Chapter III

# Third United Nations Conference on the Law of the Sea

The 1980 session of the Third United Nations Conference on the Law of the Sea, its ninth, ended in August with the issuance of an informal text of a draft convention on the law of the sea. The draft convention, covering most human uses of the oceans, incorporated the results of negotiations at the ninth and previous sessions.

The Conference recorded substantial agreement on all but one of the "hard-core" issues which were identified as standing in the way of a convention. But it did not reach the goal it had set itself in August 1979[1]-approval of a convention by the end of 1980. The new timetable approved at the close of the ninth session envisaged a concluding session in 1981, at Caracas, Venezuela, for the purpose of signing the convention.

[1] See Y.U.N., 1979, p. 122.

## Ninth session of the Conference

The ninth session of the Third United Nations Conference on the Law of the Sea was held during 1980 in two parts: from 3 March to 4 April at United Nations Headquarters, New York, and from 28 July to 29 August at Geneva.

Previous sessions had been held every year since 1973, as follows: first session, New York, December 1973; second session, Caracas, Venezuela, June/August 1974; third session, Geneva, March/May 1975; fourth session, New York, March/May 1976; fifth session, New York, August/September 1976; sixth session, New York, May/July 1977; seventh session, Geneva, March/May, and New York, August/September 1978; and eighth session, Geneva, March/April, and New York, July/August 1979.[2]

The mandate of the Conference, assigned to it by the General Assembly in 1973, was to draw up a convention dealing with all matters relating to the law of the sea.[3] The decision to convene the Conference was taken by the Assembly in 1970.[4]

A total of 155 States and the United Nations Council for Namibia participated in the ninth session: 152 attended the first part and 143 the resumed session. Zimbabwe, as a member of a specialized agency, began participating in the Conference at the resumed session. Two territories, 10 specialized agencies or United Nations-related bodies and 13 intergovernmental organizations participated as observers. (For participating States and officers, see APPENDIXIII.)

In addition, 31 non-governmental organizations in consultative status with the Economic and Social Council participated as observers, as did four national liberation movements recognized by the Organization of African Unity or the League of Arab States: the Palestine Liberation Organization and the South West Africa People's Organization at both parts of the session, the Pan Africanist Congress of Azania at the first part and the African National Congress (South Africa) at the resumed session.

The only changes made during 1980 in the officers of the Conference and membership of its committees were that Ireland replaced Belgium as a Vice-President and Thailand replaced Bangladesh as a member of the Drafting Committee.

### Organization of work

As at previous sessions, the work of the Conference in 1980 was largely carried on in informal meetings and was based on negotiating texts issued by the Conference's collegium, consisting of its President and the Chairmen of its three main committees. The results of these meetings were then reported to the Conference at formal meetings.

For the first part of the 1980 session, work was based on a revised informal composite negotiating text issued in April 1979.[5] Following a month of informal negotiations, the officers concerned reported on the results, after which the Conference held two days of public meetings in April to enable delegations to comment on proposed changes in the text. A second revision of the negotiating text was issued at the end of the first part of the session and formed the basis for work at the resumed session. After four more

[2] For accounts of these sessions, see Y.U.N., 1973, p. 44; 1974, p. 71; 1975, p. 116; 1976, pp. 73 and 82; 1977, p. 84; 1978, p. 143; and 1979. D. 121.

[3] See Y.U.N., 1973. p. 43, resolution 3067(XXVIII) of 16 November 1973.

[4] See Y.U.N., 1970, p. 81. resolution 2750 C (XXV) of 17 December 1970.

[5] SeeY.U.N.. 1979,p. 126.

weeks of negotiations, on which the President and committee Chairmen again reported, a general debate was held in plenary meetings at the end of August, followed by the issuance of the "Draft convention on the law of the sea (informal text)."

The work at the first part of the session was carried out mainly in: the Working Group of 21, concerned with the international sea-bed area; Negotiating Groups 6 and 7, dealing with a definition of the continental shelf and with delimitation of maritime boundaries, respectively; the Third Committee, on marine scientific research; and informal plenary meetings on dispute settlement, general provisions of the convention and a proposed Preparatory Commission (see p. 140). During the resumed session, sea-bed matters were again dealt with by the Working Group, while negotiations on other outstanding issues were conducted in ad hoc groups, as the mandates of the seven negotiating groups established by the Conference in 1978[6] expired at the end of the first part of the 1980 session.

The Working Group of 21 was chaired by the Chairman of the First Committee, who also co-ordinated the negotiations on issues involving the Assembly (the supreme organ) and the Council (the executive organ) of the proposed International Sea-Bed Authority. Frank X. J. C. Njenga (Kenya), Chairman of Negotiating Group 1, co-ordinated for the first part of the session the negotiations on matters relating to the sea-bed exploration and exploitation system. Tommy T. B. Koh (Singapore), Chairman of Negotiating Group 2, co-ordinated those concerning financial arrangements for the future system. Harry Wuensche (German Democratic Republic) continued consultations with the Group of Legal Experts on the Settlement of Disputes relating to First Committee matters (those pertaining to the sea-bed); for the resumed session, he carried out consultations on exploration and exploitation. Satya N. Nandan (Fiji) continued consultations on production policy.

### Participation of Namibia

On 6 March 1980, the Conference decided that Namibia, represented by the United Nations Council for Namibia as the legal Administering Authority for the territory, would participate in the Conference in accordance with a 1979 resolution by which the General Assembly had decided to grant Namibia full membership in the Conference.[7] The decision was taken on the recommendation of the Conference's General Committee, made the previous day, following a request by the Council President. In taking this decision, placed before it by the President of the Conference, the Conference also deleted rule 62 of its rules of procedure, which had provided that the Council might designate representatives to participate as observers in the Conference without the right to vote.

In Committee, the United States, speaking also on behalf of Canada, France, the Federal Republic of Germany and the United Kingdom, reaffirmed the reservations they had made in explanation of vote when the Assembly adopted its resolution.

### First Committee and its Working Group of 21

The Working Group of 21 continued to be composed of 10 representatives from the "Group of 77" developing States, two from the Eastern European group and nine from Western European and other developed States. Its co-ordinators reported to the First Committee on 1 April and 22 August on the results of negotiations on sea-bed issues, dealt with in part XI of the negotiating text.

On the system of exploitation, the Chairman of Negotiating Group 1 suggested some changes relating to the transfer of technology to the International Sea-Bed Authority and developing countries from State-operated entities and private firms holding mining contracts with the Authority. He said the changes aimed at making the contractors' undertakings binding and more precise while setting realistic limitations to them.

He also proposed a new procedure for a future review of the entire system for exploiting the deep sea-bed that would enable a Review Conference to modify the initial system by a two-thirds majority of the States parties in the event no agreement on changes had been reached within five years after the review commenced. This procedure replaced a suggestion he had made in 1979[8] for the possible imposition of a moratorium on new mining contracts if the Review Conference failed to reach agreement.

On sea-bed production policy, Mr. Nandan, reporting on the results of discussions, suggested a revised formula by which the Authority would determine how much nickel and other sea-bed minerals could be produced each year. He said his proposals were acceptable to a substantial majority of the participants in the discussions, including land-based producer and consumer countries.

On financial arrangements, the Chairman of Negotiating Group 2 reported substantial support for proposals covering the financing of the Enterprise- the mining arm of the Authority- and a tax system for private and public miners

[6] See Y.U.N. 1978, p. 145.
[7] See Y.U.N., 1979, p. 1098, resolution 34/92 C of 12 December 1979.
[8] Ibid, p. 122.

under contract to the Authority. He suggested that the amount of capital needed for the first mine site of the Enterprise be determined by the Preparatory Commission, so that prospective participants would know in advance bow much money they would have to commit. He also suggested that the Enterprise be exempted from paying taxes to the Authority during its first 10 years of operation. He redrafted the Statute of the Enterprise, adding a phrase providing for its operational autonomy and a requirement that it operate on sound commercial principles.

The Chairman of the Group of Legal Experts on the Settlement of Disputes reported agreement on the role of commercial arbitration in settling disputes over sea-bed mining contracts.

The Chairman of Negotiating Group 3, on organs of the Authority, carried out consultations on the required majorities for decision-making in the future Council. He reported that further negotiations were needed.

The second report of the co-ordinators, in August, set out new proposals on outstanding issues relating to future exploitation of the deep sea-bed.

A new voting scheme was proposed for decision-making in the Council. Different majorities would be needed for different categories of decisions: a simple majority for procedural matters, a two-thirds or three-fourths majority for most questions of substance and consensus on the most sensitive matters. Rules, regulations and procedures for sea-bed mining could be adopted or changed only by consensus. A special conciliation committee would be set up where necessary to promote consensus.

Developing States which were potential land-based producers of minerals found on the sea-bed would be entitled to representation on the 36-member Council, among six developing countries with "special interests" which would be given seats.

Endorsement by the Council's Legal and Technical Commission would suffice to assure Council approval of any plan of work submitted by a sea-bed operator, unless the Council decided by consensus to reject the plan. The Commission would calculate an annual production ceiling for the sea-bed as a whole and, once plans of work were approved, issue production authorizations to individual miners. If producers sought authorizations in excess of the ceiling, the Council would select among applicants to determine how much each could produce.

The Authority would be obliged to study measures of economic adjustment assistance, including co-operation with specialized agencies and other international organizations, to help developing countries whose export earnings or economies were likely to be seriously affected by sea-bed mining.

All contracts with sea-bed miners approved by the Authority up to 10 years after the start of commercial production by the Enterprise would carry provisions obliging the contractor to transfer technology to the Enterprise. Under the previous text, this obligation would have been limited to contracts approved before the Enterprise began commercial operation. Another proposal would strengthen the provision on the transfer of technology owned by a 'third party:" sea-bed miners would be obliged to acquire, as long as there was no substantial cost to them, the legal right to transfer to the Authority any technology they had bought or leased from others for use in their sea-bed operations.

Payments by States for the initial mining project to be carried out by the Enterprise would be staggered so that the funds would be made available as needed, rather than all at once.

Minor changes were proposed in the production control scheme and the procedure for future review of the sea-bed system after 15 years.

Commenting on the report in the First Committee, the Chairman of the Group of 77 did not object to the incorporation of the proposals in the new revision of the negotiating text, but some members, including Chile, Kenya, the Philippines, Trinidad and Tobago, Zambia and Zimbabwe, expressed reservations on some aspects, including the production control formula and the voting scheme. China regarded the voting scheme as unsatisfactory and the tax rates for sea-bed miners as too low.

A number of industrialized countries, including Australia, Canada, France, Japan, the United Kingdom and the United States, welcomed the progress achieved but expressed reservations, particularly on the tax scheme. Small and medium-sized industrialized countries, including Austria, Finland, Israel, Portugal, Spain, Sweden, Switzerland and Turkey, called for improvement of their representation on the Council, but the United States opposed this view.

Mongolia, Poland and the USSR found the proposals imperfect but an acceptable compromise.

On the proposal of Romania, the Committee requested the Secretariat to prepare a study on how much money each State would have to contribute to the administration of the Authority and the Enterprise.

The Conference, on a proposal of the Philippines at a plenary meeting on 29 August, requested the Secretariat to conduct a study analysing the effects of the new clause in the sea-bed production control formula introduced in the April

revision of the negotiating text, designed to protect the interests of land-based mineral producers and mineral-consuming countries (see p. 142). The Conference, without objection, approved the proposal, which was supported by Burundi, Canada, Indonesia, Nigeria and Zaire, as amended by the Federal Republic of Germany and the United Kingdom.

### Second Committee and Negotiating Groups 6 and 7

The Second Committee and the two negotiating groups dealing with Second Committee matters met informally during the first part of the 1980 session. At the resumed session, the Second Committee held one informal meeting. The Committee's mandate covered ocean areas other than the deep sea-bed.

The Committee Chairman, who was also Chairman of Negotiating Group 6, concerned with a definition of the continental shelf, submitted a report to the Conference dated 29 March. He proposed an addition to the definition worked out in 1979[9] that would limit the breadth of the shelf to 350 nautical miles when its outer limit extended to an oceanic ridge. He also proposed a new annex to the negotiating text, setting out the mandate of a Commission on the Limits of the Continental Shelf. No agreement was reached on the main outstanding issue relating to the shelf-a proposal to have coastal States share with the international community part of the revenue they derived from exploiting non-living resources in areas of the shelf more than 200 miles from shore.

The Chairman also reported widespread understanding in favour of a proposal by Sri Lanka to allow an exceptional method of delimitation to meet the special circumstances of that country's broad continental shelf. The understanding would be incorporated in the Conference's Final Act.

No agreement was reached on the delimitation of the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts, and on the settlement of delimitation disputes. The Chairman of Negotiating Group 7, Eero J. Manner (Finland), in a report of 24 March issued at the conclusion of the Group's work, suggested a formula to the effect that delimitation in such cases would be effected by agreement in conformity with international law. Such an agreement, the text added, would be in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the area concerned. Mr. Manner also proposed that delimitation disputes be settled by compulsory conciliation, a procedure that States parties would be bound to follow but whose outcome they would not be obliged to accept.

The Manner formula mentioned both criteria favoured by the two opposing sides on the issue-delimitation in accordance with equitable principles and the use of a line equidistant between the two coasts. Discussions began on 13 August in a 22-member informal body called Consultations on Delimitation, composed of equal numbers from each side of the issue.

The Second Committee agreed on revised provisions for the protection of marine mammals and the extension of the right of hot pursuit to chases begun in archipelagic waters, as well as the addition of southern bluefin tuna to the list of highly migratory speciesentitled to protection.

### Third Committee

The conduct of marine scientific research, particularly in the 200-mile exclusive economic zone and on the continental shelf, was the only Third Committee issue which had remained outstanding. The Committee held one formal meeting on 4 March 1980 to organize its work and continued discussion of the subject in informal meetings.

The results were reported to the Conference on 28 March by the Committee's Chairman, who suggested a text which he said had widespread support. The revised articles would in principle allow foreign vessels to conduct scientific research in the exclusive economic zone and on the continental shelf, but would also allow the coastal State to withhold consent to such research in areas of its continental shelf which it planned to explore or exploit itself. A foreign researcher would be given a second chance to comply with its obligations towards the coastal State before that State could call a permanent halt to the research on the ground that the researcher had violated those obligations. Another clause provided for compulsory conciliation in disputes where a coastal State was charged with not living up to its obligations under the convention in regard to foreign research.

Another revised article spelled out the rights of land-locked and geographically disadvantaged States with regard to marine scientific research in the exclusive economic zones or on the continental shelves of neighbouring coastal States.

During the resumed session, the Third Committee, on 20 August, approved recommendations by its Chairman for drafting changes in a number of articles. In a report to the Conference dated 25 August, the Chairman noted that the

[9] Ibid, p. 127.

Committee had previously completed substantive negotiations on all parts of the convention entrusted to it, dealing with the marine environment, technology and research. However, at the Committee's meeting of 20 August, several countries, including Brazil, Egypt, India, Spain, and Trinidad and Tobago, wanted negotiations to be continued on some articles, particularly article 263 dealing with the responsibility and liability of States with regard to marine scientific research.

Drafting Committee

The Drafting Committee and its six language groups met informally during both parts of the 1980 session, and also held an intersessional meeting at United Nations Headquarters from 9 to 27 June. The language groups continued to study lists of recurring words and expressions, and engaged in improving the translations of the negotiating text, in preparation for an article-by-article review by the Committee.

The Chairman submitted three reports during the year, one for each of its series of meetings. The reports contained the Committee's recommendations for modifications to the text.

Informal plenary meetings

The Conference held a number of informal plenary meetings on the following issues: the preamble to the convention, dispute settlement, the Preparatory Commission, final clauses and general provisions.

During informal meetings at the first part of the session, the Conference agreed on the text of a preamble, setting out principles on which the convention was to be based. In a report to the Conference dated 29 March, in which he presented the agreed text, the President said it had seemed from the discussion that the preamble should be brief, non-controversial and non-polemical.

On dispute settlement, the President reported on 29 March that agreement had been reached on the one outstanding issue: the appointment of members of a conciliation commission. According to a text by the President, which was accepted at an informal plenary meeting on 24 March, only one of the two conciliators chosen by each side might be its national unless the parties agreed otherwise.

In a report dated 23 August, the President said the Conference, at informal plenary meetings, had responded favourably to a proposal to restructure the dispute settlement part of the negotiating text (part XV), grouping in one section all provisions for compulsory resort to conciliation. In addition, it had accepted his proposal to call the new court to be established under the convention the International Tribunal for the Law of the Sea.

The President presented on 14 March an informal draft resolution for the establishment of a Preparatory Commission, which would make arrangements for convening the first sessions of the Assembly and the Council of the Sea-Bed Authority and the Tribunal. The Commission would be empowered to prepare and adopt draft rules of procedure and draft financial regulations for the Assembly and the Council, and would be composed of all States that had signed, ratified or acceded to the convention. It would meet as soon as possible after the lapse of 60 days following the opening of the convention for signature, provided that by that time it had been signed, ratified, acceded to or otherwise accepted by at least 50 States; if the number of States fell short of 50 at that point, the Commission could not be convened until 30 days after the fiftieth signature. Funds would be lent by the United Nations and repaid by the Authority. The United Nations would provide secretariat services.

Reporting to the Conference on 1 April, the President said there had been agreement during the informal meetings on the establishment of a Commission, though a few countries would have preferred its functions to be limited to preparations for the Authority. Regarding its composition, some countries felt that, to ensure broad and representative membership, it should consist of States which had signed the Conference's Final Act rather than being restricted to those which had signed or ratified the convention. While some countries wanted the Commission to take all decisions by consensus, others doubted the need for that as the Commission was only supposed to make recommendations. Concerning the preparation of rules, regulations and procedures of the Authority, some countries strongly felt that they should have provisional effect until the Authority decided otherwise, while others considered that such provisional effect would contravene the powers and functions of the Authority.

The Conference did not deal with the Preparatory Commission proposal at its resumed session.

Several proposals to insert general provisions in the convention, encompassing matters beyond the purview of any main committee, were considered at informal plenary meetings during both parts of the 1980 session. The initial discussions were inconclusive, according to reports by the President of 29 March and 1 April, though there had been broad acceptance of a proposal by Mexico and the United States intended to prevent any State from abusing its rights under the convention. An informal proposal on the peaceful uses of the seas, submitted by

Costa Rica and others, had also received wide support.

On 22 August, the President reported acceptance by the informal plenary meetings of a package of three proposals, concerning good faith and abuse of rights, peaceful uses of the seas, and disclosure of information. Also in August, the informal plenary meetings accepted articles on protection of archaeological and historical objects recovered from the sea-bed, prohibition of amendments to the principle that sea-bed resources were the common heritage of mankind, and responsibility for damage (see p. 145 for a summary of these articles). Consultations were inconclusive on an article proposed by Turkey, stating that the general provisions of the convention were to be applied with due regard to the special characteristics of the region concerned.

The Group of Legal Experts on Final Clauses, established in July 1979,[10] continued its work in informal meetings on certain controversial issues concerning the legal effect of the convention, namely, ratification, amendments, status of annexes, reservations and exceptions, relation to other conventions, denunciation and entry into force. Most of these clauses were accepted at informal plenary meetings during the resumed session, according to a report by the President dated 23 August. One of them provided for the convention to enter into force after ratification or accession by 60 States. (For a summary of these articles, see p. 145.)

Second revision of the negotiating text

After reviewing the reports submitted to the Conference and the debate on them in April, the collegium decided to include in the second revision of the informal composite negotiating text all proposals submitted by the Chairmen of the three main committees as well as the text suggested by the Chairman of Negotiating Group 7 (on delimitation of maritime boundaries) and the texts of the preamble and on dispute settlement proposed by the President as a result of negotiations at informal plenary meetings. A memorandum by the President, accompanying the text, stated that the Second Committee Chairman had expressed reservations about the inclusion of the text on delimitation.

The second revised text consisted of the preamble, 16 parts containing 303 articles, a transitional provision (on territories) and eight annexes.

The eight-paragraph preamble, which had not been in previous texts, mentioned the historic significance of the convention, cited the need for a new and generally acceptable convention, and stressed that the problems of ocean space were closely interrelated. It referred to the desirability of establishing a new legal order for the oceans which would contribute to a just international economic order, and voiced the desire to develop the principles of the 1970 General Assembly Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction that the sea-bed and its resources were the common heritage of mankind." It expressed the belief that the convention would contribute to the strengthening of peace and security, and affirmed that matters not regulated by the convention would continue to be governed by general international law.

Part I, on the use of terms, remained unchanged. The only change in part II, on the territorial sea and contiguous zone, was in article 25, on the rights of protection of the coastal State. A coastal State could suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if this was essential to its security, including weapons exercises. There were no changes in part III, on straits used for international navigation, or part IV, on archipelagic States.

In part V, on the exclusive economic zone, articles 65 and 74 were changed. Article 65, on marine mammals, would explicitly permit coastal States and international organizations to impose stricter rules of exploitation than the convention itself provided, and encourage States to work through international organizations for the conservation, management and study of cetaceans. Article 74 dealt with the delimitation of the zone between States with opposite or adjacent coasts. Delimitation would be effected by agreement in conformity with international law and in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances in the area. Pending agreement, the States concerned should make every effort to enter into provisional arrangements of a practical nature and not to jeopardize or hamper the reaching of a final agreement.

In part VI, dealing with the continental shelf, there were changes in articles 76 and 83. The definition of the continental shelf in article 76 was the same as in the previous text, except for the addition of a sentence excluding from the shelf the deep ocean floor with its ocean ridges, and a paragraph limiting the shelf to 350 nautical miles from the coastal baselines where the outer limit was on a submarine ridge. The limits established by the coastal State, taking into account recommendations by the projected Commission

[10] Ibid., p. 125.
[11] See Y.U.N., 1970, p. 78. text of Declaration,contained in resolution 2749(XXV) of 17 December 1970.

on the Limits of the Continental Shelf, would be final and binding. A new annex II defined the powers, functions and mode of operation of this 21-member Commission. Article 83, on the delimitation of the continental shelf between States with opposite or adjacent coasts, had the same changes as article 74.

In part VII, on the high seas, the only change was in article 111, on the right of hot pursuit. That right was extended to chases begun in archipelagic waters. Parts VIII, IX and X, on the régime of islands, on enclosed or semi-enclosed seas, and on the right of access of land-locked States to and from the sea and freedom of transit, respectively, remained unchanged.

In part XI, on the international sea-bed Area, there were a number of changes. In article 151, concerning production policies, a new clause placed a floor under the application of the existing formula, according to which sea-bed producers would be guaranteed a 60 per cent share in the growth of world nickel consumption. The effect of the new clause was to specify that, in calculating the sea-bed share, an annual consumption increase of at least 3 per cent would be assumed, thereby guaranteeing a larger market for sea-bed producers even at times of sluggish growth in demand. At the same time, to protect land-based producers from a declining share of the market, the increase for sea-bed producers would be limited to 100 per cent of the actual consumption increase. Several other changes affecting the operation of production control were made in this article.

Article 155 called for the convening of a Review Conference 15 years after the start of the first commercial production from the sea-bed. The Conference would be given five years to evaluate the mining system and its benefits. If it failed to agree, it would have another year to adopt amendments to the system by a two-thirds vote. The amendments would enter into force for all States parties 30 days after two thirds of them ratified, acceded to or accepted the amendments.

A new paragraph in article 157, on the nature and fundamental principles of the International Sea-Bed Authority, stated that the Authority would have the powers and functions conferred on it by the convention as well as incidental powers needed to perform those powers and functions. A revised article 158, on the organs of the Authority, would require each organ to avoid taking any action which might derogate from or impede the exercise of powers and functions conferred on another organ. Article 160, on the powers and functions of the Assembly, described it as the Authority's supreme organ and gave it the power to decide which organ should deal with any question not specifically entrusted by the convention to any organ. A footnote was added to article 161, on the composition, procedure and voting of the Authority's Council, stating that productive negotiations had commenced on the subject of decision-making. The Legal and Technical Commission, the subject of article 165, was to have additional powers for the protection of the marine environment.

Changes were made in article 188, which provided for the submission of sea-bed disputes to a special chamber of the Law of the Sea Tribunal or an ad hoc chamber of the Tribunal's Sea-Bed Disputes Chamber or to binding arbitration. Contract disputes were to be submitted to binding commercial arbitration unless agreed otherwise by the parties. A commercial arbitral tribunal would not be competent to interpret the convention; questions of interpretation would have to be referred to the Sea-Bed Disputes Chamber.

There were a number of changes in annex III, on the basic conditions of prospecting, exploration and exploitation. Regarding technology transfer, the revised text stated that every contract with the Authority authorizing an operator to explore or exploit the deep sea-bed would spell out the operator's obligations to transfer technology, including the commitment to make available to the Authority, on fair and reasonable commercial terms and conditions, the technology he was legally entitled to transfer. In the case of technology owned by a third party, the operator would have to obtain a written assurance from the owner that it would be made available to the Enterprise on request, and he would have to take all feasible measures to acquire the legal right to transfer it to the Enterprise. The operator would also be obliged to transfer technology to developing countries mining the deep sea-bed, but only when the Enterprise had not requested or received technology from him. If the Enterprise could not obtain the technology it needed to begin operations, the Council or Assembly could convene a meeting of States to take steps to ensure that the technology was made available. The technology transfer obligations could be invoked until 10 years after the Enterprise had begun commercial production. Technology was defined in the annex as the equipment and know-how needed for a viable system.

Other changes in this annex included: tighter limitations to ensure against monopolization of sea-bed mining by a particular country; additional criteria to guide the Authority in deciding whether to grant priority to a particular applicant for a mine site; and giving the Authority power to impose penalties, including fines and contract suspension or termination, in cases of contract violation.

The Statute of the Enterprise, set out in annex IV, also contained numerous changes. The Enterprise was to operate on sound commercial principles and enjoy autonomy in the conduct of its operations. Its Governing Board was to take decisions by an absolute majority of eight of its 15 members, who would be paid by the Enterprise. The Board's powers and functions would include the development of plans of work and programmes for the Enterprise's mining activities, the submission of work plans to the Council, approval of the results of negotiations on the acquisition of technology, establishment of terms and conditions for joint arrangements with outside entities, budget approval and borrowing. The Director-General of the Enterprise would be directly responsible to the Board and subject to rules and regulations approved by it.

The Enterprise would be exempted from paying income taxes to the Authority during its first 10 years of commercial production. The amount of funds needed for its first mining operation would be recommended by the Preparatory Commission. In the event that the Enterprise did not obtain all the funds it needed from the States which initially adhered to the convention, they could be asked to contribute supplementary amounts until more States came in, at which time the extra payments and loans would be refunded. The schedule of repayment to States would be adopted by the Assembly on recommendation of the Council and advice from the Governing Board. The funds made available to the Enterprise would be in freely usable or convertible currencies. The Enterprise would negotiate with host countries for immunity from national taxation.

Part XII, on protection and preservation of the marine environment, remained unchanged, but several changes were made in part XIII, dealing with marine scientific research.

A new paragraph in article 242, on promotion of international co-operation, would require a State to enable other States to obtain information necessary to prevent and control damage to the health and safety of persons and the environment.

Article 246, on the conduct of marine scientific research in the exclusive economic zone and on the continental shelf, contained a new provision on research in the outer shelf (beyond 200 miles from shore): a coastal State would not be able to withhold consent to such research except in areas which it had designated for exploitation or exploration. Regarding research projects under the auspices of or undertaken by an international organization, article 247 provided that the coastal State should be deemed to have authorized such a project if it had approved it when the organization decided to undertake it or if the State was willing to participate in the project. Article 253 dealt with suspension or cessation of research activities: a coastal State could require the suspension of a project on grounds specified in the article, but once those conditions had been met it would have to lift the suspension order and allow research to continue; if the researcher did not comply within a reasonable time, the coastal State could require cessation.

Revised article 254, on the rights of neighbouring land-locked and geographically disadvantaged States, would require a researcher to notify the coastal State of any notice of a proposed research project given to such a neighbouring State. An expert appointed by a land-locked or geographically disadvantaged State could participate in a research project if the coastal State did not object to the expert appointed.

There were no changes in part XIV, on the development and transfer of marine technology.

In part XV, on dispute settlement, two articles were revised. Article 296, which set out limitations on the applicability of the convention's compulsory settlement section, listed two types of disputes over marine research which the coastal State would not be obliged to submit to binding third-party settlement: disputes involving the right or discretion ofcoastal States to withhold consent for research in their exclusive economic zone and on their continental shelf, and disputes over a decision by the coastal State to order suspension or cessation of research. If in such matters a researching State alleged that the coastal State was not acting in accordance with the convention, the dispute would have to go to conciliation, but the conciliation commission could not call into question the discretionary right of the coastal State to bar certain types of research in the economic zone or on the continental shelf, or to exclude foreigners from resource-related research in designated areas of the outer shelf.

In article 298, allowing optional exceptions to binding dispute-settlement procedures, a new paragraph would require States involved in a dispute over sea boundaries to submit it to conciliation. If the parties were then unable to negotiate an agreement on the basis of the conciliation commission's report, they would be obliged, by mutual consent, to submit the question to other binding procedures.

Annex V, on conciliation, was revised to provide that only one of the two conciliators chosen by each side to sit on a conciliation commission might be its national, unless otherwise agreed.

### Draft convention on the law of the sea (informal text)

At the end of the resumed session in August 1980, the collegium prepared a draft convention

(informal text) which contained a preamble, 17 parts consisting of 320 articles, a transitional provision and eight annexes. Compared to the second revision of the negotiating text (described in the preceding section), the only changes appeared in: part XI, on the international sea-bed Area, and related annexes; part XV, on dispute settlement (rearranged); part XVI, new to the text and containing general provisions; and part XVII, final clauses.

Article 150 in part XI added two guidelines for policies relating to sea-bed activities: development of the common heritage for the benefit of mankind as a whole, and conditions of market access for sea-bed minerals no more favourable than those applied to imports from other sources.

A reference to other measures of economic adjustment assistance, as an alternative to compensation, was added to a paragraph in article 151, on production policies, requiring the Assembly to assist land-based developing country producers harmed as a result of sea-bed production. The Assembly would also, on request, study the problems of States likely to be most seriously affected.

Under the review procedure provided for in article 155, amendments to the sea-bed part of the convention adopted at a future Review Conference would enter into force one year after two thirds of the States parties had ratified, acceded to or accepted them.

In article 161, on the composition, procedure and voting of the Council, one change was made in the list of interest groups to be represented: potential land-based producers of the types of minerals to be derived from the sea-bed were mentioned as part of the developing country representation on the 36-member Council.

The article spelled out a new voting formula, the key element of which was the extensive use of a consensus procedure. Consensus-defined as the absence of any formal objection-would be required for adoption of the rules, regulations and procedures for sea-bed mining, as well as for recommendations to the Assembly on rules for the distribution of economic benefits to States, decisions on protection of mineral-producing developing countries against adverse economic effects of sea-bed mining, and the adoption of amendments to the sea-bed part of the convention. A conciliation commission could be set up to promote consensus. Other substantive matters would be decided either by two-thirds or three-fourths majorities, depending on the nature of the issue, and procedural questions would be decided by a simple majority of members present and voting.

Article 162, on the Council's powers and functions, included a revised procedure for the approval of sea-bed miners' plans of work. Such a plan, once it was endorsed by the Council's Legal and Technical Commission, would be deemed to have been approved by the Council unless the Council disapproved it by consensus of all members other than the State sponsoring the applicant. A plan disapproved by the commission could be approved by a three-fourths vote of the Council. Under another paragraph, the Council (by a three-fourths majority) would make a selection among applicants for production authorizations when the total of what all producers wanted to mine exceeded the annual production ceiling.

Under article 163, on organs of the Council, the decision-making procedures of the Legal and Technical Commission and the Economic Planning Commission would be established by the rules, regulations and procedures of the Authority. Their members, 15 for each commission, would be elected for five-year terms from among persons nominated by States parties on the basis of competence and integrity. The members would be prohibited from having any financial interest in sea-bed activities and from disclosing industrial secrets they learned while working for the Authority. Under article 165, the Legal and Technical Commission was given the additional task of calculating the production ceiling for all sea-bed mining and issuing production authorizations to individual mining entities within that ceiling.

Article 183, on the Authority's immunities from national taxation, was revised to specify that the immunities would extend only to transactions within the scope of its official activities and not to taxes which were no more than charges for services. Goods exempt from tax could not be resold except as agreed with the State concerned. States would not be permitted to tax the pay of persons working for the Authority who were not their nationals.

In annex III, on basic conditions of prospecting, exploration and exploitation, most of the changes concerned technology transfer. A new provision would give a sea-bed contractor 45 days to revise his offer in a case where a commercial arbitration body found that he had not complied with the requirement that he make technology available to the Authority on fair and reasonable terms and conditions. Where the technology sought by the Enterprise was owned by a third party, the contractor would be bound to acquire, whenever he could do so without substantial cost to himself, a legally binding and enforceable right to transfer it to the Enterprise.

According to another addition in this annex, the selection of applicants for production authorizations would be made so as to avoid discrimination against any State or system.

The Statute of the Enterprise, contained in annex IV, included several changes in regard to the financing of that organ's first mining operation. The amount of funds needed for that purpose, and the criteria and factors for adjusting that amount, would be included by the Preparatory Commission in the Authority's draft rules, regulations and procedures. The Assembly, at its first session, would adopt by consensus measures to deal with any shortfall that might result if the contributions of States parties to the convention were less than the Enterprise needed. The interest-free loans to be made to the Enterprise by all States parties would take the form of irrevocable non-negotiable non-interest-bearing promissory notes which the Enterprise would cash as needed, in accordance with a schedule to be drawn up by its Governing Board.

Part XV, on dispute settlement, was rearranged into three sections, dealing respectively with voluntary procedures, compulsory procedures entailing binding decisions, and limitations and optional exceptions. In the last section were grouped all procedures involving compulsory resort to conciliation. The body previously referred to as the Law of the Sea Tribunal was named the International Tribunal for the Law of the Sea. A new section in annex V, on conciliation, detailed the procedural aspects of this form of settlement.

The new part XVI contained general provisions concerning the application or interpretation of the convention as a whole or relating to matters going beyond the scope of other parts. Under article 300, States would be required to discharge their obligations in good faith and not to abuse their rights, jurisdictions and freedoms under the convention. Article 301 would oblige States parties to refrain from any threat or use of force against the territorial integrity or political independence of any State. Article 302 would exempt States from having to supply information if disclosure would harm their essential security interests. By article 303, States would have the duty to protect archaeological and historical objects found at sea; a coastal State could treat their removal from the contiguous zone (up to 24 miles from shore) as a violation of its regulations. Article 304 stated that the convention's provisions on responsibility and liability for damage were without prejudice to the application of existing rules and the development of new ones.

Part XVII set out the convention's final clauses, most of them appearing in the text for the first time. The convention would be open for signature for 24 months after its adoption( article 305). It would enter into force 12 months after the sixtieth State had adhered to it (article 308). No reservations or exceptions could be made to the convention unless expressly permitted by other articles (article 309). A State would not be precluded from making declarations or statements that did not purport to alter the legal effect of the convention (article 310). The new convention would prevail, for the States adhering to it, over the 1958 Geneva Conventions on the law of the sea,[12] and no amendments could be made to the basic principle that the sea-bed and its resources were the common heritage of mankind (article 311).

Under articles 312 to 316, amendments to the convention could be made as follows: for sea-bed matters, amendments would have to be approved by the Assembly and the Council, followed by acceptance by three-fourths of the States parties; for the other parts of the convention, amendments would have to be approved by a conference and accepted by two thirds or by 60 of the States parties, whichever number was greater. In the case of non-controversial amendments, a simplified procedure without convening a conference would be applied if no State objected.

A State could cease to be a party to the convention by denouncing it, with effect from one year after its notification reached the Secretary-General (article 317). The Secretary-General would act as depositary of the convention, and also report on issues of a general nature that had arisen with respect to it (article 319).

### Discussion in plenary meetings

The Conference met on 2 and 3 April for a general discussion on proposed changes to the first revision of the negotiating text. Most of the 91 speakers favoured the preparation of a revised text on the basis of the proposals made by the President and the Chairmen of the main committees and negotiating groups, although some countries expressed reservations and stressed the need for further negotiation.

Following the incorporation of these changes into the second revision of the text, the Conference held a general debate from 25 to 27 August at which 120 delegations expressed their views on the new text and on the results of the latest negotiations. Again the text was generally endorsed but a number of individual difficulties were placed on record.

A summary of the positions expressed at these two debates follows.

Sea-bed. A number of countries endorsed as a whole the changes affecting sea-bed exploration and exploitation made in the second revision. Among those taking this position were Argentina, Australia, Bahrain, Brazil, Bulgaria, the Bye-

[12] See Y.U.N., 1958. p. 377.

lorussian SSR, Chile, Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Ethiopia, Fiji, Finland, the German Democratic Republic, Greece, Honduras, Hungary, Iceland, India, Ireland, Jamaica, Kenya, Kuwait, Lesotho, Malawi, Mongolia, New Zealand, the Niger, Norway, Oman, Papua New Guinea, Peru, Poland, the Republic of Korea, Singapore, Sri Lanka, the Syrian Arab Republic, Swaziland, Tonga, Turkey, the Ukrainian SSR, the USSR, the United Arab Emirates, the United Kingdom, the United States, Uruguay and Viet Nam. Similar broad support by countries from all regions was voiced in August for the changes that were later introduced into the informal draft convention, though Uganda, as Chairman of the Group of 77, said that Group's acceptance did not preclude individual countries from voicing reservations on specific parts of the package.

Members of the Group of 77 called for strengthened provisions to ensure the transfer of technology to the International Sea-Bed Authority on reasonable commercial terms. The Group proposed in April that the text retain a provision prohibiting sea-bed contractors from using a particular item of technology unless they had obtained a written assurance from the supplier that he would also make it available to the Authority.

India urged that specific sanctions be envisaged against third-party owners who did not comply with their obligations towards the Authority. Liberia, the Libyan Arab Jamahiriya, the Philippines and Tunisia also favoured provisions to ensure that contractors did not evade their obligations.

Speaking of the proposals that were eventually incorporated into the second revised text, Algeria and the United Republic of Tanzania said they undermined the concept of technology transfer by requiring the Enterprise to buy it on the open market and by restricting the definition of the kinds of technology covered. Iran believed they offered no guarantee that technology transfer would take place and failed to provide adequate penalties in the event of failure to respect obligations. Venezuela also doubted the effectiveness of the guarantee to transfer.

Many developing countries, including Algeria, the Congo, the Ivory Coast, Kenya, Liberia, the Libyan Arab -Jamahiriya, Mali, Mauritius, Mexico, Mozambique, Oman, Pakistan, Sierra Leone, Somalia, Swaziland, the Syrian Arab Republic, Yugoslavia and Zaire, asked that mineral-processing technology be explicitly included in the transfer provisions, and most of these also suggested that transport and marketing technology be covered as well.

Commenting on the 10-year period during which the technology transfer obligations would remain in effect after the Enterprise began commercial production, Angola, the Ivory Coast, Mozambique, Pakistan and Sierra Leone asked for removal of the time-limit. Swaziland was not convinced that there should be a limit, while Kenya suggested that it be extended to 25 years. In Jamaica's view, the obligations should continue during the first decade after each contractor (rather than the Enterprise) began commercial operations. On the other hand, the Netherlands wondered whether any extension of the period might not upset the balance of the negotiated package.

Among the industrialized countries, the Federal Republic of Germany, Japan and the United States objected to the provision requiring contractors to transfer technology to developing countries, and the United Kingdom voiced reservations on the same clause. Japan also found difficulty in endorsing the provision on transfer of technology owned by a third party, stating that it would discourage private enterprise from participating in sea-bed mining. Italy asked for further negotiations on technology transfer. The Netherlands could accept the obligation of technology transfer but urged that the language be kept flexible to accommodate differing national laws. Sweden and Switzerland found the proposals generally acceptable, though Switzerland had difficulties about the transfer to developing countries.

Industrialized countries expressed concern about arrangements for financing the sea-bed system, including the Enterprise. Austria, Belgium, the German Democratic Republic, Japan, the Netherlands, Sweden and the USSR wanted some advance indication of how much they would have to pay to establish and operate the Enterprise's first sea-bed mine site. Czechoslovakia urged that a limit be placed on amounts required from individual States, while Italy wanted the total sum to be fixed. Poland believed the financial burden placed on States should be proportionate to the benefits they would derive from sea-bed exploitation. Spain feared that an undue financial burden would be imposed on medium-sized industrialized States which would not immediately benefit from sea-bed mining. Switzerland voiced concern that some States might delay ratifying the convention because of the provision making the original parties responsible for covering any shortfall caused by the failure of others to adhere. Several States welcomed the changes in the financial provisions proposed in August and later incorporated into the informal text.

Some developing countries, such as Nigeria, questioned whether the financial arrangements

for the Enterprise were adequate. Bhutan and Nepal thought the least developed countries should be exempt from making financial contributions, and Tonga said a way must be found to alleviate the financial burden on small States. The Ivory Coast and Mauritius thought that the funds to be loaned and guaranteed by all States should not be restricted to the Enterprise's first project. Sri Lanka regretted that the negotiators had not agreed to exempt the Enterprise from all taxes, though it welcomed changes in the text tending to enhance the Enterprise's financial independence. Trinidad and Tobago suggested that all States, whether participants or not, had a duty to contribute to the Enterprise because they were all entitled to share in the benefits. Viet Nam would have preferred the Enterprise's first mine site to be underwritten mainly by sea-bed contractors.

Belgium, Italy, Japan and the Netherlands were critical of the tax rates to be paid to the Authority by sea-bed contractors; Belgium thought they were so high as to eliminate any prospect of profitability and jeopardize investment prospects. The Federal Republic of Germany proposed that the rates be halved for contractors starting commercial production before the year 2000. The Libyan Arab Jamahiriya, on the other hand, said the Enterprise should be able to change the rates if it felt they were not commensurate with the immense profits of contractors.

Mauritius and Morocco urged changes in the text to guarantee the autonomy of the Enterprise.

Differing views about sea-bed production policies continued to be expressed by large consuming and investing countries, which stressed the need to maximize opportunities for the development of sea-bed resources, and by land-based mineral producers, which feared that their own economies would suffer if sea-bed miners gained too large a share of the market.

Several industrialized countries expressed dissatisfaction with proposed limitations on sea-bed mining. Belgium, for example, thought many countries might be reluctant to ratify the convention if there could only be about a dozen sea-bed mine sites, particularly as the financial contributions to be required of Governments were so high. The Federal Republic of Germany expressed concern that, by limiting the number of mine sites, production control could render meaningless the convention's guarantees of assured access to sea-bed minerals. Opposing any production limitation, Italy said it wanted to discourage any proposal that might prejudice not only the interests of the industrialized countries but those of the consumer countries in particular, including most of the developing countries. The Netherlands considered that any limitation system should last only until world-wide arrangements were made between producers and consumers, and should afford reasonable opportunities for producing sea-bed minerals. Concern about restrictions on sea-bed production was also voiced in April by the United States, but it said in August that the latest formula, though far from ideal, was balanced and the issue should be regarded as closed.

Other countries viewed more positively the revised production-policy text that had emerged from the negotiations. Cuba accepted it but hoped the provisions to protect developing land-based producers would be strengthened. Denmark and Sweden viewed it as the maximum restriction on sea-bed production that could be accepted. Indonesia, concerned that land-based producers not be harmed by sea-bed production, noted that the negotiations seemed to have produced a basis for consensus. Norway regarded the text as a major contribution but said the production ceiling might need further study. Eastern European countries generally supported the new text as a basis of compromise; the German Democratic Republic and Hungary also stressed the need to protect the interests of commodity exporters.

On the other hand, Angola thought the formula should be refined to meet the interests of land-based producing States and potential producers, taking due account of possible catastrophic effects on the economies of certain developing countries. Concern about the effects of the formula on such producers was also voiced by Burundi, Colombia, the Dominican Republic, Guatemala, Malaysia, Mali, Papua New Guinea and the United Republic of Tanzania. Swaziland suggested study of a possible provision for consultations between interested parties and for remedial measures when a developing land-based producer country was adversely affected. Hungary, Liberia, the Republic of Korea, Senegal and Yugoslavia stressed the need to balance the requirements of land-based producers on the one hand and of developing country consumers and sea-bed miners on the other. Lesotho urged that negotiations on the subject continue.

The Group of 77 proposed certain changes in the production-control formula that would have had the effect of reducing the production guarantee to sea-bed miners and ensuring a larger share for land-based producers during periods of low market demand. Zaire urged the Conference to go even further in that direction, arguing that the proposed formula would not prevent sea-bed producers from dominating the market, would restrict land-based production and prevent the

emergence of new producers because no one would risk huge sums to enter a glutted market. Zambia warned that the formula would create a catastrophic situation for developing land-based producers dependent on mining by forcing them to cut back on production during periods of low market growth. Zimbabwe proposed that sea-bed production not be permitted to exceed an amount that would cause land-based production to drop below its latest five-year average. Canada, the Ivory Coast and the Philippines thought that the figures in the production-guarantee clause should have been omitted from the revised text because there had not been agreement on them. However, Japan considered that the production guarantee for sea-bed miners in the existing text was insufficient to attract contractors, especially at the initial stage.

Argentina, Australia, Canada, Chile, Colombia and Zimbabwe pressed for an anti-subsidy clause to ensure that sea-bed miners would not obtain an unfair economic advantage.

Strengthening the proposed compensation scheme for affected land-based producers was supported by Angola, Chile, the Ivory Coast, Malawi, Morocco, Zaire and Zambia. Mauritius welcomed the provision for compensation but said it must not become a first charge on the revenues of the Authority, which must be fairly distributed among all States. Nigeria regarded the promise of compensation as illusory, and the Philippines said the idea was practically negated by the fact that consensus in the Council would be required to implement it.

Bhutan feared that a clause added during the August negotiations, specifying that the benefits derived from the deep sea-bed be shared on a non-discriminatory basis, would prevent the least developed countries from receiving the special consideration they deserved.

Referring to a provision whereby a sea-bed operator's plan of work would be deemed to have been approved unless it was challenged in the Council after acceptance by the Legal and Technical Commission, the Federal Republic of Germany and the United States favoured better safeguards to ensure the Commission's impartiality and to protect the rights of applicants for contracts. On the other hand, Algeria and Indonesia regretted that this provision would make approval of work plans almost automatic, whereas under the earlier text they would not have been approved if it meant surpassing the production limitation in effect; Algeria said the provision opened the way for more intensive exploitation of the sea-bed in a manner seriously detrimental to land-based producers.

Eastern European countries asked that the provision to prevent monopoly control be extended to the part of the sea-bed reserved to the Enterprise and to developing countries, particularly in cases where firms from developed countries participated in joint ventures. France pressed for what it described as a truly effective anti-monopoly clause.

Regarding decision-making in the Council of the Authority, many developing countries expressed willingness to accept the compromise voting scheme worked out in August, but some regarded it as unsatisfactory because of its emphasis on decision by consensus, which they feared would paralyse the Council by subjecting it to a veto. Among those voicing concern about the effects of the consensus rule were Algeria, Angola, Bahrain, Cape Verde, the Congo, Ecuador, El Salvador, Guyana, Indonesia, Iraq, the Ivory Coast, Kenya, Kuwait, Liberia, the Libyan Arab Jamahiriya, Madagascar, Mauritius, Mozambique, Nigeria, the Philippines, Senegal, Sierra Leone, Swaziland, Trinidad and Tobago, Tunisia, the United Republic of Tanzania, and Zaire. Mali voiced concern because of the number of matters to be decided by a three-fourths majority. New Zealand described the voting scheme and the formula for composition of the Council as complex and cumbersome.

On the other hand, Fiji viewed the decision-making scheme as offering the only possible compromise, and said the consensus procedure was deeply rooted in many third world cultures where people were encouraged to take account of one another's views and interests. Jamaica described the formula as an assertion of the will of the international community to liberate itself from domination by the powerful. The Republic of Korea welcomed the breakthrough achieved on this point but thought safeguards were needed to ensure that the consensus method was not used to paralyse the Council.

A number of speakers suggested specific changes in the formula requiring different majorities for different types of decisions. Thus, China and Kenya thought that a number of questions should be resolved by a two-thirds rather than a three-fourths majority, though China said it would not object to the August formula if most countries accepted it. Colombia, Indonesia, Kuwait and Zimbabwe did not want the consensus rule to apply to action the Council might take to protect land-based producers from being harmed by sea-bed production. Bahrain, Kuwait, Qatar, the Syrian Arab Republic and the United Nations Council for Namibia took the same position in regard to Council decisions on the distribution to States and peoples of benefits from sea-bed production; Kuwait noted that the recognition of liberation movements

was involved in this issue. Canada was concerned that a three-fourths majority would be required before the Council could act to protect environmentally sensitive areas. Pakistan, Somalia, and Trinidad and Tobago thought that decisions as to which voting majority would be required in specific cases should be made by a simple majority.

Eastern European countries and Mongolia, emphasizing the need to take account of the interests of all political and social systems represented in the Council, took the position in April that the best compromise lay in the earlier negotiating text, which provided for decisions by a three-fourths majority. As an alternative, they favoured a system originally suggested by Mongolia in the First Committee by which decisions on substantive questions would require a two-thirds vote of all members participating in a given session and would be valid only if negative votes were not cast by a simple majority in any two out of the five interest groups making up the Council or by the whole of a geographical group. This suggestion was supported by Cuba and Viet Nam, the latter adding that the voting system must be one that would prevent a small group of Western developed States from imposing their will on the Council by a sort of collective veto. However, when the new proposal on voting was made at the resumed session, the Eastern European countries supported it.

Speaking in April before the compromise formula was presented, the United States stressed the need of giving adequate protection to the real economic interests at stake in sea-bed mining. Speaking in August after the new formula emerged, Austria said it might paralyse the Council and did not seem to have been designed as an instrument of executive and managerial efficiency. France welcomed it as offering a safeguard rather than a privilege for the interests of the industrialized countries.

Austria, Greece, Portugal, Spain, Sweden and Switzerland suggested that the Council be slightly enlarged to accommodate the smaller and medium-sized industrialized States. They feared that such States would be excluded from membership for excessive periods because they did not qualify under any of the special interest categories that would determine the composition of the Council under the existing text. Others favouring some formula to accommodate such States were Belgium, Finland, Honduras, Norway, Senagal, and Turkey, though Norway added that this must be done in a way that did not call into question the agreed decision-making procedures. New Zealand thought it unfair that developed States which were not major mineral producers would be inadequately represented on the Council, since most of them would be substantial contributors to the Authority and the Enterprise. Greece urged better representation for States with special maritime interests, while Morocco and Portugal suggested that countries supplying the labour force for maritime activities should be represented.

The Byelorussian SSR, Czechoslovakia, Japan, Mongolia, Poland, the Ukrainian SSR, the USSR and the United States opposed efforts to revise the compromise reached in August on the composition of the Council and its voting system. The Netherlands and the United Kingdom feared that any change in the Council's size would upset the voting scheme.

Argentina, Colombia and Guatemala expressed the view that the special interests of potential land-based mineral producers must be represented-a point which was endorsed by Honduras in August after it was added to the second revision of the negotiating text. Senegal urged that "potential producer" be defined. The Republic of Korea felt that the interests of developing consumer countries heavily dependent on mineral imports had not been given sufficient importance.

Algeria, Angola, Egypt, Madagascar, Tunisia, the United Arab Emirates and the United Republic of Tanzania were concerned that the Council's powers might outweigh those of the Assembly. Kenya suggested that the Assembly be given the right to discuss any matter on which a negative decision by the Council might paralyse implementation of the convention.

With regard to the procedure for review of the sea-bed mining system 15 years after the start of commercial production, a number of industrialized countries, including the Federal Republic of Germany, welcomed the abandonment of the provision in previous texts that would have permitted a moratorium on new sea-bed mining contracts if agreement on changes in the system had not been reached within five years after the start of a Review Conference. However, they said they could not accept the latest proposal to permit the sea-bed part of the convention to be amended by two thirds of the States parties.

Several developing countries described the new review formula as acceptable, but others, including Algeria, Bahrain, the Congo, Guyana, India, Iraq, the Ivory Coast, Kenya, Liberia, the Libyan Arab Jamahiriya, Madagascar, Mali, Mauritius, Mozambique, Nigeria, Senegal, Sierra Leone, Swaziland, the United Republic of Tanzania, Yugoslavia, Zaire and Zambia, favoured retention of the moratorium proposal. Angola and Guyana thought the review provision needed further work to ensure respect for sea-bed resources as a common heritage.

Referring to the question of preparatory investments prior to the entry into force of the convention, the United States said in August that the convention must contain arrangements to facilitate the incorporation of existing sea-bed exploration activities into the treaty regime and to prepare for an early start of the Enterprise.

Territorial sea. Albania, Algeria, Argentina, Bahrain, Bangladesh, Cape Verde, China, Democratic Kampuchea, Democratic Yemen, Ecuador, Egypt, El Salvador, Guatemala, Guyana, Iran, the Libyan Arab Jamahiriya, Madagascar, Malta, Morocco, Oman, Pakistan, Panama, Papua New Guinea, the Philippines, the Republic of Korea, Romania, Sao Tome and Principe, Sierra Leone, Somalia, the Syrian Arab Republic, Trinidad and Tobago, Turkey, the United Arab Emirates and Uruguay supported a proposal that the innocent passage of foreign warships through the territorial sea should be subject to prior authorization by or notification to the coastal State. The Republic of Korea proposed an alternative text providing only for prior notification. Egypt and the United Arab Emirates said coastal State authorization should also be required for the passage of nuclear-powered ships or vessels carrying dangerous goods. Finland and Sweden said coastal States already had the right to require prior notification of the passage of warships.

The Federal Republic of Germany said that innocent passage by all ships was a fundamental right. The United Kingdom and the United States opposed the proposal for prior authorization or notification and, along with Nigeria, urged retention of the existing text, giving all vessels the right of innocent passage. Australia, Bulgaria, the Byelorussian SSR, Hungary, Mongolia and the Ukrainian SSR also opposed revision of the existing text.

In the view of the United Republic of Tanzania, the definition of innocent passage did not strike the right balance between the interests of coastal and other States.

Albania said each coastal State had the right to define its territorial waters up to a reasonable width, taking account of individual conditions and the interests of others. Ecuador maintained that States should be able to extend their territorial sea to 200 miles, as Ecuador had done. Somalia, which had also proclaimed a 200-mile territorial sea, said the convention should protect such acquired rights, either by allowing reservations or by incorporating a safeguard clause.

The Federal Republic of Germany said the right laid down in the negotiating text to extend the limit to 12 miles should not be exercised to the detriment of other States and was dependent on acceptance of passage through straits used for international navigation. Turkey stated that the right to a 12-mile territorial sea should not be exercised unilaterally in semi-enclosed seas without taking account of the rights of others.

Three countries objected to a provision in the negotiating text to the effect that, when two States disagreed on where to draw the line between overlapping territorial seas, they could not go beyond the midway point unless historic title or other special circumstances dictated otherwise. Argentina called the provision unacceptable unless agreement could be reached on delimitation of the exclusive economic zone and the continental shelf. Venezuela said the provision should be brought into line with the delimitation clauses covering those other maritime zones. In Romania's view, the basic principles in such cases should be equality and agreement between the States concerned.

Peru and a number of other countries seeking changes in the text concerning the territorial sea and other zones of national jurisdiction objected during the August debate that other delegations appeared unwilling to negotiate on outstanding matters within the purview of the Second Committee. Others, however, including Colombia, Cuba, Indonesia and Eastern European countries, said they would oppose any attempt to reopen negotiations on already agreed issues.

Straits used for international navigation. The articles on this topic were generally endorsed in the discussion. However, Albania said there could be no automatic right of free passage through a strait leading to an enclosed or semi-enclosed sea. A provision permitting innocent passage from the open sea through a strait leading to the territorial sea of another State was opposed by Kuwait on the ground that States might have to suspend passage of hostile ships menacing their territorial integrity and independence.

Iran opposed the provision permitting overflight of straits by foreign aircraft. Morocco and Spain asked that the criteria for the passage of aircraft and vessels be made more precise, and that the obligations assumed by user States be accompanied by adequate provisions concerning responsibility. In Oman's view, a number of States bordering straits had not received equitable treatment. The United Republic of Tanzania considered that the provisions on straits were discriminatory and put undue emphasis on superpower military use.

Archipelagic States. The Philippines regretted that recognition of archipelagic waters had been made conditional on requiring the archipelagic State to designate sea lanes through those waters for the passage of foreign vessels, and to accept the right of overflight of those lanes-a right not enjoyed over the territorial sea.

Exclusive economic zone. Bahrain, Iraq and Poland urged that the text be revised to accommodate the need of geographically disadvantaged States to fish in neighbouring maritime areas. Bahrain and Mali did not want to see such States confined to "surplus" fish stocks. Romania suggested an amendment to give them access to the fisheries of neighbouring regions if their own region was poor in living resources; this suggestion was supported by Albania, Cape Verde, the Democratic People's Republic of Korea, Dominica, Poland, Tonga, Turkey and Zaire, though Zaire said it needed improvement.

Urging that geographically disadvantaged States be granted more equitable participation in the fisheries of neighbouring States' zones, Nepal said that decisions on the distribution of the zone's resources should be taken by an international organization, not unilaterally, while Bhutan said coastal States should take the recommendations of such organizations into account. Lesotho thought that the nationals of a land-locked State should have the same status as those of coastal States or should be given preferential treatment.

Malawi felt that provisions favourable to coastal States should be reconsidered. Mongolia said it would have liked to see improvements that took account of the rights of land-locked and geographically disadvantaged States. The Niger opposed any attempt to reopen debate with the aim of further diminishing the modest rights granted to those States.

Speaking of the provision giving developing land-locked States the right to share in fishing resources within their region, even when the coastal State approached the point where it could harvest the whole of the catch itself, Austria and Switzerland said the text should not draw a distinction between developed and developing land-locked States.

Kuwait and Spain thought the text did not safeguard the interests of States whose nationals had traditionally fished in areas previously considered to be high seas. Zaire interpreted the term "States with special geographical characteristics" to cover States that had traditionally fished in waters which would, under the convention, become another State's economic zone.

Taking a different view, Pakistan said it did not recognize any other State's right to resources in the zone and voiced strong reservations on the articles pertaining to this matter. Ecuador suggested changes to ensure that no decisions on the management of highly migratory species in the zone were taken without coastal State consent. The United Republic of Tanzania thought the provisions on the zone impinged too much on the rights of coastal States.

A number of countries, among them Australia, Colombia, Costa Rica, Cyprus, Denmark, France, the German Democratic Republic, Guatemala, Hungary, the Ivory Coast, New Zealand, Peru, the Philippines, Turkey, the USSR, the United Kingdom, Uruguay and Viet Nam, were in favour of the proposed addition to the text on protection of marine mammals (see p. 141), originally submitted by the United States. Japan said it could accept the new wording on the understanding that each stock of such mammals would be dealt with individually, when appropriate, through consultations among the States concerned, taking account of such factors as population and harvesting levels. Denmark expressed its understanding that the assistance of international organizations would be required when necessary in respect of individual stocks.

Argentina urged support for an informal proposal to strengthen the article on the settlement of disputes over the management of fish stocks that straddled neighbouring economic zones and the high seas; it argued that the existing text would not achieve the objective of conserving a resource threatened by the predatory activities of large fishing fleets. Guatemala, Guyana, Kenya, Morocco, Somalia and Turkey were among those supporting this proposal, and Cape Verde said that conservation provisions for such stocks should be strengthened to prevent uncontrolled and selfish depletion.

A revised version of the Argentine proposal, sponsored also by Canada, was endorsed by Costa Rica, Guyana, Morocco, Portugal and Uruguay. Chile called for further negotiations on the basis of this proposal, while Ecuador urged that the article be amended to ensure that regulations applicable beyond the 200-mile limit were brought into line with those of the coastal States concerned.

However, Hungary, Italy (speaking for the European Economic Community (EEC) nations), Somalia, the USSR and Zaire opposed any changes in the articles on fisheries. Japan opposed any restriction on freedom of the high seas and believed that any conservation arrangement for stocks within and beyond the economic zone should be based on voluntary agreement among those concerned.

Brazil said the convention should stipulate that the area beyond the territorial sea must not be used in a manner detrimental to a coastal State's security, and that military exercises in the economic zone required authorization by the coastal State. The United Kingdom called for improvements in the article on removal of offshore structures in the zone. Uruguay asked for negotiations on responsibility for damage caused in the zone by warships or other non-commercial

government vessels as a result of non-observance of coastal State laws and regulations-a point which the text did not cover.

Nepal, supported by Austria, Bhutan, Lesotho, Mali, the Niger, Sierra Leone, Singapore, Swaziland, Uganda, Zaire and Zambia, urged inclusion in the revised negotiating text of its 1978 proposal for a common heritage fund, which would redistribute to developing countries a share of the mineral revenues derived by coastal States from their economic zone and continental shelf.[13] Swaziland said the fund would be a real move in the direction of the new international economic order. Uganda declared that, if the Conference did not affirm that the economic zone was not within the exclusive jurisdiction of coastal States, about 10 such States, most of them developed, would gain the most; the needs of the land-locked and geographically disadvantaged States, which numbered at least 67, should be taken into account.

Continental shelf A number of countries agreed with the formula on the limits of the continental shelf, presented on 29 March by the Chairman of Negotiating Group 6 (see p. 139). These included Ireland and the USSR, authors of two earlier proposals to define the outer limits of the shelf, though the USSR said it was not fully satisfied with the new provision excluding oceanic ridges. Also in favour were Australia, Brazil, the Byelorussian SSR, Costa Rica, Denmark, the German Democratic Republic, Guatemala, Iceland, Italy, Mauritius, Mexico, New Zealand, Norway, the United Kingdom, the United States and Venezuela. China considered the new formula reasonable but suggested an amendment to allow flexibility in view of the great variations in geography and geology. Cuba and Viet Nam also accepted the formula but reiterated their preference for criteria based on distance from shore rather than depth. Nigeria, which had favoured making the shelf coterminous with the exclusive economic zone, said it could accept as a compromise the principles underlying the new text.

Argentina accepted the definition as part of a package but regarded the addition of the clause on oceanic ridges as a further sacrifice of the legitimate interests of coastal States and a restriction on their sovereign rights over the shelf. Mongolia supported what it described as a major concession to the broad-margin States in the hope that they would accommodate the interests of the land-locked and geographically disadvantaged States.

The United Arab Emirates, speaking for the Arab group, which had previously proposed a 200-mile limit, considered that the new definition made the text even more obscure and allowed coastal States to extend their shelves arbitrarily. The group was willing to extend the outer limit beyond 200 miles, but felt that distance rather than depth must be the sole criterion. Austria, Liberia, Nepal, Romania, Swaziland, Sweden, Switzerland and Thailand voiced concern that the definition would extend the jurisdiction of coastal States and thereby reduce the international area of the sea-bed. Dissatisfaction or reservations were also expressed by China, Malta, Yugoslavia and Zaire; the last three favoured a 200-mile limit. Algeria, Bhutan, Mali, Singapore and Swaziland objected that the text allowed for uncertainty in its application. Bangladesh stated that the shelf should be coextensive with the exclusive economic zone and requested special consideration for its own situation because of the peculiar nature of its seaboard.

The new clause on oceanic ridges was criticized by Bahrain, Denmark, the Federal Republic of Germany and Poland on the ground that it was vague or unnecessary, and by Switzerland, which regarded it as unacceptable if it meant that States could claim certain undersea areas that were not theirs under existing international law. Denmark also objected to a provision permitting States to lay pipelines across the shelf of another State.

Most States welcomed the proposal to establish a Commission on the Limits of the Continental Shelf, but differing views were expressed on whether the Commission's actions should be taken as definitive. Brazil, France and Venezuela thought the Commission should make nonbinding recommendations. The United Kingdom opposed a change in wording, made in the April revision, according to which the final limits established by a coastal State would have to be on the basis of the Commission's recommendations rather than taking them into account, as the previous text had stated. In Uruguay's view, the new language would alter the legal status of the recommendations. Austria, on the other hand, felt there should be a closer link between the recommendations and the final definition of limits.

Singapore questioned the proposal to elect the Commission's members on the basis of geographical distribution, stating that this could give an edge to broad-margin States and those sympathetic to their views. Austria, Bhutan and Mongolia urged that the interests of land-locked and geographically disadvantaged States be represented.

Bhutan, Czechoslovakia and Singapore suggested that the expenses of the members be met

[13] See Y.U.N., 1978, p. 151.

by the coastal States concerned-or by the Sea-Bed Authority, Singapore added-rather than by the State which nominated them. Mali feared that the provision to make the nominating States pay members' expenses would bar developing countries, particularly land-locked ones, from participating in the Commission. Uruguay thought the financial provisions would not safeguard the Commission's autonomy.

The United Kingdom said it was ready to make a contribution under the scheme outlined in the negotiating text whereby coastal States would share with the international community part of the revenue they derived from exploiting the shelf in areas beyond 200 miles, but it regarded the maximum rate of 7 per cent proposed in the text as so high that it would inhibit operations. Canada stated that any revenue-sharing must benefit the developing countries and not burden coastal States. The United States described as inequitable a provision exempting developing countries which were net importers of a mineral produced on their shelf from a revenue-sharing contribution in respect of that mineral.

Austria, Bahrain, Jamaica, Lesotho, Morocco and the Syrian Arab Republic called for increased payments under this scheme so as to benefit countries adversely affected by extension of the shelf beyond 200 miles. Ethiopia, Singapore and Swaziland also thought the proposed rates of contribution were low. Democratic Yemen and the Sudan asked that the formula be reconsidered in the light of the needs of developing countries, and Bhutan and Switzerland also found the text unsatisfactory. Iraq, on behalf of the Arab group, said that peoples who had not yet attained full independence should be able to share in the benefits. Yugoslavia stated that the proposed extension of the shelf could be justified only if the international community benefited substantially from exploitation of the outer shelf.

Boundary delimitation. Delimitation of the exclusive economic zone and the continental shelf between States with adjacent or opposite coasts remained the only unresolved "hard-core" issue. Most speakers continued to favour either "equitable principles" or the median line as the main criterion.

Accepting the new text proposed by the Chairman of Negotiating Group 7 (see p. 139) as a better basis for consensus were Bulgaria, Canada, Cape Verde, Chile, Colombia, Costa Rica, Cyprus, Democratic Yemen (with reservations on dispute settlement), Denmark, the Dominican Republic, Ethiopia, Greece, Guyana, Iceland, Italy, Japan, Malaysia, Malta, Nigeria, Oman, Peru, Portugal, the Republic of Korea, Sao Tome and Principe, Sierra Leone, Spain, Sweden, the Ukrainian SSR, the USSR, the United Arab Emirates, the United Kingdom and Yugoslavia, although Chile and Spain considered that the criteria in the formula were incomplete and required clarification. Most of these countries had supported the median line approach, and Kuwait, Peru, Spain and the Sudan reiterated such support. Indonesia said the new formula did not adequately reflect the equidistance principle.

Among those favouring a reference to equitable principles and objecting to the new formula were Algeria, Argentina, Bangladesh, China, Democratic Kampuchea, Dominica, France, Iraq, Ireland, the Ivory Coast, Kenya, the Libyan Arab Jamahiriya, Madagascar, Mali, Morocco, Mozambique, New Zealand, Nicaragua, Pakistan, Papua New Guinea, Poland, Romania, Senegal, Somalia, Suriname, the Syrian Arab Republic, Turkey, Venezuela and Viet Nam. They sought instead to retain the original language, which called for delimitation by agreement in accordance with equitable principles, employing, where appropriate, the median and equidistance line, and taking account of all relevant circumstances. Venezuela stressed that agreement between the States concerned in a delimitation dispute was the best means of reaching equitable solutions; if the text did not take sufficient account of the vital interests involved, a number of States would be unable to ratify the convention.

Iran doubted whether the reference in the new text to international law would suffice without further clarification, and the Republic of Korea also regarded the reference as ambiguous. Thailand considered all the proposed texts to be acceptable, since delimitation was subject to the agreement of the parties to employ suitable criteria. Viet Nam agreed that the formula should refer to international law, on the clear understanding that that law was based on equity.

The German Democratic Republic, Iran, Pakistan and Poland endorsed the Negotiating Group Chairman's proposal for dispute settlement by compulsory resort to conciliation. Nigeria and Somalia said they could accept compulsory conciliation but not binding adjudication. Mozambique and the USSR opposed the compulsory arbitration procedure called for in the previous negotiating text, stating that settlement could be reached only by negotiation or other methods agreed by the parties. Cuba also opposed any procedure for binding settlement involving third parties, while the Ukrainian SSR and Viet Nam expressed preference for direct negotiation on the basis of mutual respect for independence and sovereignty.

The Netherlands advocated a compulsory dispute-settlement procedure strengthened by a

clause enabling each party to request a final and binding determination by an international tribunal. Greece and the United Arab Emirates warned that the failure to provide for a binding procedure could delay the settlement of disputes. Bangladesh, Chile, Guyana and Spain also favoured a binding third-party procedure.

Argentina, on the other hand, regarded the compulsory conciliation provision as unacceptable, since direct negotiation was the most suitable means of settling delimitation disputes. Opposition to binding procedures was also voiced by Democratic Kampuchea, Democratic Yemen, Ethiopia and Kenya.

Several delegations endorsed the provision in the new text that would encourage States involved in a delimitation dispute to make provisional arrangements of a practical nature and not to jeopardize final agreement during the interim. Iran thought this could be improved by adding a statement that exploration and exploitation should not be interrupted during the interim period, and the Republic of Korea also considered that it would be wrong to leave valuable resources unexploited simply because one party refused to negotiate. Greece regarded the provision as ineffective because it was no more than an expression of wishes. The United States hoped the provision would be amended to take account of the legitimate interests of third States, as well as States directly involved, pending agreement on a boundary.

Pakistan believed that no activity should be carried out in the disputed area by either party pending final settlement. Romania said the parties should not take any unilateral measures which might hamper attainment of a final solution.

High seas. The USSR and some other Eastern European States urged approval of a proposal providing that sunken ships and aircraft, as well as equipment and cargoes on board, could be salvaged only by the flag State or with its consent. The United Republic of Tanzania said the provisions on the high seas failed to put the right emphasis on international co-operation.

Islands. Referring to a provision that would give habitable islands the same maritime zones as land territory, Algeria said that recognition of the right of islands to an economic zone must be accompanied by measures to safeguard the rights of other affected States. Ireland called for a review of the provision to reflect the clauses on delimitation of the exclusive economic zone and continental shelf. Turkey regarded the article on islands as out of harmony with international law, while Cyprus opposed attempts to change the text.

The United Kingdom, stating that it objected to any arbitrary distinction between parts of a coastal State's territory, voiced reservations to the provision that uninhabitable rocks could have no exclusive economic zone or continental shelf of their own. Iran opposed in principle any distinction between areas that were above water at high tide. Venezuela also opposed this provision. Dominica urged its retention, however, stating that to give rocks an economic zone would create a disturbing precedent that could only be based on political factors.

Ecuador called for a special provision to preserve the natural wealth of the Galapagos islands, in line with the treatment accorded by the convention to the waters surrounding archipelagic States. Greece believed that mixed archipelagos should have been covered by the provisions on archipelagic States.

Enclosed or semi-enclosed seas. Iraq and Turkey urged improvement of a provision designed to encourage co-operation among States bordering enclosed or semi-enclosed seas; Iraq added that the provision should take into account freedom of passage in all sea lanes leading to straits. Ethiopia could not accept any interpretation of the text purporting to impose strict legal obligations on the States concerned. Iran welcomed the idea of voluntary co-operation among States bordering such seas, adding that any obligation imposed in that respect could have harmful consequences. Kuwait stressed the importance of co-operation among such States and said the text should remain as it stood. Cyprus favoured its deletion.

Access of land-locked States to the sea. The Federal Republic of Germany maintained that freedom of transit for land-locked States through the territory of a neighbouring coastal State should not infringe the sovereignty of the latter; in the absence of agreement, the national law of the coastal State regulated the transit of persons and goods. Iran was ready to recognize freedom of transit, as long as the land-locked State granted the same right on its territory to the neighbouring coastal State. Pakistan could not accept the article, on the ground that it did not comply with the transit State's sovereignty over its territory.

Among land-locked States, Lesotho said that aircraft, pipelines and gaslines should be included among the means of transport covered by the freedom of transit provisions. Lesotho, Swaziland and Uganda considered that the ships of land-locked States should enjoy most-favoured-nation status in ports of the access State. In Zambia's view, the right of access should be set out clearly instead of being subject to bilateral agreement or other requirements that would negate the right. Malawi also called for improvements in this part of the text.

Marine environment. Most speakers regarded the provisions on protection of the marine environment as acceptable. France described them as relatively satisfactory but felt that the provision authorizing monetary penalties for foreign vessels guilty of pollution seemed to be a regression from existing international law, which acknowledged the right of coastal States to impose prison sentences for such offences.

Iran refused to agree to any provision limiting the coastal State's right to safeguard ecologically vulnerable parts of its exclusive economic zone, and was not satisifed with purely monetary penalties against coastal pollution from large tankers passing outside the territorial sea. Spain criticized the text for not making it clear that States bordering straits used for international navigation could take emergency measures when an accident occurred in the strait. The United Republic of Tanzania thought that the powers granted to coastal States were weak and encumbered by too many exceptions in favour of flag States, and that the provisions for safeguards against inappropriate enforcement measures seemed to protect shipping interests instead of the environment.

Marine scientific research. Speaking in April about the latest set of suggested changes in the articles on this topic, China and others said the revised articles on marine scientific research in the exclusive economic zone weakened the position of coastal States in favour of researching States-a view shared by the United Republic of Tanzania in the August debate. Ecuador and Pakistan wanted the text to state unambiguously that no research in the zone could be undertaken without the prior express consent of the coastal State. Egypt called for restoration of the guarantees for coastal States contained in the previous text. In Greece's view, the text should not be interpreted as obliging coastal States to grant consent for research when their vital interests were at stake. Guatemala expressed reservations on a number of articles.

Austria, on the other hand, said the new text would endow coastal States with ill-defined discretionary powers to regulate marine research, while Belgium, the Federal Republic of Germany and Sweden expressed regret at what they saw as restrictions on research. The United States, though describing the package as the best that could be achieved, said it offered far less protection for research than the United States and the scientific community considered desirable.

Differing views were expressed about a revised article on research on the outer continental shelf (beyond 200 miles from shore), limiting the discretion of coastal States to withhold consent to foreign research while giving them an unchallengeable right to prohibit such research in certain areas when resources were involved. Researching States, including the Federal Republic of Germany, Japan and Sweden, did not object to this provision but stressed the need to lighten restrictions on such research. Several coastal States with broad continental shelves, including Argentina, Australia, Brazil, Canada, New Zealand, Norway, the Philippines and Uruguay, emphasized the sovereign rights of coastal States over the shelf; most of them indicated that they would not oppose the revised text, but Brazil said it would continue to oppose attempts to undermine the rights of coastal States by applying different rules for research on the outer shelf. Guyana, Kenya and Malaysia voiced dissatisfaction with the new text, while Mauritius, Mongolia, the Republic of Korea and Senegal indicated support.

Egypt and Somalia expressed concern over the effect on coastal States' rights of a clause giving a research vessel a reasonable period of time to comply with the coastal State's wishes before that State could call a halt to the research.

With regard to a revised article on the research rights of land-locked and geographically disadvantaged States, Peru and other coastal States objected to the word "rights," and Peru, Spain and Venezuela thought the article should refer to States with special geographical characteristics, as defined in an article on the exclusive economic zone with reference to the fishing rights of such States. On the other hand, Poland, Singapore and the Sudan opposed such a change in terminology.

Angola expressed strong reservations on this article because of the need to safeguard the rights of coastal States, and Senegal said more negotiations were needed. Among the land-locked and geographically disadvantaged States, the German Democratic Republic and Switzerland felt that the revised article took less account of their interests than the earlier version. Mali thought it should be improved, while Hungary did not want to see it weakened.

Concerning a provision giving a neighbouring land-locked or geographically disadvantaged State the right to appoint an expert to participate in a foreign research project in a coastal State's exclusive economic zone provided that the coastal State did not object to the person appointed, Austria stated its understanding that the right to object did not give a coastal State the right to exclude the appointing State from participating. Singapore understood that the coastal State would not be entitled to exercise capriciously its right to object to an appointment.

The Federal Republic of Germany, Italy and Japan expressed their preference for mandatory

dispute-settlement procedures in regard to disputes over foreign research; the first two voiced concern at a clause in the revised text which excluded certain types of disputes from the requirement that they be submitted to conciliation. On the other hand, Ecuador said it would be unacceptable to make disputes over foreign research subject to compulsory settlement, and El Salvador would not go beyond compulsory conciliation. Pakistan and Uruguay wanted to limit or exclude the possibility that a coastal State's discretionover certain types of foreign research could be challenged, and Brazil did not think the text adequately reflected the sovereign rights of coastal States over the continental shelf. Venezuela, while reserving its position on the article, felt that the compulsory conciliation provision improved prospects for consensus.

Bahrain viewed as superfluous a change that had the effect of preventing a coastal State from using the absence of diplomatic relations as a reason for withholding consent to research by another State.

Honduras said the text should be more specific on the obligation to co-operate in the publication and dissemination of information resulting from research.

Most of the critical comments about the provisions on research were made during the April debate. By August, most speakers who referred to the topic said they were pleased that the substantive negotiations were completed.

Dispute settlement. Chile said the dispute-settlement provisions were ineffective and included a series of exceptions that would make them practically inoperative. In the same vein, Malta viewed the provisions as the most serious failure of the Conference; there was no point in agreeing on elaborate regulations which could not be enforced. Bangladesh and Cyprus favoured binding adjudication of disputes, while Finland expressed preference for compulsory settlement procedures and regretted that the text allowed so many exceptions to that principle. The United Arab Emirates thought that every party should have a right to use compulsory settlement procedures if conciliation failed or if one of the parties refused conciliation.

Taking a different view, Albania and Ethiopia stressed the need for mutual consent before disputes could be submitted to compulsory settlement. Cuba said it was willing to endorse compulsory conciliation but not procedures that would impose binding settlements, unless the parties agreed to such a course. In France's view, the dispute-settlement system constituted a balance which it would be dangerous to question. Mexico stated that compulsory conciliation was the maximum concession it could make in respect of specific types of disputes. Compulsory conciliation was also endorsed by Malaysia.

Bahrain considered that the settlement of disputes over the sharing of living resources in the exclusive economic zone and the delimitation of sea boundaries should be compulsory. Zambia thought it unsatisfactory that a coastal State would have no obligation to submit to compulsory settlement of disputes over its economic zone.

General provisions. Most speakers who referred to the matter welcomed the fact that agreement had finally been reached on protection of archaeological objects and objects of historical value. The Republic of Korea said the new provision should not prejudice the rights of coastal States to such objects found on the continental shelf. Turkey stated that the clause was unrealistic because it was linked to the contiguous zone instead of the continental shelf.

Jamaica said there was danger of abuse in regard to the provision that a State was not obliged, in fulfilling its obligations under the convention, to supply information if disclosure would be contrary to essential security interests.

Final clauses. On the matter of reservations to the convention, Bhutan and Greece felt they should not be allowed at all. Chile, Colombia, Cyprus, Ethiopia, Iceland and Mongolia thought they should not be permitted unless specifically authorized with respect to a particular article. Argentina, Bahrain, the Federal Republic of Germany, Italy, Nicaragua, the Republic of Korea, Senegal, Spain and the United Kingdom thought the no-reservations clause should be conditional on adoption of the convention by consensus, though Argentina added that reservations might be permitted on certain unsettled questions.

However, Albania, Bangladesh, China, Democratic Kampuchea, Ecuador, El Salvador, Oman, Pakistan, the Philippines, Portugal, Romania, the Syrian Arab Republic and Venezuela argued that States should be permitted to enter reservations to provisions they could not accept, especially on matters of vital national interest. Somalia would not renounce the right to enter reservations until such time as a satisfactory package was achieved. Tonga believed it unlikely that the convention would attract the number of ratifications it deserved without a provision for reservations. Trinidad and Tobago felt that reservations should be permitted as long as they were not inconsistent with the convention's basic purposes.

The United Kingdom did not believe the convention should enter into force until a well-balanced Council of the Sea-Bed Authority, reflecting the various interests, could be constituted from the States which had adhered to the

convention. Chile and Senegal, on the other hand, were of the view that the convention should take effect once the requisite number of ratifications were received. Commenting on the provision requiring 60 ratifications to bring the convention into force, Fiji thought that number undesirable if the new legal régime was to take effect as soon as possible.

In the view of Hungary and the German Democratic Republic, amendments to the convention should require a three-fourths rather than a two-thirds majority for approval.

The EEC member States, as well as Senegal, supported a proposal to enable intergovernmental organizations such as EEC to become parties to the convention. Colombia said such organizations should be permitted to adhere as long as they did not prejudice the purpose of the convention and they gained no special advantages for themselves or their members. The Ukrainian SSR, however, thought that no international organization should become a party, though it might enjoy rights under the convention if its member States had given it responsibility for matters covered by the convention.

Members of the Arab group, as well as Cape Verde, Malta, Nicaragua, the Niger, Sierra Leone, Zaire and the United Nations Council for Namibia, said that national liberation movements recognized by the United Nations should be able to adhere to the convention. Fiji, New Zealand and Tonga urged the same possibility for self-governing States, notably certain islands in the Pacific Ocean, which were not fully independent.

Referring to a provision according to which the convention would not alter the rights and obligations of States under other agreements compatible with it, Costa Rica said it could not accept the idea that the 1958 Geneva Conventions on the law of the sea[14] should apply in respect of States which did not adhere to the new convention, even though the legal régime which currently governed the seas formed part of customary international law and was already binding on all States.

Preparatory Commission. Chile opposed the provisional application of rules and regulations for sea-bed activities to be drawn up by the Preparatory Commission. Ecuador said the Commission should have only recommendatory powers, while Egypt and Liberia said it should not act in place of the Authority. On the other hand, the United States insisted that the rules, regulations and procedures drafted by the Commission should be applied provisionally, pending action by the Authority.

Unilateral sea-bed legislation

Uganda, speaking on behalf of the Group of 77 at the opening meeting of the Conference's resumed session on 28 July, protested that national legislation recently enacted by the United States, concerning exploration and exploitation of the deep sea-bed beyond the limits of national jurisdiction, was contrary to international law. That position was supported by the Chairmen of the African, Asian, Eastern European and Latin American groups as well as by Canada, China, Cuba, India, Iraq, Liberia, the Libyan Arab Jamahiriya, Peru (also on behalf of Chile, Colombia and Ecuador), Sierra Leone, the Syrian Arab Republic, the USSR, Viet Nam and Zimbabwe. A number of other countries endorsed this view during the August general debate.

The United States replied that its legislation placed a moratorium on commercial mining until 1 January 1988, allowing time for the convention to come into force, and that sea-bed mining beyond areas of national jurisdiction remained a freedom of the high seas until regulated by an international agreement. This view was supported by France, the Federal Republic of Germany (which noted that it had also adopted a law to regulate activities by its nationals on the sea-bed beyond the limits of national jurisdiction), Italy, Japan and the United Kingdom; they stated that national legislation on the matter was not contrary to international law.

By a letter of 29 August to the Conference President, Uganda submitted a document outlining the legal position of the Group of 77 on this issue. This document reiterated the views expressed at the Conference on the Group's behalf and concluded that the Group's member States were free to resort to the competent courts against States responsible for unilateral legislation.

Sites of the Authority and Tribunal

The Conference agreed on 4 April 1980 to add a footnote to the article that was to specify the site of the International Sea-Bed Authority, stating that at an appropriate time the Conference should have the opportunity to express its preference among the three countries-Fiji, Jamaica and Malta-which had offered their candidacy. This would be done by vote unless the Conference decided otherwise, the note added.

As a consequence of this decision, proposed orally by the President, the Conference did not take up a revised proposal submitted in March by Greece (for the group of Western European and other States), the Philippines (for the Asian group) and the. United Arab Emirates (for the Arab group) that the three candidates be put on an equal footing until the Conference had decided the question.

[14] See footnote 12.

During the general debate on 25 August, the Federal Republic of Germany offered Hamburg as the site of the International Tribunal for the Law of the Sea. Portugal reaffirmed its offer to serve as host country for the Tribunal.

Programme of work for 1981

On 29 August 1980, the Conference approved a programme of work for its tenth (1981) session, as recommended by the General Committee. Three weeks of private negotiations at the start of the session would be devoted to unresolved issues. At the same time, the three main committees and the plenary Conference would examine recommendations for changes in the negotiating text made by the Drafting Committee. At the end of the third week, the Conference would decide on the status to be given to the text. If it proved impossible to avoid submission of formal amendments, a time-limit would be established for their presentation.

The Conference's tenth session would be preceded by a session of its Drafting Committee in New York.

The Conference decided, subject to General Assembly approval (see following subchapter), to hold the session at United Nations Headquarters, with Geneva as the alternative if adequate facilities were not available in New York.

The approved timetable envisaged a concluding session at Caracas in 1981, its date to be determined, for the purpose of signing the convention.

Documentary references

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. 52nd and 122nd meetings on 12 July 1974, 17 March 1975 and 6 March 1980 respectively) (A/CONF.62/30/Rev.3).U.N.P.SalesNo.:E.81.1.5.

Third United Nations Conference on the Law of the Sea. Official Records, Vol. XIII: Summary Records of Meetings, Ninth Session, New York, 3 March-4 April 1980 (Plenary meetings 121-129; General Committee, meetings 51-53; First Committee, meetings 47 and 48; Third Committee, meeting 44) and Documents. U.N.P. Sales No.: E.81.V.5; Vol. XIV: Summary Records of Meetings. Resumed Ninth Session, Geneva, 28 July-29 August 1980 (Plenary meetings 130-141; General Committee, meetings 54-58; First Committee, meeting 49; Third Committee, meetings 45 and 46) and Documents. U.N.P. Sales No.: E.82.V.2.

## Decisions of the General Assembly

By a letter dated 29 September 1980, the President of the Third United Nations Conference on the Law of the Sea informed the President of the General Assembly of the decisions and recommendations adopted by the Conference on 29 August with respect to its work programme for 1981. He also requested that the Secretary-General prepare a study identifying the future functions of the Secretary-General under the convention and the needs of countries, especially developing ones, for information, advice and assistance under the new legal regime. In addition, he suggested that a special effort be made to promote the widest possible public awareness of the Conference's achievements.

These recommendations were the subject of a draft resolution submitted by Bulgaria, Honduras, India, Mexico, New Zealand, Norway, Peru, Singapore, Thailand, Tunisia and the United Republic of Tanzania. Following the death on 4 December of H. Shirley Amerasinghe (Sri Lanka), President of the Conference, the draft resolution was revised by its sponsors to include a paragraph paying tribute to him. Maldives introduced an amendment by which the Assembly requested the Secretary-General to report to it in 1981 on the question of awarding a memorial fellowship or scholarship in the field of the law of the sea and related matters, in recognition of Mr. Amerasinghe's contribution to the work of the Conference.

The draft resolution, as amended, was adopted without vote on 10 December as resolution 35/116. By this text, the Assembly, after paying tribute to Mr. Amerasinghe, approved the convening of the Conference's 1981 session in New York, with Geneva as an alternative, and recommended that facilities be provided for informal consultations among delegations just prior to the session. It also approved a Drafting Committee session in New York, preceding the Conference. It requested a study by the Secretary-General of his future functions under the draft convention and of the needs of countries for information, advice and assistance, and suggested that special efforts be made to promote public awareness of the Conference's achievements. Finally, it authorized arrangements to be made for a final session of the Conference at Caracas, should the Conference decide, in consultation with the Government of Venezuela, to hold the final session prior to the Assembly's 1981 regular session.

In an explanation of position, Trinidad and Tobago said it would have abstained if there had been a separate vote on the study request, as the matter had not been considered by the Conference. Zaire joined in the consensus, though it had reservations on parts of the draft convention.

## Documentary references and text of resolution

General Assembly- 35th session
Fifth Committee, meeting 49.
Plenary meeting 89.

A/35/419 (S/14129). Letter of 20 August from Pakistan (transmitting resolutions and final communique of 11th Islamic Conference of Foreign Ministers, Islamabad. 17-22 May).
A/35/500. Letter of 29 September from President of Third United Nations Conference on Law of Sea to President of General Assembly.
A/35/L.30. Bulgaria, Mexico, New Zealand, Norway, Peru, Singapore, Thailand, Tunisia, United Republic of Tanzania: draft resolution.
A/35/L.30/Rev.1 and Rev.1/Add.1. Bulgaria. Honduras, India, Mexico, New Zealand, Norway, Peru, Singapore, Thailand, Tunisia, United Republic of Tanzania: revised draft resolution.
A/35/L.44, Maldives: amendment to 11-power revised draft resolution, A/35/L.30/Rev.1 and Rev.1/Add.1.
A/C.5/35/86, A/35/7/Add.22, A/35/718. Administrative and financial Implications of Q-power draft resolution, A/35/L.30. Statement by Secretary-General and reports of ACABQ and Fifth Committee.

Resolution 35/116, as proposed by 11 powers, A/35/L.30/Rev.1 and Rev.1/Add.1. and as amended by Maldives, A/35/L.44, adopted without vote by Assembly on 10 December 1960, meeting 69.

The General Assembly,

Recalling Its resolutions 3067 (XXVIII) of 16 November 1973, 3334 (XXIX) of 17 December 1974, 3463 (XXX) of 12 December 1975,31/63 of 10 December 1976,32/194 of 20 December 1977,33/17 of 10 November 1976 and 34/20 of 9 November 1979,

Taking note of the letter dated 29 September 1980 from the President of the Third United Nations Conference on the Law of the Sea to the President of the General Assembly informing the latter that the Conference had decided to recommend to the Assembly that provision should be made for the Conference to hold Its tenth session from 9 March to 17 or 24 April 1961 at United Nations Headquarters in New York, that the Drafting Committee of the Conference should be enabled to meet In New York from 12 January to 27 February 1961 and that the Group of Seventy-seven should be given facilities to meet prior to the tenth session, from 4 to 6 March 1981,

Considering the suggestions contained in the aforementioned letter regarding the need for the Conference to examine the institutional implications of the Convention and any other decisions that the Conference may adopt and for the United Nations to make a special effort with regard to public information,

1. Expresses ifs deep sense of loss at the sad news of the death of Hamilton Shirley Amerasinghe. President of the Third United Nations Conference on the Law of the Sea, and wishes to place on record its great appreciation both of his remarkable personal qualities as a diplomat and leader and of his unique contribution to the work of the Conference;

2. Requests the Secretary-General to report to the General Assembly at Its thirty-sixth session on the question of awarding a memorial fellowship or scholarship in the field of the law of the sea and related matters, in recognition of the unique contribution made by Hamilton Shirley Amerasinghe to the work of the Conference;

3. Approves the convening of the tenth session of the Third United Nations Conference on the Law of the Sea in New York[a] for the period from 9 March to 17 or 24 April 1961;

4. Approves also the convening of the Drafting Committee of the Conference In New York from 12 January to 27 February 1981;

5. Recommends that the Secretary-General should provide the necessary facilities for informal consultations from 4 to 6 March 1961 to delegations participating in the Conference, in particular to the members of the Group of Seventy-seven:

6. Requests the Secretary-General, in his capacity as Secretary-General of the Conference, to prepare and submit to the Conference at its tenth session, for such consideration as it deems appropriate, a study identifying:

(a) The future functions of the Secretary-General under the draft Convention:

(b) The needs of countries, especially developing countries, for information, advice and assistance under the new legal regime;

7. Suggests to the Secretary-General that special efforts be made, particularly in connexion with the adoption of the Convention, to promote the widest possible public awareness of the achievements of the Conference;

8. Authorizes the Secretary-General to make the necessary arrangements in accordance with section I, paragraph 5, of General Assembly resolution 31/140 of 17 December 1978. pursuant to the invitation extended by the Government of Venezuela for the holding of the final session of the Conference in Caracas, should the Conference decide, in consultation with that Government, to hold the final session prior to the thirty-sixth session of the Assembly.

[a] Geneva was considered as en alternative site if adequate facilities could not be provided In New York.