

File under: Austrian Delegation

One of the difficulties under which we are laboring is a certain confusion between the Authority as a whole and the Enterprise. In a way, the Governing Board of the Enterprise is a clumsy replica of the Authority's Council, and the Director-General duplicates the role of the Authority's Secretary-General.

I say this, not because I want to deal here today with institutional questions, but because this lack of clarity reflects itself on Article 22 with which we are dealing here.

It does so in two ways.

First of all, there is a lack of clarity with regard to the word "activities," as used in paragraphs 1 and 2.

"Activities" to be organized and controlled by the Authority in accordance with paragraph 1, include a whole range of activities, including the protection of the environment, scientific research, the disposal of archeological finds, saving of human lives, conservation of living resources, etc.

"Activities" conducted in accordance with paragraph 2 are restricted to resource exploration and exploitation.

Perhaps this ought to be clarified.

Secondly, there is a certain confusion with regard to the relations between the Authority and the Enterprise on the one hand, and States and State companies or private companies on the other. States are treated at times as though they were companies; private companies are treated as though they were States: a confusion against which the Delegation of the Soviet Union has warned repeatedly.

There are perhaps better ways of dealing with the relations between States and companies and an international organization which is both an intergovernmental organization and an Enterprise.

A different model is provided by the proposed INMARSAT Convention, which might well be worth studying from this angle. In a way, INMARSAT is both an intergovernmental organization and an Enterprise. Its Assembly is an assembly of States. Its Council, which is its operational arm, corresponds, in a way, to the Governing Board of our Enterprise. This operational arm is not composed of States, but of entities designated or authorized by States, i.e., private or State companies.

If we wanted to adapt this model for our purposes, States would be represented in the Authority's Assembly and Council, whereas the Enterprise would consist of representatives of Enterprises, whether private or public or State Enterprises: Entities designated or authorized by States: "Signatories."

In this case, ~~xxxxxxxxxxxx~~ there should be a small change in paragraph 2 (ii): the words "in association with the Authority" should be replaced by "in association with the Enterprise." The words "States Parties" should be omitted: it being understood that States Parties interact at the level of the Authority, ^{above} ~~xxx~~ that of the Enterprise.

Besides making for greater clarity, this approach would have another advantage: It would move us towards a different concept of the Enterprise, conceived as a unified joint-venture system: a system far more genuinely unitary than anything we have been discussing so far; a system genuinely under the control of the Authority; a system much more likely to solve the problems of financing and of technology transfer, which are plaguing us under the "parallel system."

This is all I would like to say at this moment.

I would like to comment on some points that came up yesterday and that seem to me to be most promising for the further development of our thinking with regard to Articles 22 and 23.

First of all, the trend to concentrate, in the text of the Convention itself, on essentials, attempt to articulate principles: principles which are of a permanent nature -- in so far as anything we can do may be permanent -- ~~while leaving details for the Annexes~~ -- and on which we can reach consensus, while leaving details to the Annexes, where we may be more empirical, more flexible: this seems to me an excellent approach: which will facilitate our task and may accelerate the rate of our progress.

Thus it appeared yesterday that there is consensus on the concept that the ~~resources~~ of the area and its resources are the common heritage of mankind; that the concept of the common heritage of mankind has a precise legal and economic content and, that among other things, it requires management and a machinery to implement such management; and that this machinery consists of an Authority, which is a political body, composed of States (Governments), with an operational arm, that is an Enterprise, through which States and other entities may explore and exploit the common heritage.

I would like to go one step further today in pointing out that perhaps it would be easier if we could agree that this operational arm does not consist of States, which are political entities and act through the Authority which is above the level of the Enterprise: but that, ~~within~~ at the level of the Enterprise States act through designated or authorized entities or entities especially established for this purpose: in other words, State companies of private companies under their effective control. It is these who must be associated with the ~~Enterprise~~ Enterprise, which is a business, if you will. States are not enterprises, nor businesses.

This is what I thought we could learn from the INMARSAT model. I think it would go a long way to assuage the ~~fears~~ those who are troubled by the present confusion ~~or~~ between or parification of States and private companies.

As Ambassador Knoke already indicated yesterday, it would be very easy to embody this new concept in Article 22: all that is needed is to replace, in 2(ii), the words "in association with the Authority" with the words "in association with the Enterprise." The words, "States Parties," furthermore, should be omitted: it being understood that States Parties interact at the level of the Authority, above that of the Enterprise. The form of this association would be determined in the Annex. There is no doubt that it will undergo variations, in line with changing technological and economic circumstances. The essential point ~~xxxx~~ is that the resources can be exploited only by entities, public or private, designated and authorized by States, in association with the Enterprise, under the authority of the Authority, through which States have agreed to manage the Area/ and its resources.

This leads me to my second point:

Mr. Kazmin yesterday expressed some doubts with regard to the notion of "joint ventures." Let me clarify.

By "joint ventures" I do not mean consortial agreements between private parties. I used the term "joint venture" in the sense in which INMARSAT can be called a "joint venture," that is, a structured, joint enterprise in which different entities cooperate with a common purpose, each playing his agreed role and taking his assured share of the product and of the profit.

~~Thank you~~ Mr. Chairman, it is my feeling that if we agreed on such a new concept of the relations between States and other entities in the Authority and in the Enterprise, paragraphs 3 and 4 might even be relegated to the Annex. If they stay where they are, however, I should like to draw your attention to the fact that the reference in para 4, to Article 28(2)(xii) presents difficulties since that article deals with relations between the Authority's Assembly and Council, which we have not yet discussed. Thank you.