convention must be based on the simple principle of sovereign equality.

Interest groups, instead, should be represented in the Enterprise, which is a business. There, they should buy their way in, directly, openly, and flexibly. Under the proviso that the Authority retains the controlling vote, holds the controlling share of investment, and gets the larger part of the profits. Under the proviso, also, that the Board, under the Authority's charter, is composed in accordance with the principles of the New International Economic Order: i.e., the Authority will make sure that among the Governors it appoints, there will be a preponderance of representatives of developing nations, of consumers, and of workers.

Once the composition of the Council has been cleared of interest groups, its composition becomes easy. It can only be based on the regional principle. This principle, however, might be refined somewhat: the system as it has evolved in the SNT is not very fair, in terms of world population or number of States. But there are a number of alternatives, that could be negotiated.

No changes in the function of the Council are proposed in this draft, except that paragraph 2 (xii) of the SNT has been omitted. This provided a device to circumvent the Assembly on some important decisions. Also, the draft adds one paragraph (vi) providing that the Council should elect its Chairman and other officers. This had been forgotten in the SNT.

Article 32: as mentioned before the planning function has been strengthened.

Article 33: The Technical Commission has been strengthened and become a Scientific and Technical Commission. Otherwise the scientific activities of the Authority remain disembodied.

Article 34: To repeat the advantages of this Enterprise system over the one proposed in the SNT:

1. It separates politics from business.
2. It brings all the production in the Area under the effective control of the Authority.
3. It embodies a practical approach to the control of multinational enterprises in general, in accord with the Report of Eminent Persons; in accord, also, with a general trend even within industrialized nations. See, for example, the Statute for European Companies now under discussion at the EEC.
4. It is, therefore, adaptable to all kind of international Enterprises (hydrocarbons, fishing, shipping).
5. It would force member States to make adequate financial contributions to the Authority during the initial stage, or else they cannot produce at all.

6. Contributions could be simply assessed to States to raise the necessary initial capital; or loans could be obtained from the World Bank; or a levy could be imposed on companies for offshore operations; or there could be a combination of all three methods. Automaticity of transfers to the Authority would, and should, be encouraged. This is in accord with the proposals made by the developing nations in all recent fora. If States are not willing to cooperate with the Authority in raising the initial 51 percent of capital needed for one or two Enterprises, the whole effort is not worth while.
7. The approach, finally, has the advantage, that it ranges, flexibly and realistically, from effective control over Enterprises to complete control: When the Authority has generated sufficient income, it could charter an Enterprise with 100% of the Governors appointed, 100% of the capital provided, and 100% of the profits taken.

Article 35: Discussion in the Plenary during the first week of this session clearly indicated the desire of the majority of Delegations to unify and simplify the dispute settlement system. There should be only one Law of the Sea Tribunal: not two. This single Law of the Sea Tribunal should be organized in special chambers, one of which should deal with matters arising from Part I of the Convention. This chamber might give access to juridical persons.

This draft retains a provision for special procedures even though the Group of 77 is, on the whole, against the institution of such procedures.

The advantages of retaining it in this form would be two:

1. It would satisfy socialist States, as was made quite explicit by the Delegate of the Soviet Union in the Plenary debate.
2. It would work in the direction of decentralizing power centers; It would contribute to the restructuring and strengthening of the "basic organizations" dealing with ocean affairs; it would provide the juridical plank of the type of "functional federation of international organizations" which I feel might have a promising future in the United Nations System.

The interests of developing nations who are not in favor of special procedures are fully safeguarded by the provision that, if one of the parties to a dispute does not agree to recourse to special procedure, the case automatically goes to the Law of the Sea Tribunal.

In accordance with the near unanimous opinion expressed during the debate in the Plenary, the distinction between "application" and "interpretation" of the Convention ~~proposed in the~~ SNT has been dropped. Accordingly, the committee on experts must include not only technical, but also legal experts.