enterprise or the Authority permitting State parties or their nationals to act could be resorted to. It was further suggested for consideration that after a certain stated period it would be the Authority only acting through the Enterprise which would be competent to undertake and carry on activities in the Area.

Several delegations alluded to these basic differences between the provisions of the Geneva text and the RSNT which in essence was the introduction of the parallel system of exploitation, an express clear preference for the system of exploitation omitted in the SNT. One delegate, however, was of the view that the system of exploitation envisaged in Article 22, Part I of the RSNT was realistic in that it allowed national corporations to undertake activities in association with and under the control of the Authority.

On the question of prospecting, the Secretariat study pointed out that a new stage of operations described as prospecting had been introduced in the Annex in addition to the activities of exploration and exploitation. Attention was drawn to the interpretation clause (Article 1 clause (ii)) where the term "activities in the Area" was confined to exploration and exploitation and did not apparently include prospecting. In paragraph 3 of the Annex which dealt with this matter it was stated that "the Authority shall encourage the conduct of prospecting of the Area". Although the prospector was to furnish certain undertaking to the Authority in regard to prospecting and had to notify the Authority of broad area or areas in which prospecting was to take place, there was no provision for obtaining of any licence from the Authority. It was also stipulated that prospecting may be carried out by more than one prospector in the same area or areas simultaneously. It was not very clear as to the need for prospecting as a prior stage to exploration, but prospecting in the context appeared to contemplate a general survey of the area. It was suggested for consideration whether the work of prospecting should be controlled by the Authority by means of issue of licences setting forth the conditions,

rules and regulations therefor with the definite obligation on the prospector to report the results of such prospecting to the Authority. It was pointed out that the provisions of paragraph 3 (b) which stated that prospecting shall not confer any preferential, proprietary or exclusive rights on the prospector with respect to resources or the minerals, would not offset the inherent defect in the scheme of paragraph 3 which permitted almost unrestricted prospecting in the Area which in practice meant that only a few highly developed countries would undertake such activities in view of their technological capacities.

On the scope and content of the expression 'prospecting' a view was expressed that prospecting was no more than a general survey of the area, whilst another view was that the prospecting included, in general, survey, evaluation and development. It was pointed out that paragraph 3 read with paragraph 2 of Annex I permitted all states and their nationals to engage in prospecting without any limit of time. A point was raised as to whether there should be a system of prior authorisation by the Authority in regard to prospecting. It was also pointed out that whilst under the provisions of the SNT the Area was to be opened by the Authority itself, the RSNT contemplated the Authority's powers only to close an area for the purpose of prospecting. The majority view was that some link must be maintained between the prospecting operations and the Authority, such as obtaining its prior authorisation and also a mandatory requirement for supply of data to the Authority by the prospector. The question of fixation of specific periods for prospecting as a precondition for application for exploration and payment of some fees by the prospector was also mentioned. Another view expressed was that prospecting was merely gathering of information and not commercial operations and the provisions of the RSNT had provided for the link as prospector had in any case to abide by the rules and the regulations of the Authority under a written undertaking and has to accept verification of compliance by the Authority.

On the crucial issue of exploitation of the sea-bed mineral resources, the Sub-Committee considered the provisions of paragraph 8 (d) together with paragraph 12(2) of Annex I in regard to contracts for exploration and exploitation of the Area. They were generally of the view that since some of the highly industrialised countries had already conducted general surveys of the Area and were in possession of know-how regarding exploration and exploitation of the mineral deposits of the seabed, their interests should in some way be accommodated. But they felt that the provisions of paragraph 8(d) had gone much beyond the acceptable limit. The full implication of this provision might mean that there may be nothing left for the International Seabed Authority to exploit when it would be in a position to do so in the light of the production control envisaged in Article 9, even though paragraph 8(d) of Annex I apparently contemplated one half of the area going to the parties who are in a position to offer viable sites for exploration and exploitation. Views were expressed that in regard to contracts for exploration and exploitation a time-limit should be prescribed and that the possibility of the Authority taking over the contract areas upon payment of compensation after the expiration of a reasonable period of the time should not be ruled out.

The Secretariat's study on this aspect highlighted the provisions of paragraph 8(d) of Annex 1 of the RSNT relating to the selection of applicants which was a new provision not referred to in the SNT.

Many delegations were of the view that the Authority should start its work of exploration and exploitation simultaneously with the contractors. However, it was pointed out that if the provisions of Article 8(d) of Annex 1 were to apply, provision should be made to ensure that one area is given under a contract to the contractor and the other is exploited by the Authority simultaneously, if necessary, through a service contract. One delegate emphasised the need in such a

system to provide that the contractor would not be given a new area unless the area assigned to the Authority had commenced operations. Another delegate opposed this scheme which he thought would hamper production. He emphasised that if all the conditions for granting a contract were fulfilled, there would appear to be no reason to holding up the contract and that the proposed formula was neither contemplated in the SNT or in the RSNT.

Attention was also drawn to the fact that the idea of fifty-fifty contractual agreements as found in paragraph 8(d) was rejected by the Group of 77 at the Geneva Session. The original idea, it was pointed out, was that at the time of general survey the contractor would offer areas half of which would be assigned to him for prospecting, the other half being reserved for the Authority. Having prospected that half, the contractor was to be assigned half of the prospected area for mineral exploitation, the other half being reserved for the Authority, the practical result being that 75% of the area would be with the Authority and 25% would be given under contracts.

One delegate felt that the provisions of paragraph 8(d) already incorporated a concession in favour of the Enterprise and the developing countries as compared to States parties and private corporations of developed nations.

Another delegate pointed out that the provisions of paragraph 2 of Annex I was inappropriate in regard to the passing of titles to the minerals because the Authority must have full and effective control through all stages upto processing and that title should be passed only when it was marketed.

Baghdad Session

For the Baghdad Session, the Secretariat prepared a study which examined the three Workshop Papers and certain other informal proposals that were discussed at the fifth session of U. N. Conference on the Law of the Sea which had concluded shortly before that session. The study focussed on the following questions relating to First Committee matters:

(a) Whether the states parties and other entities including private firms sponsored by them should be given a guaranteed role to undertake activities side by side with the Authority as envisaged in the Revised Text and Workshop Papers II and III or whether their role should be determined at the option of the Authority in respect of specified areas as envisaged in Workshop Paper I?

(b) Whether the system of exploitation embodied in the RSNT and the Workshop Paper II or Paper III can be given effect to, and if so under what conditions?

(c) If the parallel system is accepted, either on a permanent or temporary basis, what means should be adopted to make it possible for the Enterprise to commence its operations simultaneously with states parties and other entities sponsored by them?

(d) What proportion of the areas should be allocated for operation by the Authority itself, by states parties and private firms and whether any areas should be reserved for exploitation by developing countries?

(e) The basis for selection of applicants for contracts and the procedure for selection.

(f) What should be the degree of control exercisable by the Authority over states parties and other entities in regard to the activities in the area?

(g) What terms and conditions should be included in the contract between the Authority and the states parties and other entities?

(h) When should the title to the minerals pass to the contractor?

(i) What would be the effective way of giving special consideration to the needs and interests of developing countries, especially those which are land-locked and geographically disadvantaged?

(j) What measures are necessary to ensure that under a parallel system of exploitation, no single state or entities sponsored by it would have a monopoly in respect of these activities?

(k) Should the conditions of exploitation applicable to the Enterprise be the same as those applicable to states parties and entities sponsored by them?

During the discussions in the Plenary and the Sub-Committee of the Whole on the Law of the Sea, it was pointed out that the SNT had proceeded on the basis that all activities in the area concerning exploitation of the resources should be under the direct supervision and control of the Authority on behalf of mankind as a whole, as the resources of the Area were the common heritage of mankind. This position was not acceptable to some developed countries and their demand for a system which would guarantee a role for states parties and entities sponsored by them under the provisions of the Convention found expression in the RSNT, even though the RSNT also recognised the Authority to be the representative organ of mankind as a whole. The position reflected in Workshop Paper II that states parties in international law are the representatives of mankind and therefore should have a guaranteed role in the matter of exploitation of the sea-bed resources was considered unacceptable by several

delegations especially in the context of sea-bed exploitation since all states were not equally situated in terms of technological or economic resources. They were of the view that the provisions contained in the SNT as well as in Workshop Paper I were sound in principle and were in harmony with the U. N. Declaration on the Resources of the International Sea-bed Area adopted by the General Assembly in December 1970, as well as the Declaration on the Establishment of a New International Economic Order adopted by the General Assembly in May 1974.

The Secretariat's study, while emphasising the need to give full effect to the concept of common heritage of mankind in formulating a system of exploitation of the resources of the international sea-bed area, drewattention to certain practical realities which required to be taken into consideration in negotiating an acceptable formula for the development of sea-bed resources.

Several delegations considered that the negotiations within the Law of the Sea Conference had reached the point where solution to the problems relating to the drawing up of a generally acceptable scheme for the exploitation of the mineral resources of the international sea-bed area could only be found if delegates approached the negotiations with an open mind and ready to explore the possibilities of evolving a scheme which might fall short of the ideal but would satisfy the minimum requirements of the various interests groups. It was in this context that the delegations examined the question of the parallel system of exploitation under certain conditions which would ensure that the fundamental concept underlying sea-bed operations, nemely, the common heritage of mankind would not be negated. Some of the conditions that were discussed were:

(a) that the Authority should be placed in a position to undertake activities relating to the exploitation of the sea-bed area simultaneously with the contractors in regard to at least the equal number of areas as would be exploited by the contractors;

(b) sufficient control is retained with the Authority in the matter of selection of the contractors as well as over the activities of the contractors in relation to exploration and exploitation; and

(c) some provision is made which would enable developing countries to undertake such activities in the future by means of reservation of certain areas and transfer of technology.

In this connection the delegations considered the following scheme of operation:

(i) If a system of parallel operation is to be adopted, then on the basis of prospecting done by the Authority, States parties and other entities, a list of viable areas considered suitable for exploration and exploitation should be prepared and published by the Authority. Further areas would be added to this list from time to time on the basis of further information that may be available.

(ii) The Authority will then determine the areas which should be opened for exploitation during a particular period out of the list so prepared, taking into account the marked demand for the metal from sea-bed resources, the need for production control in order to protect the interests of countries having similar landbased mineral resources and reservation of certain areas for future exploitation by the Authority and developing countries.

(iii) Having determined the number of areas which would be open for exploration and exploitation during the particular period, one half of such areas should be kept by the Authority for its own exploitation

through the Enterprise and the other half should be open for exploitation by States parties or entities sponsored by them.

(iv) In regard to the areas which are open to the States parties and other entities sponsored by them, the Authority will invite applications from interested parties and the contract should be given on the basis of such applications. Where there is only one applicant for a particular area and the applicant fulfils all the qualifications and undertakes to abide by the terms and conditions laid down by the Authority, the contract should normally be granted to the applicant if the case is recommended by the Technical Commission, subject however to the condition that the grant does not exceed an agreed percentage of the total number of areas in favour of a particular State party or entities sponsored by them taken together.

(v) In considering the applications, the Authority will take into account factors for determining whether the applicant State party will be conducting the activities on its own resources or it will be depending on foreign assistance. In cases where a State party sponsors a corporation or a firm, the Authority may also consider the question of a genuine link between the State party and the entity sponsored by it including the nature of arrangements between the entity and the sponsoring state. The Authority will be justified in refusing to grant a contract to the applicant where it transpires that the application in reality is on behalf of some other state or on behalf of a corporation which has no genuine link with the sponsoring state.

(vi) When there is more then one applicant for an area, the selection would be made primarily on the basis of technical competence, but if both are found to be

technically competent, then selection should be made in such a way as to avoid giving of too many areas to the same State party or entities sponsored by it and also to ensure adequate participation of socialist states and preference being given to developing countries, if any.

(vii) Apart from the fact that the funds as well as technical know-how for the exploitation should be provided for by the contractors and that an undertaking shall be given to abide by the rules, regulations and general directions to be given by the Authority, the contract should provide for the following:

(a) The contractor should pay to the Authority a fixed annual sum calculated on the basis of the extent of the area given under the contract plus a royalty to be calculated on the basis of minerals raised.

(b) The contractor shall exploit an area which would be more or less equal in size to the contract area on behalf of the Authority (Enterprise) using its own funds and technical know-how — the gross proceeds of such exploitation less legitimate operational costs should be wholly given over to the Authority. *Alternatively,* the contractor shall provide the Authority (Enterprise) with the necessary funds and technical know-how and all the other assistance including qualified personnel required for exploitation of an area similar to the contract area to enable the Enterprise to undertake the work of exploitation.

(c) The contractor shall take immediate steps for transfer of technology to the Authority and through the Authority to developing countries by associating personnel from developing countries on the recommendation of the Authority in its operations in the

contract area and also for the area which it may exploit on behalf of the Authority.

(d) The contractor shall on the expiry of the contract period vacate the contract area but the installations and the machinery may at the option of the Authority be taken over by the Authority on payment of reasonable compensation.

(viii) In regard to the areas which the Authority reserves for its own exploitation, the following methods may be employed:

(a) The Authority may entrust to a contractor, who has been allotted an area under a contract for its own exploitation, an area similar in size and other properties to exploit it for its benefit in accordance with the terms of contract on behalf of the Authority and of the contractor. In all such cases steps are to be taken to ensure that technology is fully transferred to the Authority and personnel from developing countries are associated with the activities.

(b) The Authority may decide to undertake the work of exploration and exploitation through the Enterprise or by means of joint ventures between the Enterprise and States parties and particularly the developing states. In such cases the Authority may call upon a contractor to provide it with the necessary funds and the technical know-how and all other assistance including personnel under the terms of contract with the contractor.

(c) In cases where assistance from the contractor cannot be availed of, that is, when the contractors have already fulfilled their obligations in regard to other areas, the activities would have to be undertaken by the Enterprise by itself or in association with States parties or other entities.

With regard to the question of selection of applicants for contracts by the Authority, the following criteria were considered to be relevant to the selection process:

(i) technical competence;

(ii) benefit to the Authority to be derived from the granting of the contract in the shape of revenue and royalty as also tranfer of technology;

(iii) benefit to be derived by developing countries;

(iv) the work already done by the contractor in the area;

(v) avoidance of too many areas being given to one State party or entities sponsored by it;

(vi) need to ensure that at least some areas are given to socialist countries;

(vii) preference in favour of developing countries; and

(viii) genuine link between the entity sponsored and the sponsoring state.

The delegations also considered that all applications should be intially evaluated by the Technical Commission and a decision thereafter should be taken by the Council after taking into consideration the report of the Technical Commission and other factors indicated above.

The participants also considered the question of the degree of control that should be exercisable by the Authority over parties engaged in activities in the Area. Many delegations considered that the contractor should submit a plan of work for approval by the Authority prior to commencement of activities and that he also submit periodic reports on the work in progress together with a financial

statement and that its activities should be open for inspection by authorised officials of the Authority to ensure that the activities are carried out in accordance with the approved plan of work, the conditions of the contract and the provisions of the Convention.

With regard to the terms and conditions that might be included in a contract between the Authority and a contractor, the delegations considered the following to be among the basic conditions that ought to find expression in such contracts:-

(i) obligation to work in accordance with the provisions of the Convention, rules and regulations as well as directives given by the Authority;

(ii) payment of lump sum amount and royalties;

(iii) obligation to transfer technology in favour of the Authority;

(iv) association of personnel from developing countries in a training programme; and

(v) obligation to exploit an area similar to the contract area on behalf of the Authority with finance and technical assistance in order to enable the Authority to exploit a similar area.

There was some discussion on the manner in which and the time at which the title to the minerals would pass to the contractor and on this question the view was expressed that such transfer of title would depend upon the terms of the contract between the Authority and the contractor. Several delegations from developing countries of the Asian-African region expressed the view that effective steps should be taken to give special consideration to the needs of the developing countries with regard to their role in the exploitation of sea-bed resources. Reservation of certain

areas for future exploitation by developing countries, training of personnel from developing countries with regard to activities relating to sea-bed exploitation and disbursement of certain portion of the revenues accruing from sea-bed exploitation to the Authority among developing countries, were some of the means discussed at the session.

Many delegations also felt that the Convention should embody adequate provisions to prevent any single state or entity sponsored by it from acquiring monopoly with regard to sea-bed exploitation activities.

Doha Session

As the Doha Session of the Committee was to be followed by the seventh session of the U.N. Conference on the Law of the Sea detailed consideration was given to the following topics:

(1) Development of the resources of the Area;

(2) Award of contracts for the exploitation of the mineral resources of the Area;

(3) Financial arrangements;

(4) Structure and nature of functions of the Authority and its various organs;

(5) The Enterprise and the Statute of the Enterprise; and

(6) The review provisions.

At this session, the issues on Law of the Sea matters were discussed in three plenary meetings, two meetings of the Sub-Committee of the whole as well as in three informal sessions of an open-ended Working Group. The President of the Law of the Sea Conference, H.E. Ambassador Shirley Amerasinghe, the Special Representative of the U.N. Secretary-General to the Law of the Sea Conference, H.E. Ambassador Bernardo Zuleta, and the representative of the IMCO participated in the discussions.