Chapter VII

Third United Nations Conference on the Law of the Sea

Third (Geneva) session of the Conference on the Law of the Sea

The third session of the Third United Nations Conference on the Law of the Sea was held from 17 March to 9 May 1975 at Geneva, Switzerland.

The first session of the Conference, held in New York from 3 to 15 December 1973, had been devoted primarily to organizational and procedural matters.[1] The second session, held at Caracas, Venezuela, from 20 June to 29 August 1974, had begun substantive work on the questions of ocean law before the Conference.[2]

A total of 141 States participated in the third session. In addition, five territories, 13 specialized agencies or United Nations bodies, 10 intergovernmental organizations, 32 nongovernmental organizations having consultative status with the Economic and Social Council, and six national liberation movements recognized by the Organization

[1] See Y.U.N., 1973, pp. 44-46.
[2] See Y.U.N., 1974, pp. 71-84.

of African Unity (OAU) and the League of Arab States, participated as observers.

The 141 States that attended were: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, the Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi, the Byelorussian SSR, Canada, the Central African Republic, Chile, China, Colombia, the Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, the Democratic People's Republic of Korea, Democratic Yemen, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Gabon, the Gambia, the German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, the Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, the Ivory Coast, Jamaica, Japan, Jordan, Kenya, the Khmer Republic, Kuwait, Laos, Lebanon, Lesotho, Liberia, the Libyan Arab Republic, Liechtenstein, Luxembourg, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Nauru, Nepal, the Netherlands, New Zealand, Nicaragua, the Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, the Philippines, Poland, Portugal, Qatar, the Republic of Korea, the Republic of Viet-Nam, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sri Lanka, the Sudan, Swaziland, Sweden, Switzerland, the Syrian Arab Republic, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Uganda, the Ukrainian SSR, the USSR, the United Arab Emirates, the United Kingdom, the United Republic of Cameroon, the United Republic of Tanzania, the United States, the Upper Volta, Uruguay, Venezuela, Western Samoa, Yemen, Yugoslavia, Zaire and Zambia.

The five territories which sent observers, in accordance with invitations issued as a result of the General Assembly's decision of 17 December 1974,[3] were the Cook Islands, the Netherlands Antilles, Papua New Guinea, Surinam and the Trust Territory of the Pacific Islands.

The specialized agencies and United Nations bodies which were represented at the third session were the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Bank for Reconstruction and Development, the International Civil Aviation Organization, the International Telecommunication Union, the World Meteorological Organization, the Inter-Governmental Maritime Consultative Organization, the International Atomic Energy Agency, the United Nations Conference on Trade and Development, the United Nations Environment Programme and the United Nations Council for Namibia.

The intergovernmental organizations that participated as observers were the Asian-African Legal Consultative Committee, the Commonwealth Secretariat, the Council of Europe, the European Communities, the Inter-American Development Bank, the International Hydrographic Bureau, the League of Arab States, OAU, the Organization of American States, and the Permanent Commission of the South Pacific.

The national liberation movements that participated as observers were the African National Congress of South Africa, the African National Council of Zimbabwe, the Partido Africano da Independencia da Guiné e Cabo Verde, the Palestine Liberation Organization, the Pan Africanist Congress of Azania (South Africa), and the South West Africa People's Organization (SWAPO).

Officers, structure and agenda

The officers for the Conference were elected at its first session. The President was H. S. Amerasinghe (Sri Lanka); the Rapporteur-General was Kenneth O. Rattray (Jamaica). There were 31 Vice-Presidents, and a Chairman, Rapporteur and three Vice-Chairmen for each of the three main committees which dealt with the substantive work of the Conference. In addition, there was the General Committee, which consisted of 48 members, to assist the President in the general conduct of the business of the Conference; the Drafting Committee, which consisted of 23 members, to formulate draft texts and give drafting advice; and a nine-member Credentials Committee to examine the credentials of representatives. The only changes made to the officers or members elected at the first or second sessions[4] were that Reynaldo Galindo Pohl (El Salvador) was elected to replace Andres Aguilar (Venezuela) as Chairman of the Second Committee, and Venezuela consequently replaced El Salvador as a member of the Drafting Committee. Also, Ireland replaced Belgium as a Vice-President of the Conference, and J. S. Bailey (Australia) replaced H. C. Mott (Australia) as Rapporteur of the First Committee.

The rules of procedure for the Conference had been adopted during the second session. At the beginning of the third session, on 17 March 1975, the Conference adopted a recommendation by its General Committee that the rules be amended to include Arabic as an official language of the Conference. The rules were also amended to permit

[3] **Ibid., p. 85, text of resolution** 3334(XXIX).
[4] See Y.U.N., 1973, **pp.** 44-45, **and Y.U.N., 1974, p. 72.**

representatives designated as observers in accordance with the invitation extended by the General Assembly in 1974[5] to participate, without the right to vote, in the deliberations of the Conference, its main committees and, as appropriate, the subsidiary organs. That amendment also provided that written statements of such observers would be circulated to those attending the Conference.

Otherwise the rules remained as adopted at the second session, as did the "gentleman's agreement" annexed to the rules, by which the Conference was to make every effort to reach agreement on substantive matters by consensus, and by which there was to be no voting on such matters until all efforts at consensus had been exhausted.

The aim of the Third United Nations Conference on the Law of the Sea was to codify existing ocean law and attempt to solve questions which were outstanding from the first two Conferences, held in 1958 and 1960.[6] In particular, the Conference was to try to establish a definition of and an international regime for the sea-bed and ocean floor beyond the limits of national jurisdiction and to ensure that the resources of the marine environment would be exploited for the benefit of all.

Specific issues for discussion included: the questions of who might exploit the sea-bed and ocean floor beyond national jurisdiction and what the basic conditions of exploration and exploitation should be, to be covered by the First Committee; definitions of and régimes for such concepts as the territorial sea, international straits, the continental shelf and an exclusive economic zone, to be covered by the Second Committee; and regulations to cover the preservation of the marine environment, marine scientific research and the development and transfer of technology, to be covered by the Third Committee.

Among the many documents before the Conference at its third session were a report by the Secretary-General on the economic implications of sea-bed mining in the international area and an exchange of letters between Greece and Turkey on their dispute over the Aegean Sea (see pp. 321-22).

There were also a number of documents which represented the progress which had been achieved on substantive issues in the main committees during the second session, including: the texts of draft articles 1 to 21 on the international regime for the sea-bed and ocean floor beyond national jurisdiction and the international machinery to be set up under that régime, which had been considered by the First Committee; a working paper reflecting the main trends which had emerged on the specific issues under discussion in the Second Committee; and two documents on the work covered by the Third Committee, one containing the results of consideration of proposals and amendments relating to the preservation of the marine environment, and the other containing texts on marine scientific research and the development and transfer of technology. All these texts contained many provisions in alternate formulations and it was on the basis of these that discussions at the third session were opened.

Work in plenary

Five plenary meetings were held during the third session; they were mainly devoted to the question of how to promote the process of negotiation.

The President of the Conference pointed out at the first plenary meeting on 17 March 1975 that at the end of the second session the Conference had agreed that the stage of general debate and general statements had been concluded and that from the outset the third session should be devoted to negotiations on issues of substance. It was therefore desirable, he said, that the main committees should immediately initiate the process of negotiation, allowing ample time for negotiations and consultations and avoiding general discussions.

The main committees began work on that basis, meeting mainly in informal groups. Reports of the informal consultations were submitted to the Chairmen of the three committees, who in turn informed the President of the Conference at regular intervals of the progress being made. Every week the Chairmen also reported to the General Committee on the progress of work in each committee.

At the plenary meeting on 18 April, the President said that he had consulted the Chairmen of the three main committees to ascertain the status of the work accomplished and to determine whether the procedures and methods being employed satisfied the needs of the occasion. After giving a short summary of the progress which had been made, the President recalled that earlier in the session he had said that negotiations should be based on a single text, reflecting all the current positions, to be prepared by the Chairman of each committee in consultation with his fellow officers. A text of that kind, which might be informal, seemed to be particularly indispensable in the case of the Second Committee, he said; the First and Third Committees were already drafting unified texts. During the negotiations on the unified

[5] See footnote 3.
[6] See Y.U.N., 1958, pp. 377-83, and Y.U.N., 1960, pp. 542-44.

text, each member would be free to propose amendments, he suggested, but it would be advisable to avoid the pitfall of protracted monologues and dialogues at cross purposes. Furthermore, provision had been made for joint meetings of committees—a procedure that might be useful in the case of issues for which the Third Committee was awaiting the outcome of the Second Committee's negotiations.

The spokesman for Venezuela thought the preparation of a single negotiating text by each of the three committees was the only course which was possible and logical. The document, he said, should contain just one text on each issue, with no variants, and would serve solely as a basis for negotiation and be subject to all possible kinds of amendments. The United Kingdom expressed the view that the drawing up of single texts was the last hope of achieving significant progress and believed it would lead to a better understanding of the positions of others and open the way for compromise.

The representative of Algeria said that a number of participants had misgivings about the proposal. All interests had to be taken into account. He could not see how the Chairman of the Second Committee could be expected to produce a single text without variants. The spokesmen for the Ivory Coast and the United Republic of Tanzania also queried whether it would be possible to produce a single text in the case of the Second Committee's work, which was deadlocked, and believed that the task of the Chairmen would be extremely difficult. The USSR said that texts on questions of principle or substance on which there were divergent views might include a few variants; otherwise it was difficult to see how the Chairmen could prepare a single text.

China said the single negotiating texts should reflect the positions and conform to the interests of the great majority of countries, especially of the developing countries, and should not prejudice proposals already submitted or new proposals, nor should they be treated as the sole documents for consultation and discussion.

Canada thought that the procedure suggested by the President was very unusual; however, because there appeared to be no other way of breaking the deadlock, it supported the idea. Afghanistan said that the single negotiating texts would have to reflect the positions of all interest groups, including the land-locked and geographically disadvantaged States; with that proviso it would support the proposal.

The President concluded that his proposal seemed generally acceptable and that the Chairmen of the three committees should each prepare a single negotiating text covering the subjects entrusted to his committee, to take account of all the formal and informal discussions held up to that point. The texts would not prejudice the position of any State; they would be a basis for negotiation and any representative would be free to move amendments.

Single negotiating texts were subsequently prepared by each of the three Chairmen, issued on 7 May, and presented to the Conference at the final plenary meeting on 9 May 1975 as a three-part document known as the informal single negotiating text. (For summary of the main provisions of the informal single negotiating text, see below.)

Also at the final plenary meeting, the Conference, on the recommendation of its General Committee, decided inter alia to recommend to the General Assembly that the next session of the Conference be held in New York from 29 March to 21 May 1976 and that a decision regarding a possible fifth session be held over until the fourth session. It also decided to ask the Assembly to give the highest priority to the work of the Conference, and to request the Secretary-General to make financial provision to enable those participants which so requested to conduct informal consultations and negotiations on the single text during the intersessional period.

In addition, the President, at the request of the "Group of 77" developing countries, appealed to all States to refrain from taking any unilateral action—and to so restrain their nationals—on the exploration and exploitation of the mineral resources of the sea-bed which might jeopardize the conclusion of a just and universally acceptable treaty. The President also read out an appeal by the group of land-locked and geographically disadvantaged States that all States refrain from unilateral or other measures which would extend national jurisdiction beyond 12 nautical miles before the Conference had completed its work. Finally, the President read out the text of a decision of the Governing Council of the United Nations Environment Programme (UNEP) by which the Conference was urged to give high priority to the inclusion in the treaty under consideration of effective provisions for the protection of the marine environment.

On 21 July 1975, after the third session was over, the President of the Conference circulated a fourth part to the single negotiating text, on the settlement of disputes. The covering note stated that it was the President's duty to submit a text on any item which was not the exclusive concern of any of the main committees. As the settlement of disputes would be an essential and vitally important element in the proposed convention, the

President had deemed it fit to present a text on that subject in order to facilitate the process of negotiation. The text was stated to have taken into account all the formal and informal discussions held up until that time, was informal in character and did not prejudice the position of any State. It was to serve as a procedural device and only provide a basis for negotiation; it was not to be in any way regarded as affecting either the status of proposals already made or the right of participants to submit amendments or new proposals. (For summary of the main provisions of the informal single negotiating text, see below.)

Work in main committees

First Committee

The First Committee (which dealt with the international legal regime for the area of the sea-bed and ocean floor beyond national jurisdiction) met between 18 March and 7 May under the chairmanship of Paul Bamela Engo (United Republic of Cameroon). It reconvened the Working Group which it had established at Caracas, consisting of 50 members, but open to all those interested.[7] The purpose of the Group was to facilitate negotiations on the draft articles of the proposed sea-bed regime which were before the Committee in 1974, particularly on the article which dealt with the question of who might exploit the area (article 22 of the First Committee's informal single negotiating text), and on the basic conditions of exploration and exploitation of the area.

Six formal meetings of the First Committee were held during the session, but the greater part of the negotiations took place at informal meetings of the Working Group, under the chairmanship of C.W. Pinto (Sri Lanka), and at other informal groups. The Working Group had before it the four proposals on who might exploit the area which had been presented at Caracas,[8] as well as a new working document submitted by the USSR.

The Working Group began its work by singling out for discussion those provisions which were deemed to be of fundamental importance, specifically those relating to: the scope of the proposed sea-bed Authority's powers (including which stages of operations should be under the Authority's control, and whether it should control processing and marketing of minerals or scientific research); the method of entering into arrangements with the Authority for the conduct of activities in the international area and the basic principles of those arrangements (including the selection of contractors and their participation in subsequent stages of operations and the nature of financial arrangements that would be entered into between the contractor and the Authority); and the settlement of disputes.

In an attempt to reveal an area of common ground—and without prejudice to the other methods of exploitation felt by many to be of essential importance, such as direct exploitation by the Authority itself—the Group proceeded to assess the merits of various proposals for joint venture systems. Owing to the very divergent positions that had been taken on this subject at Caracas, this decision to take up a single arrangement in detail was seen as a significant step, and several informal meetings were devoted to it, as were subsequent meetings of the Group as a whole.

An informal paper was submitted by the Chairman of the Working Group outlining the basic conditions of a contractual joint venture between, on the one hand, the Authority, and, on the other, a State member of the Authority or a State enterprise, or a natural or legal person having the nationality of a contracting State or effectively controlled by its nationals, or any group of those entities. The paper was intended, the Chairman stated, to embody the major ideas of all the proposals made to date and to provide a basis for compromise. He believed that most of its provisions could be agreed upon almost immediately by all members of the Working Group and perhaps by all States represented at the Conference. However, he noted, there was a continuing disagreement on two points, reflecting the concerns of two important groups of States with different economic systems.

The first matter, the Chairman of the Working Group said, related to the concern of one group of States that, while the proposed Authority might be allowed to have broad discretion as to how to exploit one part of the area, other parts should be subject to a separate regime under which States might, on the basis of strict equality, have some autonomy, subject to over-all supervision by the Authority.

The second matter, which caused concern to another group of States, the Chairman continued, related to a provision whereby an applicant for a contract for exploitation activities would be required to propose to the Authority two alternative areas of equivalent commercial interest for the conduct of operations under the contract. Under this system the Authority would then have the right to select one of the two areas for its own exploitation.

At the final meeting of the First Committee, the Chairman of the Working Group reported that,

[7] See Y.U.N., 1974, p. 78.
[8] Ibid., p. 76.

in the light of further discussions within the Working Group and in informal groups, the paper would be revised to include a certain number of provisions concerning direct exploitation by the Authority—a subject which the Working Group had not considered in detail. The Chairman said he wished to emphasize that the revised version should not be considered as a compromise or negotiated text but one intended to serve as the basis for further negotiation.

Also discussed at the formal meetings of the First Committee was the international machinery which would have to be established to facilitate the application of the principles, norms and rules laid down under the international regime. Attention was centred on the structure of the machinery and the responsibilities and powers to be given to the various organs.

The representative of Peru—noting that the question of the machinery had last been considered in 1973 by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction—commented on the Group of 77 developing countries' views on the nature, powers and general functions of the principal organs of the Authority. These were to comprise: an Assembly, composed of all members of the Authority, which would formulate the general policy of the Authority and issue directives governing its functions—it would take decisions by a two-thirds majority on questions of substance and by a simple majority on other matters; a smaller Council, as a permanent executive organ of the Authority, whose members would be chosen on the basis of equitable geographical distribution and in which there would be no system of veto; an operative body, the Enterprise, consisting of a small number of experts responsible for undertaking activities in the area, either on behalf of the Authority or through contracts with third parties; and a system for the settlement of disputes.

A number of countries, including Egypt, Trinidad and Tobago, Yugoslavia and Zaire, endorsed the position of the Group of 77. Trinidad and Tobago said that the activities of the proposed machinery should be guided by five basic principles: optimum use of resources, optimum sharing of resources, equitable distribution of revenue, sharing of benefits so that no State would be placed at an undue disadvantage, and supervision in the international area in order to protect the environment. With regard to a dispute-settlement mechanism, it felt that this was necessary and should be able to act quickly, but should not be a permanent body.

Argentina, Yugoslavia and Zaire were among those States which stressed the unacceptability of a decision-making system in the Authority which allowed for a veto, or a system of permanent membership or weighted votes in the proposed Council. The representative of Madagascar said that the decisions of the proposed Assembly should be mandatory and, in some cases, accompanied by enforcement measures.

Egypt noted that the rules and regulations to be embodied in the convention would remain in force for many years and felt that it would be unwise to adopt any rules restricting the powers of the Authority. It also expressed the view that the Council should not take any important decisions without the guidance of the Assembly, and that a suitable balance needed to be established between the two organs. Chile emphasized that any proposal for the machinery should provide that the Council would have the powers necessary for effective action. It further noted that such controls were consonant with the goals of a new international economic order, as could be seen from the agreements reached at the sixth special session of the United Nations General Assembly. Argentina and Zambia drew attention to the possible adverse effects on developing countries of uncontrolled exploitation, particularly at a time when primary commodity markets were in disarray. Morocco and Zaire were among those States which called for the appointment of a commission to plan production and stabilize prices to protect the interests of developing countries which produced minerals.

The representative of the United States, stating that his views could be regarded as harmonious with those of a variety of other industrialized countries, listed 12 elements which the United States felt had to be settled to the satisfaction of all if the single text was to be regarded as a useful basis for negotiation. These included limiting the Authority's competence to exploration and exploitation so that activities such as marine scientific research would not be restricted; restricting the policy-making powers of the proposed Assembly by, inter alia, not allowing it to overrule the Council, in order to protect the constitutional structure of the machinery; devising a Council structure which recognized the special interests of both developed and developing States; giving the Council alone the exclusive mandate to exercise the Authority's powers and functions relating to exploration and exploitation; arranging for an effective dispute-settlement procedure; ensuring that the Authority was financially self-sufficient; and making provisional arrangements for the exploitation of marine resources.

France and the Federal Republic of Germany, supporting the views expressed by the United

States, stated that a balance had to be established between the developing and the industrialized countries and that it was important that no situation should be allowed to arise in which one group of States could automatically impose its will on another.

Bulgaria, the German Democratic Republic and Mongolia expressed the view that the Authority should be a universal international organization but could not be a supranational one. Bulgaria said that it was premature to specify the powers and functions of the Authority and its organs since these were necessarily related to the outcome of negotiations on the question of who might exploit the area. As to the executive organ of the Authority—the Council—Bulgaria expressed the view that substantive decisions should as a general rule be taken by consensus, which, it explained, had nothing in common with either a veto or a mechanical majority.

China said that the sea-bed machinery should have broad powers, including the right to direct exploration and exploitation of sea-bed resources, and should regulate all activities in the international area, such as scientific research, production, processing and marketing. The super-powers should not be allowed to reduce the machinery to a hollow administrative framework devoid of real power, in China's view, and it was opposed to the introduction of a disguised veto system.

Malta said that the views expressed in the discussions might give the impression that there was a conflict of interests only between the industrialized countries and the land-based producers of raw materials, and pointed out that a large number of developing countries fell into neither category. It felt that if more attention were not paid to the needs of these countries their interests would be jeopardized.

The problems of the land-locked and geographically disadvantaged countries were brought up by a number of States, including Czechoslovakia and Switzerland. Switzerland called for two-fifths representation for this group in the proposed Council and in all other organs of the Authority. Czechoslovakia proposed a new system of distribution of revenue from sea-bed exploitation.

On the settlement of disputes, Australia said that there should be a Law of the Sea Tribunal with jurisdiction over all disputes concerned with the future convention, or, if this was not possible, a tribunal of more limited competence to deal with disputes relating to the activities of the Authority. Kenya expressed the view that the Conference should retain its freedom to establish either a tribunal competent to decide conclusively and without appeal all disputes arising in the international area, or an administrative tribunal, the decisions of which might be reversed by a higher court.

At the request of Singapore, the Special Representative of the Secretary-General agreed to make available for the following session of the Conference information and studies on various economic and technical aspects of sea-bed mineral development.

Chairman's summation. In a closing assessment of the work of the First Committee, the Chairman declared his satisfaction with the work of the Committee and its Working Group, but noted that at the next session it would be necessary to consider new procedures for facilitating the negotiating process. He reminded members that the President of the Conference had asked him, as Chairman, to draft a single text on the matters dealt with by the First Committee to serve as the basis for future negotiations. He assured the members that he had noted all the proposals, suggestions and opinions which had been put forward and that he would take them fully into account in drafting the single text.

Second Committee

The Second Committee, under the chairmanship of Reynaldo Galindo Pohl (El Salvador), held only two formal meetings during the third session of the Conference, on 18 March and 2 May 1975. The Committee's task was to consider 15 of the 24 items before the Conference, covering the legal regimes applicable to various ocean spaces from the territorial sea to the high seas as well as the special interests and needs of particular groups of countries.

At its first formal meeting, the following proposals for the organization of work were agreed by the Committee: first, a review of the documents produced at Caracas with a view to elaborating consolidated texts, using as a basis a document on the main trends; second, informal consultations on the views expressed during the review and an attempt by the Chairman and other officers of the Committee to focus the process of consultation on the essential items; third, encouragement of working groups already in existence or which representatives might decide to set up; fourth, invitations to members which maintained differing views to meet and attempt to reach compromises, and to report on the results of such consultations; and fifth, formal meetings for the official submission of new proposals by States or groups of States or to hear progress reports on consultations.

A number of informal consultative groups were established in which all members of the Committee were allowed to participate. These groups dealt

with the following subjects: baselines, historic bays and historic waters, the contiguous zone, innocent passage, the high seas, the question of transit (land-locked States), the continental shelf, the exclusive economic zone, straits, enclosed and semi-enclosed seas, islands, and delimitation.

Some of the main issues discussed in these informal groups included: the interrelationship between the contiguous zone and the economic zone; the plurality of regimes; the issue of whether there should be equal rights for land-locked and geographically disadvantaged States to exploit the living and non-living resources of the economic zones; artificial islands and installations in the economic zone; living resources of the economic zone; optimum utilization of the resources of the economic zone; conservation and management of resources in the economic zone; fishing agreements with neighbouring States, and the question of highly migratory fish species.

Although no major issue was resolved in these negotiations, nevertheless a degree of progress was achieved. The group on baselines prepared a consolidated text, as did the group on innocent passage and the group on the high seas (on some of the questions before it).

At the second, and last, formal meeting of the session, the Committee took up an Ecuadorian draft article on the concept of the territorial sea. The key provision of the text concerned the right of a coastal State to establish the breadth of its territorial sea up to a distance of 200 nautical miles[9] from its shores. As explained by the Ecuadorian representative, the concept of the territorial sea embodied in the draft article responded to the modern concept of sovereignty under which the State had the right to declare where the limits of its sovereignty lay. The draft article also provided, he said, that two régimes—that of innocent passage and that of freedom of passage—could coexist in the territorial sea, and it gave detailed specifications for the exercise of States' rights under those regimes. Without prejudice to the plurality of regimes, he explained, the coastal State could regulate all activities concerned with resources lying within its territorial sea and might allow the nationals of other States to exploit the living resources. The draft article also took into account the situation of the land-locked and other geographically disadvantaged States, he said, and provided for the co-operation of the coastal State with other States and with the competent international organizations.

Morocco said that it had acted on the recommendation of OAU by declaring a territorial sea of 12 miles on the understanding that its final decision would depend on how the concept of the economic zone was defined in the final convention, but that nevertheless it sympathized with the preoccupation with national sovereignty and security which inspired the Ecuadorian draft. Turning to the question of international straits, Morocco noted that a new law of the sea should make as clear as possible the responsibilities and rights of States using international straits and the responsibilities and rights of States bordering such straits.

Somalia, supporting the draft, stated that there was widespread support for the concept of the territorial sea among an increasing number of developing coastal States, which justifiably felt that no other system would sufficiently protect their meagre marine resources and their security. Uruguay said that the affirmation and consolidation of the sovereignty of States in the seas adjacent to their coasts was at the very heart of the current crisis concerning the law of the sea; the confrontation on this issue, in Uruguay's view, should be seen in the context of small and medium-sized States extending their sovereignty over the adjacent sea and big maritime powers seeking to restrict that sovereignty.

Peru said that it had decided in 1947 to exercise full sovereignty over the seas adjacent to its coast to a distance of 200 miles and that this right had been recognized as legitimate by the International Court of Justice. It also noted that the Conference would obviously fall into two distinct camps: those advocating the "territorialist" position (advocating full sovereignty and jurisdiction up to 200 miles), and those who wished to maintain the existing law of the sea to serve their own monopolistic interests. Brazil expressed the view that the territorial sea was the simplest and most coherent expression of the new order of the seas which the Conference was trying to prepare, adding that none of the countries advocating a 200-mile extension were seeking a mare clausum and that the territorial sea described in the Ecuadorian draft article was one in which the interests of all countries were accommodated.

Guinea said that to safeguard its interests it had always supported the idea of a territorial sea rather than the concept of an economic zone, but wished to make clear that its concept of this territorial right in no way excluded the exploitation of biological resources by neighbouring land-locked States. The representative of the People's Democratic Republic of Korea said it supported the Ecuadorian draft since it reflected the will of the countries of the third world to safeguard their sovereignty, national independence and security.

[9] The miles referred to in this Chapter are nautical miles.

China observed that the majority of developing and other States favoured an exclusive economic zone not exceeding 200 miles from the baseline of the territorial sea, while others favoured a 200-mile territorial sea with different regimes to apply within it, but that the two proposals stemmed from the same basic position—that of safeguarding State sovereignty. The differences, it added, could certainly be resolved through consultations.

Turkey noted that, to allow for the problem of narrow seas between neighbouring coastal States, it had submitted draft articles at the second session of the Conference which provided that the breadth of the territorial sea should be fixed jointly by the coastal States of the region concerned; Turkey therefore welcomed the inclusion of that principle in the Ecuadorian draft proposal, but suggested that the draft be amended to take into consideration the interests of neighbouring as well as coastal States.

Mali said that it could not support the draft article because it accorded no legal recognition of the right of land-locked and geographically disadvantaged States to share in maritime resources within the 200-mile area, but made such participation completely dependent on the goodwill of the coastal State concerned. Such an approach, it said, undermined the basis of a new economic order which sought to give to all a fair share of the resources available and equal opportunities for development. This position was subsequently endorsed by Hungary, Paraguay and Singapore.

In fulfilment of the Conference's decision of 18 April 1975, the Chairman of the Second Committee prepared a text covering the subjects allocated to that Committee, taking into account the documents before the Conference and the views expressed during the official and unofficial consultations held during the session.

Third Committee

The Third Committee, under the chairmanship of Alexander Yankov (Bulgaria), met between 19 March and 8 May 1975 to consider the three items allocated to it: preservation of the marine environment, scientific research, and the development and transfer of technology.

At its first formal meeting, the Committee accepted a proposal by the Chairman that it should continue the practice of holding informal discussions alternately on the item on the environment and on the other two items on research and technology together. These were chaired, as at the 1974 session, by Jose Luis Vallarta (Mexico) and Cornel Metternich (Federal Republic of Germany) respectively. The Committee held eight formal meetings at which members submitted new proposals on each of the items before the Committee. In addition to the representatives of participating States which spoke, the Committee heard statements during the formal sessions by representatives of the Intergovernmental Oceanographic Commission, UNEP, IMCO and the International Council of Scientific Unions.

PRESERVATION OF THE MARINE ENVIRONMENT

During discussions in the formal meetings, a number of States proposed draft articles on the issue of preservation of the marine environment. The United Kingdom, on behalf also of Belgium, Bulgaria, Denmark, the German Democratic Republic, the Federal Republic of Germany, Greece, the Netherlands and Poland, introduced draft articles on the prevention, reduction and control of marine pollution. The United Kingdom stressed that the threat from marine pollution was essentially international and could be controlled only by the imposition through international channels of a uniform set of regulations which set high safety standards. In addition to measures to cover pollution from land-based sources, from sea-bed exploration and exploitation and from dumping, the draft articles proposed a system of enforcement of measures against vessel-source pollution, from the initial obligation of the flag State, through port State inspection and enforcement, to the right of the coastal State to require information from passing ships. Belgium said it was necessary to safeguard the principle of primary responsibility resting with the flag State in order to preserve the existing legal status of ocean-going vessels on the high seas, which was in the interests of all States, including coastal States.

A number of States expressed support for this draft, including Japan, Liberia, Norway and the USSR. The USSR said it was prepared to accept a limited grant of competence to the coastal State to deal with the enforcement of measures against vessel-source pollution, but said an essential condition should be the establishment of safeguards against the abuse of power by the port State and the avoidance of unnecessary international complications. The USSR referred to the additional draft articles which it was proposing to cover national rules in the territorial sea, the combating of pollution in international straits within the territorial sea, and the right of threatened coastal States to intervene. Norway described these additional draft articles as a useful complement to the nine-power draft articles.

Other States welcomed one or both of the proposals, with reservations. The United States felt the nine-power draft placed too many restric-

tions on the enforcement of international rules by port States. Liberia expressed some hesitation over the far-reaching powers which the draft would vest in a port State which was also a coastal State, and said inter alia that it was essential to protect a ship's officers and crew against prolonged detention by foreign States for alleged pollution offences.

Others were less enthusiastic about the proposals. Canada thought that the nine-power draft articles seemed to be intended more for the protection of shipping than for the preservation of the marine environment. Canada believed it was vital for coastal States to retain the right of environmental self-protection and to ensure effective enforcement of agreed standards. India, Iran and New Zealand recalled the draft articles submitted in Caracas on the zonal approach. New Zealand said it was essential that coastal States should have adequate powers over their economic zones to protect their interests. India called for a balanced approach which took account of the needs of navigation as well as the need to protect coastal resources against pollution.

Indonesia said the nine-power draft articles were too one-sided because they did not give the coastal State the right to take action against a violator or the rights of inspection, enforcement or protection. Egypt said the draft articles were concerned entirely with maintaining the powers of the flag State vis-a-vis the powers of other States, a concept which had prevailed in earlier international treaties because of the dominance of international affairs by certain States. Such inequities had become unacceptable, Egypt said, and world opinion had come to reject hegemony of one group of States over another. Senegal also would not agree to giving pre-eminent rights to the flag State. Coastal States had the primary responsibility, Senegal said, for enacting and enforcing legislation in an area such as the exclusive economic zone, which contained resources of major importance to the development process of the coastal developing countries.

Spain did not agree with the emphasis placed in the nine-power draft on the role of the port State; it considered matters of jurisdiction were to be settled by the flag and coastal States and that the new provisions concerning the port State might lead to abuses.

On the question of pollution from land-based sources, the United Republic of Tanzania criticized the draft articles on the grounds that the proposals would place a disproportionately heavy burden on developing countries. Iran said it was too much to expect countries in the early stages of economic and social development to apply uniform international standards; land-based sources of pollution should be controlled through national regulations that took account of international regulations, in its view.

On the question of the prevention of pollution from the dumping of wastes at sea, Greece introduced draft articles in which it said it had aimed to combine all existing proposals and generally accepted ideas, and which it considered to be consistent with the nine-power draft. India and Pakistan thought some of the proposals seemed to be a departure from the generally agreed principle that the control of land-based marine pollution would be the responsibility of the coastal State.

MARINE SCIENTIFIC RESEARCH

The question of marine scientific research was considered at a number of formal sessions of the Third Committee, and four different proposals were discussed.

One—a new proposal by Bulgaria, the Byelorussian SSR, Czechoslovakia, the German Democratic Republic, Hungary, Mongolia, Poland, the Ukrainian SSR and the USSR—provided, the USSR explained, that scientific research connected with the exploration and exploitation of the resources of the economic zone of a coastal State should be conducted only with that State's consent, and that research in the zone, unrelated to exploration and exploitation of resources, should be conducted only after notification to the coastal State, an opportunity being afforded to that State to participate and have access to the information gained. All States and competent international organizations were to have freedom to conduct scientific research outside the limits of the economic zone.

The German Democratic Republic pointed out that the legitimate interests of land-locked and geographically disadvantaged States were safeguarded by their being notified, by being informed of and helped to interpret results, and by being given an opportunity to participate. Czechoslovakia, approving the treatment accorded to land-locked and geographically disadvantaged countries, said that the nine-power draft on scientific research struck a balance between two extreme views: that which advocated unlimited freedom of research and that which insisted on a strict regime.

A number of countries, including Algeria, Belgium, Canada, Chile, India, the Netherlands and the United Kingdom, expressed support for certain aspects of the draft articles, while objecting in varying degrees to others. Belgium, Canada and Chile were among those which expressed doubt about the subtle distinction made in the

proposal between the two types of regime envisaged since it would, in their view, be very difficult to apply. India and Pakistan felt the draft left the definition of marine scientific research rather vague, and believed that any decision on research activities should rest with the coastal State. Canada said it did not wish to be in the position of having one of its research vessels exercising the right of scientific research off the coast of a country without that country's consent. The United Kingdom, on the other hand, thought that the draft granted too many concessions to coastal States.

Kenya and Yugoslavia were among those States which called for a uniform consent regime. All scientific research in the economic zone should be required to have the consent of the coastal State, Kenya said. Nigeria believed it would be impossible for the coastal State and research State or any international organization involved to co-operate without prior agreement issuing from such consent.

On the regime applicable to the sea-bed in the international area beyond the economic zones, Yugoslavia expressed the view, shared by China, Ireland and Pakistan among others, that scientific research should be conducted subject to the control of the future international Authority, and not without restriction, as the nine-power draft articles on scientific research suggested. Such freedom had never existed, Brazil said, and was incompatible with the generally accepted concept of the common heritage of mankind.

China and Albania believed the draft nullified the principle that the coastal State's consent should be required for any marine scientific research carried out in waters over which that State had jurisdiction and suggested that the pretext of scientific research was used by the super-powers to undermine the security and economic interests of the many developing countries which were coastal States.

Another draft, representing the position of the Group of 77 developing countries, was put forward by Iraq. It provided inter alia for prior consent of the coastal State for all research activities in the area under its jurisdiction, and for the international Authority to be responsible for research activities in the international area, either by conducting the research itself or by some other means under its direct control. Land-locked and geographically disadvantaged countries were to be given preferential treatment by the coastal State in the matter of conducting research. A number of countries, including India, Kenya, the United Republic of Tanzania and Yugoslavia spoke in favour of the Iraqi draft.

Other countries, including France, the Federal Republic of Germany, Poland, Sweden, the USSR and the United States, criticized it. They regretted that it ran counter to the general spirit of compromise. The United States said the two concepts on which the document was founded were unacceptable—the absolute-consent regime governing research in the economic zone, and the regulation by the international Authority of research in the international area. Sweden suggested that a notification system for research in the international area should suffice, and appealed to coastal States not to exercise their jurisdiction in such a way as to hamper bona fide marine research.

Czechoslovakia and Switzerland thought the Iraqi proposal unsatisfactory for the land-locked and geographically disadvantaged in that it differentiated between developed and developing land-locked countries and offered the latter nothing more than preferential treatment.

Amendments submitted by the Netherlands on behalf of the group of land-locked and geographically disadvantaged States to proposals made at Caracas by 17 powers—Austria, Belgium, Bolivia, Botswana, Denmark, the Federal Republic of Germany, Laos, Lesotho, Liberia, Luxembourg, Nepal, the Netherlands, Paraguay, Singapore, Uganda, the Upper Volta and Zambia—aimed at clarifying the notification system proposed. It involved a two-phase settlement-of-disputes procedure. Algeria and Iraq were among those countries which found its provisions unacceptable because they did not, in their view, take sufficient account of the interests of coastal States, especially those of the developing world.

Draft articles proposed jointly by Colombia, El Salvador, Mexico and Nigeria attempted to reconcile the two conflicting schools of thought on this item, Mexico said, and to protect the interests of both coastal and research States. Some States welcomed the effort to find a compromise but found the proposals unacceptable.

THE DEVELOPMENT AND TRANSFER OF TECHNOLOGY

Iraq, on behalf of the Group of 77 developing countries, introduced draft articles on the development and transfer of technology, which Nigeria described as an improved version of proposals submitted at Caracas. The articles provided that States and international organizations should actively promote the development of the marine scientific and technological capacity of developing States by such means as training, the establishment of research centres, joint projects for exploration and exploitation, the exchange of technologists, and conferences and seminars, and by making the re-

suits of research available to all States without discrimination.

Many developing countries expressed their support for the proposals, including Bahrain, Ecuador, Guinea, India, Senegal, and Trinidad and Tobago. Somalia said that all States recognized the need to bridge the ever-widening gap between the developing and developed countries; the Conference would fall short of its objectives, in Somalia's view, if it did not agree on precise terms for the transfer of technology to the developing countries. China said that the transfer should, as proposed in the draft articles, take account of the economic capacity and development needs of the receiving country, strictly respect its sovereignty, and be unconditional. The USSR said that it could not accept the articles, which were based on the assumption that the future international Authority would undertake all forms of marine scientific research. The United States said that the connexion made in the draft between the transfer of technology and the international Authority was a matter for the First Committee (a point with which India and Kenya, among others, disagreed); nor could the United States agree to provisions on transferring patented technology, which was private property in the United States.

Senegal expressed regret that no proposals had been made by developed countries, since they also benefited from the transfer of technology in so far as it helped to reduce the gap between them and the developing world.

Chairman's summation. The Chairman of the Third Committee, summing up its work during the session, said that the Committee had made a significant advance in the negotiating and drafting process. Several important gaps had been filled by the formal proposals received during the session and a will to negotiate had been evident.

The Chairman reported that, in accordance with a decision of the Conference, he had transmitted to the President a single negotiating text on the three items assigned to the Third Committee. He had endeavoured to reflect as far as possible the views expressed by members. Where he had had to make a choice he had done so on his own responsibility, he said; it was not to be considered a compromise but a basis for negotiation.

The informal single negotiating text

The informal single negotiating text was divided into four parts. The first three, issued on 7 May 1975, covered the work of the three main committees of the Conference and were prepared by the Chairmen of those committees; the fourth part, issued on 21 July 1975, covered the question of the settlement of disputes and was presented by the President of the Conference. The President made clear that the informal single negotiating text was to serve as a procedural device and only provide a basis for negotiation. It did not represent any negotiated text or accepted compromise.

Part I

Part I, prepared by the Chairman of the First Committee, contained 75 articles and three annexes (two of which were issued subsequently) dealing with the basic provisions of the international regime for the area of the sea-bed and ocean floor beyond the limits of national jurisdiction.

The principles of the regime were set out in articles 2 to 19. Article 2 defined the area and article 3 described it and its resources as the common heritage of mankind. By article 7, activities in the area would be carried out for the benefit of mankind as a whole, and, by article 8, the area would be reserved exclusively for peaceful purposes. Article 9 stated that the development and use of the area was to be undertaken in such a manner as to foster the healthy development of the world economy and a balanced growth in international trade and to avoid or minimize any adverse effects on the revenues and economies of the developing countries resulting from a substantial decline in their export earnings from minerals and other raw materials originating in their territory which were also derived from the area.

Articles 10 to 19 covered other principles for the use of the international area, including provisions on scientific research (article 10), the transfer of technology and knowledge with regard to activities in the area (article 11), the protection of the marine environment (article 12), and archaeological and historical objects (article 19).

The international machinery to be established to apply the new regime was described in articles 20 to 63. The powers and functions of the proposed international sea-bed Authority, established under article 20, were set out in articles 21 to 23. By article 22, the Authority would be empowered to control directly activities in the area. That article stated that the Authority could, if it considered it appropriate and within the limits it might determine, carry out activities in the area—through States parties to the convention, or State enterprises, or persons natural or juridical possessing the nationality of such States or effectively controlled by them, or any group of those parties or persons—by entering into service contracts or joint ventures or any other such form of association which ensured the Authority's direct and effective control at all times over such activities.

The component organs of the Authority—namely, an Assembly, a Council, a Tribunal, an

Enterprise and a Secretariat—would be established by article 24. The structure, powers and functions of the Assembly were set out in articles 25 and 26; those of the Council were set out in articles 27 and 28, and special organs of the Council, namely, an economic planning commission and a technical commission, were covered by articles 29 to 31. The structure and jurisdiction of the Tribunal were set out in articles 32 to 34, the functions and legal character of the Enterprise in article 35, and the structure and functions of the Secretariat in articles 36 to 41.

Article 25, on the structure of the Assembly, stated that it was to consist of all members of the Authority, each with one vote, and that all decisions on questions of substance, as well as the question of whether a question was one of substance or procedure, were to be made by a two-thirds majority of the members present and voting, provided that such majority included at least a majority of the members of the Authority. Article 26 stated that the Assembly was to be the supreme policy-making organ of the Authority, having the power to lay down 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 the convention.

Article 27, on the structure of the Council, stated that it was to consist of 36 members of the Authority elected by the Assembly: 24 were to be elected in accordance with the principle of equitable geographical representation, and 12 with a view to representation of special interests, each member having one vote. Article 28 stated that the Council was to be the executive organ of the Authority.

Article 32 stated that the Tribunal was to have jurisdiction with respect to any dispute relating to the interpretation or application of the convention and any dispute connected to the subject-matter of the convention and submitted to it pursuant to a contract or arrangement entered into pursuant to the convention. The Tribunal would be composed of nine judges, five of whom would constitute a quorum, elected regardless of nationality, and appointed by the Assembly on the recommendation of the Council from among candidates nominated by States parties to the convention.

Article 35, on the purposes of the Enterprise, stated that it was to be the organ of the Authority which would, subject to the general policy direction and supervision of the Council, undertake the preparation and execution of activities of the Authority in the area, and enter into appropriate agreements on behalf of the Authority.

Articles 42 to 56 dealt with financial questions; the question of the settlement of disputes was covered in articles 57 to 63. The latter included provisions for: the circumstances under which a dispute might be brought before the Tribunal; the rights of States parties to institute proceedings before the Tribunal against the Council or any of its organs or the Assembly; the obligations of States parties to the convention to recognize and enforce judgements of the Tribunal; and the rights of the Tribunal, in the event of a dispute, to order provisional measures for the purpose of preserving the respective rights of the parties or preventing serious harm to the marine environment. The final provisions were contained in articles 64 to 75.

Annex I contained the basic conditions of general survey, exploration and exploitation. It contained, in 21 paragraphs, the principles and rules to govern inter alia: access to the area and its resources; the working procedures of the Enterprise; general rules covering contracts for joint ventures or associated operations; qualifications for applicants for such contracts; the rights and obligations of contractors; conditions under which a contract might be suspended, terminated, revised or transferred; the responsibility and liability for damages arising from the conduct of operations by the contractor; and the settlement of disputes between the contractor and the Authority.

Annex II (issued subsequently) contained the proposed statute of the Enterprise, setting out provisions on inter alia the Enterprise's relationship to the Authority, its membership, its organization and management (including the structure of the governing board and financing) and how it should conduct its operations.

Annex III (also issued subsequently) contained the proposed statute of the sea-bed dispute-settlement system and set out provisions for the Sea-Bed Tribunal and the organization of special chambers to exercise the contentious jurisdiction of the Tribunal as requested.

Part II

Part II of the text, prepared by the Chairman of the Second Committee, contained 137 articles, and one brief annex, covering a very broad range of subjects related to ocean areas falling within national jurisdiction and to uses of the high seas. These were divided into 11 subjects: (1) the territorial sea and the contiguous zone (articles 1 to 33); (2) straits used for international navigation (articles 34 to 44); (3) the exclusive economic zone (articles 45 to 61); (4) the continental shelf (articles 62 to 72); (5) the high seas (articles 73 to 107); (6) land-locked States (articles 108 to 116); (7) archi-

pelagos (articles 117 to 131); (8) the régime of islands (article 132); (9) enclosed and semi-enclosed seas (articles 133 to 135); (10) territories under foreign occupation or colonial domination (article 136); and (11) settlement of disputes (article 137). The annex listed species of highly migratory fish.

In respect of the territorial sea, articles 2 to 13 set the limits—article 2 stating that every State had the right to establish the breadth of its territorial sea up to a limit of 12 nautical miles, measured from baselines drawn in accordance with the provisions of the convention. Articles 14 to 32 governed innocent passage in the territorial sea: article 14 affirmed the right of innocent passage through the territorial sea; article 18 listed the rights of coastal States to restrict such passage; articles 24 to 26 contained special rules applicable to the passage of merchant ships; and articles 27 to 32 set forth special rules applicable to the passage of Government ships (including warships). Coastal State rights in a zone contiguous to the territorial sea in such matters as customs, immigration and sanitary regulations were affirmed by article 33.

In respect of straits used for international navigation, articles 37 and 38 established that for straits linking high seas or exclusive economic zones all ships and aircraft were to enjoy the right of transit passage, which was not to be impeded (with the exception that if the strait was formed by an island of a strait State, transit would not apply if a high seas route or a route in an exclusive economic zone of similar convenience existed seaward of the island). Articles 39 to 43 set out the rules governing transit passage. Article 44 provided that there should be no suspension of the right of innocent passage already existing through such straits or through straits linking the high seas or an exclusive economic zone with the territorial sea of a State.

In respect of the exclusive economic zone, article 45 described the zone as an area beyond and adjacent to its territorial sea where the coastal State had: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters; (b) exclusive rights and jurisdiction with regard to the establishment and use of artificial islands, installations and structures; (c) exclusive jurisdiction with regard to other activities for the economic exploitation and exploration of the zone—such as the production of energy from the water, currents and winds—and scientific research; (d) jurisdiction with regard to the preservation of the marine environment, including pollution control and abatement; and (e) other rights and duties provided for in the convention. The limits of the zone were not to extend beyond 200 nautical miles from the baseline from which the territorial sea was measured (article 46).

Among other provisions on the exclusive economic zone were those governing fishing rights (living resources), on which there were 11 articles. Article 50 provided that the coastal State would determine the allowable catch of the living resources in its exclusive economic zone. Opportunities to share in those resources were set forth in article 51, by which the coastal State which did not have the capacity to harvest the entire allowable catch would give other States access to the surplus.

In respect of the continental shelf, article 62 described the shelf as comprising the sea-bed and subsoil of the submarine areas that extended beyond the territorial sea of a coastal State to the outer edge of the continental margin or to a distance of 200 nautical miles from baselines from which the breadth of the territorial sea was measured where the outer edge of the margin did not extend up to that distance. The rights and duties of the coastal State in this area were set out in articles 63 to 72.

In respect of the high seas, article 73 defined the term as all parts of the sea not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. Other articles on the high seas dealt with the rights and obligations of ships flying State flags, the prevention of transport of slaves, the repression of piracy and unauthorized broadcasting, coastal State rights of hot pursuit, the laying and protection of submarine cables, and the management and conservation of living resources.

In respect of land-locked States, the provisions covered rights of access to the sea and terms and conditions for exercising that right in co-operation with the transit States involved. Article 111 stated that traffic in transit was not to be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connexion with such traffic.

In respect of archipelagic States, article 118 made provision for the drawing of baselines joining the outermost points of the outermost islands and drying reefs for the purpose of defining and delimiting the waters falling within national jurisdiction, and for the sovereignty of the archipelagic State within these areas, particularly with reference to fishing rights, sea lanes and air routes and their use.

In respect of the régime of islands, article 132 stated that the territorial sea, contiguous zone, exclusive economic zone and continental shelf of an island were to be determined in accordance

with the provisions of the convention applicable to other land territory, but with the proviso that rocks which could not sustain human habitation or economic life of their own should have no exclusive economic zone or continental shelf.

In respect of enclosed or semi-enclosed seas, articles 133 and 134 called for co-operation between States sharing such waters in the exercise of rights and duties under the convention in such matters as resource management, the protection of the marine environment and scientific research.

With regard to territories under foreign occupation or colonial domination, article 136 stated that the rights recognized or established by the convention in respect of the resources of a territory whose people had not gained full independence were vested in the inhabitants of that territory and in no case were they to be exercised, profited from or benefited from by any power occupying or administering that territory.

Part III

Part III, prepared by the Chairman of the Third Committee, contained 92 articles on the protection and preservation of the marine environment, marine scientific research, and the development and transfer of technology. (In this part of the single negotiating text, the articles for each of these three items were numbered separately.)

Forty-four articles were devoted to the protection and preservation of the marine environment (including estuaries). By article 4, States would take all necessary measures to prevent, reduce and control pollution (a) from the release of toxic, harmful and noxious substances from land-based sources, from and through the atmosphere, and by dumping, (b) from vessels, (c) from installations and devices used in the exploration and exploitation of the sea-bed and subsoil, and (d) from all other installations and devices operating in the marine environment. To this end, States would undertake to establish national laws and regulations, taking into account internationally agreed rules, standards and recommended practices and procedures, with regard to pollution from land-based sources (article 16), from exploration and exploitation of the sea-bed within their jurisdiction (article 17), from dumping (article 19), from vessels (article 20), and from the atmosphere (article 21).

In respect of vessel-source pollution, article 20 required all States to establish effective laws and regulations to prevent, reduce, and control pollution from vessels flying their flag. It also empowered coastal States to establish, in respect of their territorial sea, more effective laws and regulations (without hampering innocent passage), and, where internationally agreed rules did not exist or were inadequate, and the coastal State believed a particular area of the economic zone was an area where the adoption of special mandatory measures were required to prevent, reduce and control pollution, to apply for the area to be recognized as a special area.

Articles 22 to 40 dealt with rights of enforcement. States parties to the convention were given the right to enforce laws and regulations concerning pollution from land-based sources (article 22) and from the effects of exploration and exploitation of the continental shelf under their jurisdiction (article 23). The international Authority was authorized, by article 24, to enforce, in co-operation with the flag States, the anti-pollution measures in respect of the international sea-bed area. On the matter of dumping, article 25 provided that laws and regulations were to be enforced by any State within its territory, by the flag State with regard to vessels and aircraft registered in its territory or flying its flag, by the coastal State on vessels and aircraft dumping within its economic zone and continental shelf, and by the port State on vessels and aircraft loading at its facilities or offshore terminals.

With regard to pollution from vessels, article 26 would oblige States to ensure that vessels flying their flag or of their registry complied with the international rules and standards. By article 27, a State was obliged to investigate, on reasonable grounds, suspected violations by a vessel voluntarily within its ports or at one of its offshore terminals, irrespective of the vessel's flag or registration; it also was empowered to institute proceedings and to prevent the vessel from sailing.

Similar powers were given under article 28 to coastal States with respect to vessels passing through their territorial sea, including the power of arrest. Provision was also made by articles 30 and 31 for coastal States to enforce the rules and standards in an area extending [an unspecified number of miles] from the baselines from which their territorial sea was measured.

Thirty-seven articles were devoted to marine scientific research, defined in article 1 as any study or related experimental work designed to increase man's knowledge of the marine environment.

By article 13, coastal States would have the exclusive right to conduct and regulate marine scientific research in their territorial sea, and research could only be conducted there with the explicit consent of the coastal State. With regard to research in the economic zone or on the continental shelf of a coastal State, article 15 stipulated the information to be supplied to the coastal State by

the researching State, such as the objectives, the means to be used and the dates proposed; and article 16 set forth eight conditions with which the researching State had to comply, including ensuring the rights of the coastal State, if it so desired, to participate or to be represented in the research project, providing the coastal State with the final results and conclusions of the project, undertaking to provide the coastal State with raw and processed data and samples, and, if requested, assisting the coastal State in assessing that data.

By article 21, any research project related to the living and non-living resources of the economic zone and the continental shelf was to be conducted only with the explicit consent of the coastal State. In these circumstances the researching State or international organization was obliged, in addition to the conditions listed above, and if requested, to submit to the coastal State, as soon as practicable after the completion of the research, a report including a preliminary interpretation, to ensure that the research results were not published or made internationally available without the express consent of the coastal State, and to fulfil any other request for information relating directly to the research project.

Eleven articles were devoted to the development and transfer of technology. By article 1, all States either directly or through appropriate international organizations would co-operate to promote the development and transfer of marine sciences and technology at fair and reasonable terms, conditions and prices; States in particular would promote the development of the marine scientific and technological capacity of developing States, including land-locked and geographically disadvantaged States, in consonance with their economies and needs, with regard to the exploration, exploitation, conservation and management of marine resources, the preservation of the marine environment and the equitable and legitimate uses of the marine environment compatible with the convention, with a view to accelerating the social and economic development of the developing States.

In respect of international co-operation, articles 5 to 9 dealt with the obligations of all States to help developing countries increase their technological capacities and with the role of the international sea-bed Authority in that process. Article 9 stated that the Authority, within the area of its competence, was to ensure that nationals of developing States be taken into appropriate training programmes, that technical documentation on the relevant equipment, machinery, devices and processes for sea-bed exploration and exploitation be made available to all developing States upon request, that adequate provisions be made to facilitate the acquisition by any developing State of the necessary skills and know-how, including professional training, and that the developing States be assisted in the acquisition of the necessary equipment, processes, plant and other technical know-how through a special fund or any other financial arrangement designed for the purpose. Articles 10 and 11 covered the establishment of regional marine scientific and technological research centres to stimulate and advance the conduct of such research by developing States.

Part IV

Part IV, presented by the President of the Conference, contained 18 articles on the settlement of disputes, and annexes which dealt with conciliation, arbitration, the statute of the Law of the Sea Tribunal, special procedures relating to fisheries, special procedures relating to pollution, special procedures relating to scientific research, and information and consultation procedures.

By article 1 of the text on the settlement of disputes, the contracting parties would settle any dispute between them relating to the interpretation and application of the convention through the peaceful means indicated in Article 33 of the Charter of the United Nations.[10] Article 2, however, stipulated that nothing in that text would impair the right of parties to settle such a dispute by peaceful means of their own choice. Article 6 made clear that where a chapter of the convention provided for a special procedure for settling disputes relating to the interpretation or application of that chapter, such procedure should be concluded before resort was made to measures described in the settlement-of-disputes text. Article 7 set out that where no special procedure was provided for, a party to a dispute might invite the other party to submit to conciliation, and, if the invitation was accepted, the conciliation procedure set out in annex IA would apply.

Article 8 provided that any dispute not settled in accordance with previous provisions of the text might be submitted to the tribunal having jurisdiction. By article 9 the Law of the Sea Tribunal, constituted in accordance with annex IC, would have jurisdiction and its decisions would be binding. However, the article also provided that, if both parties declared that they recognized the jurisdiction of an arbitral tribunal constituted in accordance with annex IB, or of the International Court of Justice, they might submit the dispute to that tribunal and the parties would

[10] For text of Article 33 of the Charter, see APPENDIX H.

be bound by its decisions. The scope of the jurisdiction of the tribunal chosen was set out in article 10 and the articles which followed.

Annex IA on conciliation set out that the parties initiating the conciliation procedure were to notify the Registrar of the Law of the Sea Tribunal who would assist the parties in the establishment of a conciliation commission comprised of conciliators chosen by the parties. A list of conciliators from which the parties could choose was to be drawn up and maintained by the Registrar. The conciliation commission was to decide its own procedure.

Annex IB on arbitration set out that, unless the parties agreed otherwise, the arbitral tribunal would consist of five members appointed by the parties, of which one would be appointed President by the parties. If the parties were unable to reach agreement on the appointment of members or the President, or on a third party who might choose on their behalf, the President of the Law of the Sea Tribunal was to be entrusted with the task. The arbitral tribunal was to decide its own procedure assuring each party a full opportunity to be heard and to present its case. The parties were to provide the tribunal with all relevant documents and information, and enable the tribunal to summon evidence from witnesses and experts.

Decisions of the tribunal were to be taken by a majority vote. The award of the tribunal was to be accompanied by a statement of reasons; it was to be final and without appeal. The tribunal was also to be given the power to prescribe such provisional measures as it considered appropriate to preserve the respective rights of the parties or prevent serious harm to the environment.

Annex IC laid down the statute of the Law of the Sea Tribunal. It was to be composed of 15 independent members elected regardless of their nationality from among persons of high moral character and of recognized competence in law-of-the-sea matters. In the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution were to be assured. The members would serve nine-year terms.

The Tribunal was to frame rules for carrying out its functions and to lay down rules of procedure. The articles provided for the appointment of technical assessors, the formation of chambers for dealing with a particular dispute, financial provisions, the competence of the Tribunal and procedural matters—including the power of the Tribunal to prescribe provisional measures to preserve the respective rights of the parties, taking decisions by a majority vote of those present, and stating the reasons on which the judgement was based.

Annex IIA, on special procedures to deal with fishery disputes, provided for a special committee of five members to be appointed by agreement between the parties and selected from a list of experts on legal, administrative or scientific aspects of marine fisheries, established by the Food and Agriculture Organization of the United Nations.

Annex IIB, on special procedures to deal with pollution matters, provided for a special committee of five members to be appointed by agreement between the parties and selected from a list of experts on scientific and technical marine pollution problems established by the Inter-Governmental Maritime Consultative Organization.

Annex IIC, on special procedures to deal with disputes over scientific research, provided for a special committee of five members to be appointed by agreement between the parties and selected from a list of experts on marine scientific problems established by the Intergovernmental Oceanographic Commission.

By annex III, the contracting parties, wishing to minimize the occurrence of disputes, would agree to make information available promptly for publication, through the Secretary-General or international organizations, on the adoption or application of measures (including legislation, regulations, administrative notices and boundary determinations) within the scope of the convention. The parties would also respond promptly to requests by other parties for consultations on such measures.

Documentary references

Third United Nations Conference on the Law of the Sea. Official Records, Vol. IV: Summary Records of Meetings, Third Session, Geneva, Switzerland, 17 March-9 May 1975 (Plenary meetings 52-56; General Committee, meetings 7-13; First Committee, meetings 18-23; Second Committee, meetings 47 and 48; Third Committee, meetings 18-25); Documents. U.N.P. Sales No.: E.75.V.10.

Third United Nations Conference on the Law of the Sea. Rules of Procedure (adopted at its 20th meeting on 27 June 1974 and amended at its 40th and 52nd meetings on 12 July 1974 and 17 March 1975 respectively). U.N.P. Sales No.: E.76.I.4.

National Legislation and Treaties Relating to the Law of the Sea. U.N.P. Sales No.: E/F.76.V.2.

Decisions of the General Assembly

On 12 December 1975, the General Assembly adopted resolution 3483(XXX) concerning the Third United Nations Conference on the Law of the Sea. By that resolution, the Assembly noted a letter of 19 May 1975 from the President of the Conference to the President of the General Assembly regarding the decisions reached at the third session of the Conference. It approved the convening of the fourth session of the Conference for the period 15 March to 7 May 1976 at New York and the convening of a fifth session in 1976 if such a decision was taken by the Conference.

In response to a request by the Conference, relayed in the Conference President's letter, the Assembly also decided by its resolution to accord priority to the Conference in relation to other United Nations activities, except those of organs established by the Charter of the United Nations. Recalling the decision of the Conference to accept the invitation of the Government of Venezuela to meet at Caracas for the signing of the final act and related instruments, the Assembly authorized the Secretary-General to make the necessary arrangements to that end.

Resolution 3483(XXX) was adopted by the Assembly without a vote. It was sponsored by Argentina, Australia, Canada, Colombia, El Salvador, Kenya, Nepal, Singapore, Trinidad and Tobago, Venezuela and Zambia. (For text of resolution, see DOCUMENTARY REFERENCES below.)

Before the adoption of the resolution, the President of the Conference addressed the General Assembly. He stated that the most important achievement at that stage, after three sessions of the Conference, was the preparation of the informal, single negotiating texts by the Chairmen of the main committees of the Conference, and said that for the first time the Conference had documents on which orderly negotiations could take place. He repeated his appeal to all States to refrain from any unilateral action of a type that would imperil or place in jeopardy the attainment of a generally acceptable treaty on the law of the sea. The President said that, should the policy of unilateral action on the part of a few States for the extension of national jurisdiction be pursued by an increasing number of nations, the Conference would be aborted.

El Salvador, introducing the resolution, warned of the consequences of failure to draw up a new convention, suggesting that coastal States would extend their economic zones unilaterally with disagreements resulting, land-locked States would lose the opportunity of achieving recognition of their right of access to the sea and a fair share of resources, navigational problems in international straits might arise as a result of changed territorial-sea limits, the ambiguity over the continental shelf as set out in the 1958 Convention on the Continental Shelf[11] would persist, and the character of the international sea-bed area as the common heritage of mankind would for all practical purposes be lost. It called for understanding and co-operation, concession and compromise.

Iceland, supporting the resolution, said an early and successful conclusion of the work of the Conference was of great importance, and emphasized its support for the possibility of holding two sessions in 1976 with the aim of concluding the work of the Conference.

[11] See Y.U.N., 1958, pp. 379-80.

Documentary references

General Assembly—30th session
Fifth Committee, meeting 1767.
Plenary meeting 2439.

A/10001. Report of Secretary-General on work of Organization, 16 June 1974-15 June 1975, Part Five, Chapter I.
A/10032 and Corr.1. Report of Committee on Conferences, paras. 29-34.
A/10121. Letter of 19 May 1975 from President of 3rd United Nations Conference on Law of Sea.
A/C.5/1738 and Corr.1, A/10008/Add.23, A/10490. Administrative and financial implications of 11-power draft resolution, A/L.782. Statement by Secretary-General and reports of Advisory Committee on Administrative and Budgetary Questions and Fifth Committee.
A/L.782. Argentina, Australia, Canada, Colombia, El Salvador, Kenya, Nepal, Singapore, Trinidad and Tobago, Venezuela, Zambia: draft resolution.

Resolution 3483(XXX), as proposed by 11 powers, A/L.782, adopted without vote by Assembly on 12 December 1975, meeting 2439.

The General Assembly,

Recalling its resolutions 3067(XXVIII) of 16 November 1973 and 3334(XXIX) of 17 December 1974,

Noting the letter dated 19 May 1975 from the President of the Third United Nations Conference on the Law of the Sea to the President of the General Assembly regarding the decisions reached at the third session of the Conference, held at Geneva from 17 March to 9 May 1975,

Having considered the decision of the Conference, as conveyed in the letter from its President, that its next session should be held in New York from 29 March to 21 May 1976 and that a decision regarding a fifth session in 1976 should be left to its fourth session,

Noting further that the Committee on Conferences

has recommended to the General Assembly that the fourth session of the Conference should be held in New York from 15 March to 7 May 1976,

1. Approves the convening of the fourth session of the Third United Nations Conference on the Law of the Sea for the period from 15 March to 7 May 1976 in New York and the convening of a fifth session in 1976 if such decision is taken by the Conference;

2. Decides to accord priority to the Conference in relation to other United Nations activities, except those of organs established by the Charter of the United Nations;

3. Authorizes the Secretary-General to continue to make the necessary arrangements originally provided under paragraph 9 of General Assembly resolution 3067(XXVIII) for the efficient and continuous servicing of the Conference in 1976 and of subsequent activities as may be decided upon by the Conference;

4. Recalls, in this connexion, that it noted in paragraph 4 of its resolution 3334(XXIX) the decision of the Conference to accept the invitation of the Government of Venezuela to meet at Caracas at an appropriate date for the purpose of signing the Final Act and related instruments adopted by the Conference and authorized the Secretary-General to make the necessary arrangements to that end.