During the course of discussions in the Plenary, many delegations felt that there was no longer a basic dispute about the need to have an International Sea-bed Authority that would have as its operative arm, the Enterprise. However, there continued to be a degree of confusion about the real nature of that organ and, according to different juridical backgrounds and national experiences, people referred to it variously as a corporate entity with equity shares, as a partnership vehicle for joint ventures, as a supra-governmental agency or as a combination of different forms etc.

According to some delegations, the new version of the statute of the Enterprise as reflected in Annex III of the ICNT was far more attuned to the original idea than was the text contained in the RSNT. That was mainly due to the fact that the ICNT reflected basically the proposals submitted to the Chairman's Working Group by the Group of 77 which held long and exhaustive meetings for the purpose of drafting articles that would bring the Enterprise closer to its real objective. They felt that the Conference should now find ways and means of making that Enterprise viable, not by merely providing it with finance but by allowing it to develop its own managerial skills, its operative capacity and what was more important, its own access to the market. If the Enterprise was to succeed as an operative arm of the Authority, it had to ensure that its association with States and companies sponsored by them would allow it to participate in all the different stages of sea-bed mining, including research, development, processing and access to market. In brief, the Enterprise, they said, should not be viewed simply as one more sea-bed operator competing with other international consortia.

The view was also expressed by several delegations that the provisions of the ICNT contained in Article 150 relating to the resource policy of the Authority appeared to be a reasonable basis for compromise and further negotiations in order to work out a formulation that would take into

account the interests of developing states and reflect objective economic needs of developed importers. In their view the main drawback of the ICNT was that it did not take into account the results of the negotiations held in the informal working groups during the sixth session of the Conference on the question of the system of exploration and exploitation of the resources of the Area.

One delegate stated that Article 151 made access of states to activities in the Area conditional on the obligation to provide the Authority with sufficient funds and technology thus replacing guaranteed access of states by discretionary powers of the Authority. Such provisions which amounted to discriminating in favour of a handful of countries who were at present in a position to provide funds and technology were not acceptable to his delegation. He stressed the need for inter-sessional consultations before the seventh session of the Conference. In his country's view, the system of exploitation of the sea-bed resources should *inter alia* provide that the Authority shall organize, conduct and control activities related to exploration and exploitation.

On the question of the resource policy of the Authority, certain delegations expressed their reservations to the provisions contained in Article 150 (1) (g) of the ICNT dealing with the interim period of seven years during which the Authority was to limit total production of minerals from nodules in the sea up to a projected cumulative growth segment of world mineral demand, and after the interim period, on an yearly basis, upto 60% of the C.G.S. of the world nickel demand as projected from the beginning of the interim period. Such a formula, they stated, would put the landbased producers in a disadvantageous position. They hoped that a more balanced formula could be adequately reflected in the ICNT.

Several delegations from highly industrialised countries stated that the provisions relating to deep sea-bed matters

as found in the ICNT were fundamentally unacceptable to the industrialised States, which were major importers of mineral resources found in the sea-bed. They suggested that paragraphs 1 and 2 of Article 151 should be revised as it does not provide adequate guaranteed access to private enterprise. They also suggested the deletion of the provision in Article 151 (2) which could be interpreted to mean that access to the area was conditional upon transfer of technology. Some delegations were not in favour of any provision that could be so read as to give the Authority the power to make it obligatory for contractors to enter into joint ventures, as joint ventures should be organised only on a voluntary basis.

The new text on financial arrangements with the contractors as set out in paragraph 7 (c) of Annex II of the ICNT, they said, did not appear to be satisfactory from the point of view of the contractors. On the question of resource policy of the Authority, some delegations found the formula for production control set out in Article 150 (1) (g) far more stringent than was necessary to project the interests of landbased producers.

As regards Article 153, paragraph (6), they stated that the automatic conversion to a unitary system on the failure of a review conference was not acceptable and instead a reasonable guarantee of access should be given to contractors in order to make their long-term exploration and exploitation on a stable basis.

Some other delegations, on the other hand, were of the view that Article 151 of the ICNT embodied the concept of common heritage of mankind in a most equitable manner and could serve as a good basis for further negotiations. On the question of the resource policy of the Authority, they expressed their support for the principle embodied in Article 150 of the ICNT and felt that any excessive control beyond a reasonable limit could defeat the very purpose of Article 150.

Several delegations alluded to the basic problem of setting in motion the machinery for exploitation, or in other words, on how best the system envisaged in the ICNT could be made workable especially with regard to finding the necessary financial and technological inputs for such operations.

In the course of discussions in the meetings of the Sub-Committee of the Whole and informal open-ended Working Group, apart from the general observations on the ICNT detailed consideration was given to the following matters:—

(a) Resource policy of the Authority (Article 150);

(b) System of exploitation (Article 151 (2);

(c) Conditions for contract (Annex II, paragraphs 3, 4 and 5);

(d) Financial arrangements for the Enterprise (Articles 158 (2) vi, 158(2)vii, 158 (2) xii, 170 to 175, Annex II paragraph 7 and Annex III paragraph 10); and

(e) Rights and interests of Land-locked States and Geographically Disadvantaged States—with particular reference to the resources of the Economic Zone; definition of Geographically Disadvantaged States—regional or sub-regional arrangements (Articles 69, 70 and 71).

The Committee was generally agreed that Articles 150-153 of the ICNT constituted a single package relating to the system of production of the resources of the International Sea-bed Area and the resource policy and therefore on the need to consider these articles as a whole. On the question of resource policy of the Authority a view was expressed that the principles embodied in Article 150 reflected the principle of the common heritage of mankind.

Intensive discussions took place on the question of system of exploitation in the open-ended informal Working Groupmeetings. The issue was viewed in the context of the conditions for award of contracts for exploitation and financial arrangements to be entered into by the contractors. Many delegates shared the view that the main question that confronted the present stage of negotiations was the question of making the system of exploitation as contemplated in the ICNT workable.

It was recalled that until the last session of the Conference, the Group of 77 had firmly taken up the stand that the activities in the Area should be exclusively carried out by the Authority or in association with it as envisaged in the provisions of the SNT drawn up at Geneva in 1975. It was further recalled that at the Kuala Lumpur Session of the Committee the delegates had totally rejected the parallel system of exploitation and the provisions contemplating such a system in the RSNT-I. A similar stand was also taken by the Group of 77 during the fifth session of the Conference at New York where they submitted a Workshop Paper I which contemplated a system of exploitation on the lines as found in the SNT. During the course of discussions at the Baghdad Session of the Committee, three trends of thought on the question of exploitation of the resources of the seabed area had emerged. These were:—

(i) The entire exploitation activities should be carried out by the Authority as contemplated in the provisions of the SNT.

(ii) Other proposals for exploitation may be considered provided they did not affect the principle of the common heritage of mankind.

(iii) A dual system of exploitation may be experimented for a limited period subject to stringent safeguards.

A compromise suggested was that a dual system of exploitation for a limited period of twenty years be accepted on the understanding that the Enterprise should be put in a position to exploit the areas reserved for it, simultaneously or almost simultaneously with those of the contractors.

At the sixth session of the Conference the Group of 77 by and large agreed to the dual access system for a limited period of twenty years on an experimental basis but could not discuss the conditions for award of contracts in detail.

The discussions during the Doha session of the Committee held in January 1978 focussed on the fundamental issue of ascertaining whether the dual system could be put into operation and if so, the measures that need to be taken to set it in motion. Some views were expressed that if the dual access system was not workable, other means of exploitation should be envisaged. According to another view, the best course would be to explore every possibility of making the dual system workable, for discussions on any other alternative system would be merely time consuming and the conclusion of a new Convention would be inevitably delayed.

It was generally felt that the parties who are given contracts for exploitation in the Area ought to be subjected to such terms and conditions, as a part of their contract, which would require them to assist the Authority to put itself in a position to undertake exploitation of the areas reserved for it simultaneously with the contractors.

On this fundamental question of the exploitation of the Reserved Area, the Sub-Committee had in-depth discussions on three main issues:—

(i) Financial arrangements;

(ii) Transfer of technology and know-how; and

(iii) Joint venture system.

On the question of financial arrangements, two proposals submitted by the United States and India came up for discussion before the Sub-Committee. According to the United States proposal, the Authority when acquiring its mining sites should use the "parallel" or "banking" system of exploitation in which an applicant for a mining site would submit his application either for one site or for two sites of equivalent commercial value. The Authority would then select and 'bank' one half of the single site or one of the two equivalent sites for its own exploitation. The advantage of this banking system, it was stated, was that it would allow the Enterprise to use the expertise of mining companies at no cost to itself in locating mining sites of commercial interest.

The financing system proposed by the United States which is a combination of providing finance for the Enterprise as also the financial terms for contractors, involved a profit sharing system in which payments by operators to the Authority would arise after the initial investment was recovered or when the return on investment increased.

As an alternative to the profit sharing system, the United States proposal had suggested that a contractor may choose a royalty system in which payment to the Authority would be a fixed percentage of the estimated value of nodules mined. After the contractor's investment was recovered, this fixed royalty percentage would rise dramatically if the contractor did not opt for the profit sharing system. Under this proposal, the United States gives the mining contractor the option of choosing a profit sharing or royalty system for the early stages of exploitation.

Views were expressed that the United States proposal, which was related to profits, does not apparently contemplate financing of the Enterprise in a manner which would enable it to undertake activities in the area simultaneously with the contractors.

According to a proposal put forward by the delegation of India, the contractor would pay the Authority $1.00 per ton of dry nodules prior to mining the site as a charge for the right to mine. This proposal provided that for a mining site from which 3 million dry tons of nodules would be recovered each year and assuming that the site will have an active life of twenty years, the contractor should pay the Authority an "up-front" payment of $60 million, one month prior to the award of the contract. This proposal contemplated that after the commercial production began, the contractor would pay the Authority a royalty of $5.00 for each ton of dry nodules mined plus a tax of 20% of gross annual income. After the contractor recovered a 200% return on his capital investment, future net proceeds would be divided, with the Authority receiving 60% and the contractor 40%.

The Sub-Committee was of the view that the Indian proposal, which was not related to net proceeds or profits, provided a basis for financing of the Authority in a manner which will enable the Enterprise to undertake activities in the area in the immediate future.

It was generally agreed that in order to make the dual access system a reality it must be ensured that the Enterprise be in a position to undertake the work of exploitation simultaneously with the contractors. That could be done only if the Authority were provided with sufficient funds, technology and technical know-how at its disposal, or in the alternative, by entering into joint ventures.

In regard to joint ventures, a view was expressed that such ventures could be entered into by the Authority in respect of the area reserved for it, but it was also pointed out that it might be difficult to find a party which would agree to go into joint ventures with the Authority providing its own finance and technology and therefore the only practicable means would be to make it compulsory for a contractor who is given the contract in regard to one half of

the Area, to exploit the other half through a joint venture with the Authority.

It was the general view that apart from the question of finances, the viability of the Enterprise depended more on the acquiring of technology and know-how. In this connection, the Sub-Committee discussed in detail the provisions in Annex II, paragraph 4 (c) (ii) of the ICNT, which obliges every applicant, without exception, to undertake to negotiate, upon the conclusion of the contract, if the Authority shall so request, an agreement, making available to the Enterprise, under licence, the technology used or to be used by the applicant in carrying out activities in the Area on fair and reasonable terms.

A view was also expressed that it would be timely to initiate, perhaps under the United Nations auspices, a training scheme of experts from developing countries.

As regards the system of access to the international seabed area and entering into contracts for exploitation, reservations were expressed by some delegates to the provisions contained in Article 151 (2) which could be interpreted to mean that access to the Area was conditional upon transfer of technology and also that it was obligatory for contractors to enter into joint ventures. In their view, such provisions should be deleted and joint ventures should be organised purely on a voluntary basis.

During the course of these discussions reference was made to a view expressed at the Kuala Lumpur session of the Committee, that in examining the provisions of the RSNT on the parallel system of exploitation, an attempt should be made to ascertain as to how many areas should go to the developed States and how the production control formula would be applied, and at what point of time should the Authority commence its operations. It was suggested at that time that the provisions of the RSNT should be so applied that one area is exploited by the Authority, if necessary through a service contract. It was emphasised that

until the second area was actually taken up by the Authority for exploitation, no new areas should be opened for giving it to the contractor. This idea which gained considerable support was further developed at the informal meetings at the sixth session of the Conference and the suggestions were made for a system of "rotation". According to that system, the first area was to be exploited by the contractor, the second by the Authority, the third by the contractor and so on.

Another proposal that was discussed at the informal meeting was what may be termed as the "joint compulsory venture system" on an equity share basis. One aspect of that proposal was that the developing countries would have control over the decision making body. A contrary view was expressed, however, that this system would result in the control of the exploitation of the resources of the Area going into the hands of the multinational enterprises.

At the conclusion of these discussions the Committee was of the view that it was more appropriate to resolve the remaining issues concerning the dual system rather than retracting from the ICNT provisions at the present stage of negotiations.

ISSUES BEFORE SECOND COMMITTEE OF UNCLOS III

Several important issues before the Second Committee of the U.N. Conference on the Law of the Sea were discussed during this period at the special intersessional meeting held in New Delhi in February 1976 as well as at the annual sessions of the Committee held in Kuala Lumpur, Baghdad and Doha. The Committee's documentation for these meetings analysed the provisions of the various negotiating texts highlighting the important changes that had been effected as the negotiating texts were revised. The following is a summary of the discussions that took place at these meetings.

Territorial Sea and the Contiguous Zone: Most of the participants found no difficulty with the provisions of the negotiating texts relating to the breadth of the territorial sea and contiguous zone. One delegation, however, expressed his Government's view favouring a 200-mile territorial sea. In respect of the principles of delimitation of the territorial sea between States with opposite or adjacent coasts, several delegations emphasised the need to ensure that special characteristics of closed or semi-enclosed seas should be given due consideration with regard to delimitation of territorial seas of States bordering such seas.

Although there was considerable support for the provisions of the negotiating text on the drawing of baselines, one delegation suggested different criteria for drawing of baselines in certain exceptional situations. Their formulation read as follows:

> "In localities where no stable low-water line exists along the coast due to continual process of alluvion and sedimentation and where the seas adjacent to the coast are so shallow as to be non-navigable by other than small boats and pertain to the character of inland waters, baselines shall be drawn linking appropriate points on the sea adjacent to the coast not exceeding 10 fathom line."

Suggestions were also made that the line of demarcation provided for in Article 13 of the SNT should be incorporated in charts to which due publicity will be given.

On referring to Article 16(2) some participants were of the view that the acts enumerated therein were not exhaustive. It was also suggested that the passage of nuclear-powered ships and ships transporting nuclear substance was *per se* a prejudicial act and therefore should also find expression in Article 16. Suggestions were also made that prior notification and authorisation should be a necessary

prerequisite for the passage of nuclear-powered ships as well as warships.

Straits used for International Navigation: On this question it was felt that the expressions 'strait State' and 'Straits used for international navigation' should be clearly defined. There was, however significant support for the provisions of the RSNT and ICNT dealing with this question. One participant stated that he preferred the regime of innocent passage through straits used for international navigation. Another participant drew attention to the Algerian proposal put forward at Caracas (A/Conf. 62/C.2/L. 20) in regard to access to States bordering enclosed and semi-enclosed seas through straits used for international navigation. He stated that according to that proposal, tankers were to be accorded free passage through such straits.

Exclusive Economic Zone: The main issues discussed, with regard to exclusive economic zone were its legal status, the limits of the exclusive economic zone, the rights and duties of the States in the zone and settlement of disputes relating to the exercise of rights by coastal States in and over the zone. Although many states favoured the concept of the exclusive economic zone as elaborated in the successive revisions of the negotiating text, the land-locked and geographically disavantaged states had several reservations especially regarding the provisions relating to the sharing of the resources in the zone. Some views were expressed that the concept of the economic zone and the continental shelf should be merged into one and the rights of the coastal States in and over the continental shelf should not extend beyond the limits of the exclusive economic zone. Others, who did not favour such an approach, pointed out that the continental shelf concept was already an established principle of International Law and that several States had undertaken the exploration and exploitation of the resources in the continental shelf on the basis of the existing Inter-

national Law and consequently merging of the two concepts would not be practicable nor desirable. Several delegations considered that jurisdiction in respect of protection of the marine environment in the exclusive economic zone should be with the coastal State. They also referred to the need to harmonise the provisions of the texts dealing with this matter and the provisions relating to pollution control.

Discussions also took place on the provisions of the negotiating texts regarding the concept of revenue sharing. Some participants found the provisions of this article unacceptable, while others were of the view that this provision would only be applicable in the event of the natural prolongation theory being accepted in regard to the limits of the continental shelf. They rejected all proposals for revenue sharing so far as the resources of the continental shelf were concerned upto a limit of 200 miles. With regard to the resources of the continental shelf beyond the 200-mile limit, some delegations were prepared to examine the possibility of a scheme for sharing of revenue. As regards the method and manner of such revenue sharing, one view seemed to favour a regulatory mechanism under the International Seabed Authority while others were of the view that the regional organizations could appropriately deal with such matters.

With regard to the status of the exclusive economic zone, most delegations were of the view that its *sui generis* character as embodied in the negotiating texts was legally justifiable.

Delimitation of Marine Spaces: Discussions also took place on the question of delimitation of various marine zones, such as the territorial sea, the continental shelf, the exclusive economic zone, the contiguous zone etc., and references were made in this connection to the articles dealing with this matter in the SNT and its subsequent revisions. The central question on which the delegations

appeared to be sharply divided was whether the median line constituted an acceptable criterion for delimitation of these various zones between States adjacent or opposite to each other, or whether such delimitation should be effected in conformity with equitable principles, taking into account the special circumstances which are relevant to a particular situation. While many delegations favoured the median line as a criterion for such delimitation, several others felt that in their respective regions rigid application of the median line principle would result in the establishment of unfair and unacceptable boundaries and lead to a proliferation of disputes. They were also of the view that the median line should not constitute a criterion for delimination of boundaries pending agreement between the States concerned with regard to the ultimate position of such boundaries.

Land-locked and Geographically Disadvantaged States: The representatives of land-locked States reiterated their national stand that land-locked countries not only had the right of access to and from the sea but that they also had the right of transit through the territories of the coastal States. The modalities for the exercise of such rights, they said, might however be subject to agreement between the land-locked States and the coastal States. They also suggested that an agency under the United Nations should be established to find a solution to the problem of land-locked countries and to guarantee their right of transit.

Some coastal States, however, were of the view that the U.N. Conference was dealing with the Law of the Sea and not directly with the question of transit rights of land-locked States and consequently, the question of transit should be examined in that limited aspect. The provisions of the various negotiating texts, they said, represented a compromise, in that, both the words 'right' and 'freedom' had been used. It was recalled that in various international conventions the absolute right of transit of land-locked States was not recognised, and that right of transit had been

satisfactorily solved in most cases by means of bilateral agreements. Some participants stated that the expression 'right' should not be used in these articles and that it should be substituted by the word 'freedom'. In their view, access to and from the sea cannot exist without agreement and the extent to which such access could be permitted in each case had to be determined by the coastal State concerned.

The second question related to the sharing of the resources of exclusive economic zone and it was suggested by participants from land-locked States that such States should have access to the living and non-living resources of the coastal States' exclusive economic zone. Some coastal States on the other hand, rejected any plea for sharing of the non-living resources in the exclusive economic zone. In this connection, reference was made to the resolutions of the Organisation of African Unity dealing with land-locked States' access to the resources of the exclusive economic zone of coastal States.

Archipelages : The negotiations in the Law of the Sea Conference with regard to the concept of archipelago and archipelagic seas had during the period under review received wide and general support and therefore the discussions at the Committee's meetings were confined to the applicability of the archipelagic concept to archipelegos belonging to continental States; the right of passage through designated sea-lanes; and the right of overflight.

Some representatives were of the view that the concept of archipelago was developed having regard to the special characteristics of archipelagos which constituted a single State and therefore the concept was applicable only to genuine archipelagic States and that archipelagos which constituted a part of continental State should not be entitled to the same rights as genuine archipelagic States. Some countries, on the other hand, were of the view that there was

no legal or moral justification for differentiating between archipelagic States and archipelagos which constituted a part of a continental State and reiterated their view that such archipelagos should also enjoy the same rights as archipelagic States.

On the question of designation of sea-lanes, some States were of the view that such designation should not be left entirely to the discretion of the archipelagic States and that it should be done under the supervision and guidance of competent international organisations. The archipelagic States, on the other hand, were of the view that such supervision or guidance was not necessary. With regard to the provisions relating to overflight, which appear in the SNT and its subsequent revisions, some archipelagic States were of the view that the question of overflight was not within the competence of the Law of the Sea Conference and that it should be dealt with by the relevant international organisation, which, in this case was, the International Civil Aviation Organisation.

Discussions also centred on the need to provide for recognition by archipelagic States of the traditional rights of neighbouring countries such as those concerning fisheries, laying and maintenance of submarine cables and pipelines etc. Several States expressed the view that archipelagic States should be subject to such obligation, although the modalities for the implementation of this obligation might be regulated on the basis of bilateral agreements between the archipelagic States and the States concerned.

Regime of Islands : A view was expressed that no distinction should be drawn between islands on the basis of size, population etc., in regard to applicability of the regime embodied in the negotiating texts. It was pointed out that many parts of continental territories too were sparsely populated and some parts, such as desert areas, were even uninhabited, and no distinction was sought to be made on these grounds with regard to such continental territories.