Chapter III

Law of the sea

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Related topic:
Transport: International shipping legislation.

For resolutions and decisions of major organs mentioned but not reproduced, refer to INDEX OF RESOLUTIONS AND DECISIONS.

General aspects

The Third United Nations Conference on the Law of the Sea concluded in 1982 with the adoption in April and signature in December of the United Nations Convention on the Law of the Sea. Completed after more than 14 years of work, including annual sessions of the Conference since it was given its mandate by the General Assembly in 1973,[5] the Convention set out a legal code for most human uses of the oceans-for navigation, resource exploitation, environmental protection and scientific research.

The Convention, together with four resolutions on preparations for its entry into force and other matters,[3] was adopted on 30 April by a recorded vote of 130 to 4, with 17 abstentions. This action was taken at the close of the first part of the Conference's eleventh session, held at United Nations Headquarters from 8 March to 30 April. After a resumed eleventh session in New York from 22 to 24 September, held to complete drafting work, the Conference reconvened at Montego Bay, Jamaica, from 6 to 10 December for the final part of its eleventh session. The Convention was opened for signature on 10 December, when it was signed by 119 delegations and ratified by one (Fiji). The Final Act of the Conference, setting out the formal account of its work, was signed on the same day by 149 delegations.

In one of the four resolutions adopted together with the Convention, the Conference decided to establish a Preparatory Commission to make arrangements for the two main organs to be set up under the Convention-the International Sea-Bed Authority and the International Tribunal for the Law of the Sea.

General Assembly action. On 3 December, the General Assembly adopted a resolution[4] by which it welcomed the adoption by the Conference of the Convention and the related resolutions, and appealed to Governments to refrain from action aimed at undermining the Convention or defeating its object and purpose. The Assembly called on States to consider signing and ratifying the Convention as soon as possible so as to allow the new regime for the uses of the sea and its resources to enter into force. It also approved the Secretary-General's assumption of the responsibilities entrusted to him under the Convention and related resolutions, as well as the stationing of an adequate number of staff in Jamaica to service the Preparatory Commission. It authorized him to convene the Commission, approved its financing from the United Nations regular budget and asked him to report in 1983 on implementation of the resolution. The Assembly accepted with appreciation Jamaica's invitation to have the Final Act signed and the Convention opened for signature at Montego Bay from 6 to 10 December 1982.

The resolution, sponsored by 49 States, was adopted by a recorded vote of 135 to 2, with 8 abstentions, following the rejection of an amendment to have the Preparatory Commission financed by the States parties to the Convention, and the adoption by separate recorded votes of the three paragraphs on signature and ratification, financing of the Commission and action to undermine the Convention. The paragraph containing the appeal to Governments to refrain from action to undermine the Convention or defeat its purpose was approved by 134 votes to 5, with 5 abstentions.

By letters dated 7 September[1] and 8 October,[2] the President of the Conference had informed the President of the Assembly of the decisions taken by the Conference at the March/April and September parts of its 1982 session. In the first letter, he said the successful. outcome of the Conference proved that the United Nations could be an effective forum for important multilateral negotiations on vital issues. He recalled a statement he had made to the Conference on 30 April, after it approved the Convention, that the participants should promote public understanding of the importance of the Convention so that Governments and parliaments would be convinced to sign and ratify it in a timely manner. He had also expressed hope that delegations which had voted against or abstained in the final vote would, after reflection, find it possible to support the Convention.

Introducing the resolution in the Assembly, Singapore observed that a few States either had a negative attitude towards the Convention or were undecided. It appealed to them to re-examine their position in the light of their specific law of the sea interests and their general support for the rule of law in inter-State relations.

A number of the States which did not support the resolution cited objections to two provisions: the call on States to consider signing and ratifying the Convention (paragraph 2) and the appeal that they refrain from action to undermine it or defeat its object and purpose (paragraph 3).

Turkey and the United States, explaining their votes against the resolution, cited their objections to the Convention and to the provision for financing the Preparatory Commission from the United Nations budget. Turkey added that paragraph 3 was a violation of the principle of international law that only the States signatory to a treaty were bound to refrain from action against it. The United States restated its objections to the sea-bed provisions.

Albania, which did not take part in the vote on the resolution, said it could not support the paragraphs welcoming the Convention and calling on States to consider signing and ratifying it. Argentina said it would not participate in the vote on the resolution and would not sign the Convention or the Final Act because of its objections to the provisions in Conference resolution III on disputed territories.

Among those which abstained in the vote on the resolution, Belgium said it could not support paragraphs 2 and 3, since time would be needed for a thorough evaluation of the Convention. Israel said those paragraphs went beyond the requirements of international law providing that treaties had to be ratified before they imposed legal obligations; Israel also objected to the provision for financing the Preparatory Commission from the United Nations budget. Reservations to these provisions were also expressed by the Federal Republic of Germany, Italy, Spain and the United Kingdom. The Federal Republic of Germany said it had not decided whether to sign the Convention and could not agree to any Assembly decision prejudicial to its position. Italy believed that, as it had not concurred in the vote on adoption of the Convention, it would be premature to accept a call to sign and ratify it; moreover, the appeal in paragraph 3, not normally included in Assembly resolutions endorsing conventions, seemed out of place for a convention that had not been adopted by consensus.

Spain voted against paragraph 3, explaining that it transplanted a provision of the law of treaties with the aim of extending it for purposes other than those originally intended. The United Kingdom, announcing that it had decided against early signature of the Convention, said the provisions on sea-bed mining were unacceptable and needed to be improved; it had voted against paragraph 3 because it would set a bad precedent.

Supporting the resolution, France announced that it would sign the Convention but had reservations about the wording of paragraphs 2 and 3 and about secretariat and other arrangements. The Netherlands said it would decide later on ratification of the Convention, when there was more clarity about the régime for exploration and exploitation of sea-bed resources, the financial obligations arising therefrom and the decisions of other countries on whether to become parties. The Syrian Arab Republic stated that the agreement on sea-bed resources recently signed by France, the Federal Republic of Germany, the United Kingdom and the United States was an attempt to create fait accompli contrary to the Convention. The USSR believed that the Convention would make a substantial contribution to the strengthening of peace and co-operation; any unilateral action to circumvent it would be a gross violation of international law and a challenge to the United Nations.

Comments on arrangements for the establishment of the Preparatory Commission and for the functions of the Secretary-General under the Convention were made by Belgium, France, the Federal Republic of Germany, Italy, Spain, the USSR and the United Kingdom.

Letters. Conference President: (1)7 Sep., A/37/441; (2)8 Oct., A/37/441/Add.1.

Publication. (3)United Nations Convention on the Law of the Sea, with Index and Final Act of the Third United Nations Conference on the Law of the Sea (A/CONF.62/122 & Corr.3,8), Sales No. E.83.V.5.

Resolution (1982). (4)GA: 37/66, 3 Dec., text following.

Resolution (prior). (5)GA: 3067(XXVIII), 16 Nov. 1973 (YUN 1973, p. 43).

Financial implications. ACABQ report, A/37/7/Add.10; 5th Committee report, A/37/687; S-G statement, A/C.5/37/58/Rev.1.

Meeting records. GA: 5th Committee, A/C.5/37/SR.52, 53 (2 Dec.); plenary, A/37/PV.91 (3 Dec.).

Other publications. Third United Nations Conference on the Lam of the Sea. Official Records, vol. XVI: Summary Records of Meetings, Eleventh Session, New York, 8 March-30 April 1982 (Plenary meetings 156-182; First Committee, meetings 55 and 56; Second Committee, meeting 59) and Documents, Sales No. E.84.V.2; vol. XVII: Resumed Eleventh Session, New York, 22 and 24 September 1982; Final Part of Eleuenth Session and Conclusion of Conference, Montego Bay, Jamaica, 6-10 December 1982 (Plenary meetings 183-193) and Documents, Sales No. E.84.V.3.

General Assembly resolution 37/66

3 December 1982 Meeting 91 135-2-8 (recorded vote)

49-nation draft (A/37/L.13/Rev.1 and Rev..1/Add.1); agenda item 28.

Sponsors: Algeria, Antigua and Barbuda, Australia, Austria, Bahamas. Barbados, Belize, Canada, Colombia, Comoros, Costa Rica, Denmark, Dominica, Egypt, Ethiopia, Finland, Gambia, Ghana, Greece, Grenada. Guyana. Haiti, Iceland. India, Ireland. Jamaica, Kenya. Kuwait, Liberia, Mauritania, Mauritius, Mozambique. New Zealand, Nigeria, Norway. Oman, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Singapore, Sri Lanka. Sudan, Sweden, Togo, Trinidad and Tobago, Uganda, United Republic of Cameroon, United Republic of Tanzania. Zambia.

Third United Nations Conference on the Law of the Sea

The General Assembly,

Recalling its resolutions 3067(XXVIII) of 16 November 1973, 3334(XXIX) of 17 December 1974, 3483(XXX) of 12 December 1975, 31/63 of 10 December 1976, 32/194 of 20 December 1977, 33/17 of 10 November 1978, 34/20 of 9 November 1979, 35/116 of 10 December 1980 and 36/79 of 9 December 1981,

Taking note of the adoption, on 30 April 1982, of the United Nations Convention on the Law of the Sea and the related resolutions by an overwhelming majority of States and of the decision of the Third United Nations Conference on the law of the Sea, on 24 September 1982, to accept with appreciation the invitation extended by the Government of Jamaica for the purpose of adopting and signing the Final Act and opening the Convention for signature at Montego Bay from 6 to 10 December 1982,

Taking special note of the fact that the Conference decided to establish a Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea and that the Commission shall meet at the seat of the Authority if facilities are available and as often as necessary for the expeditious exercise of its functions,

Taking note of the extensive functions entrusted to the Preparatory Commission, including the administration of the scheme governing preparatory investment in pioneer activities relating to polymetallic nodules,

Recalling that the Convention provides that the seat of the International Sea-Bed Authority shall be in Jamaica,

Taking further note of the timely measures being taken at considerable expense by the Government of Jamaica to construct an adequate administrative building and conference complex for housing the secretariat of the Preparatory Commission and providing meeting facilities for the purpose of enabling the Commission to function from Jamaica,

Recognizing the urgent need for the Preparatory Commission to be assured of adequate resources to enable it-to discharge its functions efficiently and expeditiously,

Recalling also that in General Assembly resolution 35/116 the Secretary-General was requested to prepare and submit to the Conference, for such consideration as it deemed appropriate, a study identifying his future functions under the proposed Convention and that such a study was submitted on 18 August 1981.

/Voting that. in a letter dated 7 September 1982 to the President of the General Assembly, the President of the Conference drew attention to the responsibilities which the Secretary-General was called upon to carry out under the Convention end the related resolutions and to the need for the Assembly to take the appropriate action to approve the assumption of these responsibilities by the Secretary-General,

Recognizing that, in accordance with the third preambular paragraph of the Convention, the problems of ocean space are closely interrelated and need to be considered as a whole,

Recognizing the need for the Secretary-General to be authorized to assume his functions under the Convention and the related resolutions, including in particular the provision of the secretariat services required by the Preparatory Commission for its effective and expeditious functioning,

1. *Welcomes* the adoption of the United Nations Convention on the Law of the Sea and the related resolutions;

2. *Calls upon* all States to consider signing and ratifying the Convention at the earliest possible date to allow the effective entry into force of the new legal régime for the uses of the sea and its resources;

3. *Appeals* to the Governments of all States to refrain from taking any action directed at undermining the Convention or defeating its object and purpose;

4. *Accepts with appreciation* the invitation extended by the Government of Jamaica for the purpose of adopting and signing the Final Act and opening the Convention for signature at Montego Bay from 6 to 10 December 1982;

5. *Authorizes* the Secretary-General to enter into the necessary agreement in this regard with the Government of Jamaica;

6. Reiterates its gratitude to the Government of Venezuela for the hospitality extended to the Third United Nations Conference on the Law of the Sea at its first substantive session, held at Caracas in 1974;

7. *Approves* the assumption by the Secretary-General of the responsibilities entrusted to him under the Convention and the related resolutions and also approves the stationing of an adequate number of secretariat staff in Jamaica for the purpose of servicing the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, as required by its functions and programme of work;

8. *Authorizes* the Secretary-General to convene the Preparatory Commission as provided in Conference resolution I, of 30 April 1982, by which the Commission was established, and to provide the Commission with the Services required to enable it to perform its functions efficiently and expeditiously;

9. *Approves* the financing of the expenses of the Preparatory Commission from the regular budget of the United Nations:

10. *Requests* the Secretary-General to report to the General Assembly at its thirty-eighth session on the implementation of the present resolution.

Recorded vote in Assembly as follows:

In favour: Algeria. Angola, Australia, Austria. Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Botswana, Brazil. Bulgaria, Burma, Burundi, Byelorussian SSR, Canada, Cape Verde, Chad. Chile, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus Czechoslovakia. Democratic Kampuchea. Democratic Yemen. Denmark, Djibouti, Dominica, Dominican Republic, Egypt, El Salvador. Equatorial Guinea, Ethiopia, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau. Guyana, Hungary, Iceland, India. Indonesia. Iran, Iraq. Ireland. Ivory Coast, Jamaica, Japan, Jordan, Kenya. Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia. Libyan Arab Jamahiriya, Madagascar. Malawi, Malaysia. Maldives, Mali, Malta, Mauritania, Mauritius, Mexico. Mongolia; Morocco, Mozambique, Nepal. Netherlands, New Zealand, Nicaragua, Niger, Nigeria. Norway. Oman, Pakistan. Panama. Papua New Guinea, Paraguay, Peru, Philippines, bland. Portugal, Qatar Romania, Rwanda. Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe. Saudi Arabia. Senegal, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian SSR, USSR, United Arab Emirates. United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay. Vanuatu, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe.

Against. Turkey, United States

Abstaining: Belgium. Ecuador, Germany. Federal Republic of, Israel, Italy, Luxembourg, Spain, United Kingdom.

Convention on the law of the Sea

The United Nations Convention on the Law of the Sea, approved on 30 April 1982 by the Conference on the Law of the Sea and opened for signature on 10 December, consisted of a preamble and 445 articles, divided into 17 parts (320 articles) and 9 annexes (125 articles).

Convention highlights. The preamble stated that the problems of ocean space were closely interrelated and needed to be considered as a whole. The aim of the Convention was defined as establishing, with due regard for the sovereignty of States, a legal order for the seas which would facilitate international communication and promote the peaceful uses of the seas, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment. The preamble referred to the need to take into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, coastal and land-locked.

Part I of the Convention, containing a single article, defined some terms used in the Convention: "Area" (the sea-bed beyond national jurisdiction), "Authority" (the International Sea-Bed Authority), "activities in the Area" (including resource exploration and exploitation), "pollution of the marine environment" (the introduction of deleterious substances or energy), "dumping" (deliberate disposal of wastes or other matter) and "States parties" (those States and other entities which had consented to be bound by the Convention and for which it was in force).

Part II (32 articles) defined the limits and legal status of a 12-nautical mile territorial sea, internal waters, and a contiguous zone extending a further 12 miles. It also included rules governing innocent passage in the territorial sea by various types of ships.

Part III (12 articles) dealt with straits used for international navigation, including transit passage and innocent passage through such straits.

Part IV (9 articles) related to archipelagic States-those consisting of islands-and the special rules used for delimiting their maritime boundaries and for passage of ships through their waters.

Part V (21 articles) specified the rules governing a 200-mile exclusive economic zone off the shores of coastal States and the delimitation of that zone between States with opposite or adjacent coasts. It defined the rights, jurisdiction and duties of different groups of States (coastal, fishing, land-locked, geographically disadvantaged and other) in the zone, regulated offshore structures and dealt with the conservation and utilization of its living resources.

Part VI (10 articles) defined the continental shelf and its delimitation, the rights of coastal States there, and the rights and freedoms of other States.

Part VII (35 articles) referred to the legal status of the high seas and various aspects of the utilization of that area beyond national jurisdiction, including conservation and management of living resources.

Part VIII (1 article) concerned the rules for the maritime space around islands.

Part IX (2 articles) defined enclosed or semi-enclosed seas and included provisions on co-operation among bordering States.

Part X (9 articles) laid down rules for exercise of the right of access of land-locked States to and from the sea and for freedom of transit across the territory of adjacent coastal States.

Part XI (59 articles) governed exploration for and exploitation of sea-bed resources beyond the area of national jurisdiction, including arrangements for the International Sea-Bed Authority.

Part XII (46 articles) set out rules for the protection and preservation of the marine environment, including provisions for their enforcement.

Part XIII (28 articles) dealt with the conduct and promotion of marine scientific research.

Part XIV (13 articles) related to various aspects of international co-operation for the development and transfer of marine technology.

Part XV (21 articles) contained provisions for settlement of disputes with regard to the interpretation or application of the Convention.

Part XVI (5 articles) included general provisions on the application or interpretation of the Convention as a whole or relating to matters going beyond the scope of other parts.

Part XVII (16 articles) contained the final provisions of the Convention concerning participation by States and other entities through signature and ratification, entry into force, reservations, amendments and other matters.

The nine annexes to the Convention concerned the following subjects: annex I, a list of highly migratory species of marine fish and mammals; annex II (9 articles), Commission on the Limits of the Continental Shelf; annex III (22 articles), basic conditions of sea-bed prospecting, exploration and exploitation; annex IV (13 articles), Statute of the Authority's Enterprise (mining organ); annex V (14 articles), conciliation procedures; annex VI (41 articles), Statute of the International Tribunal for the Law of the Sea; annex VII (13 articles), arbitration; annex VIII (5 articles), special arbitration procedure for certain types of disputes; and annex IX (8 articles), participation in the Convention by international organizations.

Four resolutions were adopted at the same time as the Convention. They related to the establishment of the Preparatory Commission, preparatory investment in pioneer activities relating to polymetallic nodules on the sea-bed, application of the Convention to non-independent territories and authorization for national liberation movements to sign the Final Act of the Conference as observers.

Course of 1982 session. The final text of the Convention was based on negotiating texts progressively refined during previous years by the Conference's colllegium—consisting of the President and the Chairmen of the three main committees, working as a team with which the Chairman of the Drafting Committee and the Rapporteur-General of the Conference were associated. Those successive texts reflected the results of negotiations among delegations.

A draft Convention issued in August 1981[10] was the basis for the final round of negotiations in March/April 1982. On 26 March, the President issued a report[6] proposing new or revised texts on participation in the Convention by intergovernmental organizations, territories and national liberation movements-a matter that the Conference had not been able to resolve in 1981.[11] The Chairmen of the Conference's First, Second and Third Committees also presented reports on the conclusion of their work.

On 30 March and 1 April, the Conference heard delegations present their views on the proposals contained in these reports. Then, on 2 April, the collegium issued a memorandum[4] and proposals(') setting out five substantive changes in the draft Convention and associated documents which they regarded as having received widespread and substantial support and therefore as offering a substantially improved prospect of consensus. The changes were: new draft articles, a draft annex IX, a draft decision and a draft resolution on participation of entities other than States, along the lines of the proposals the President had made on 26 March; a draft resolution on the Preparatory Commission; a draft resolution on pioneer investors; a sentence on the membership of land-based mineral-producing countries in the Economic Planning Commission of the Council of the Sea-Bed Authority; and a revised sentence on the removal of offshore structures in the exclusive economic zone.

On 13 April, while informal negotiations were still in progress, delegations submitted a total of 31 amendments or sets of amendments to various parts of the draft Convention and associated resolutions. These concerned innocent passage through the territorial sea, straits used for international navigation, the exclusive economic zone, the continental shelf, islands, semi-enclosed seas, access of land-locked States to the sea, sea-bed mining, the Sea-Bed Authority, sea-bed disputes, protection of the marine environment, participation in the Convention by entities other than States, reservations and the Preparatory Commission. Eighty-seven delegations made statements on these amendments between 15 and 17 April.

Voting on these amendments was deferred for eight days, as provided in the rules of procedure, while the President and other officers pursued efforts to reach general agreement. On 22 April, the President reported on the results of these efforts,[7] recommending the incorporation of several of them, some in revised form, into the draft Convention and associated resolutions.

With respect to the sea-bed part of the Convention, on which a number of amendments had been submitted, the President said he felt able to recommend only three changes that met the criterion of offering a substantially improved prospect of general agreement. They related to general resource development policy, decision-making at a future review conference and guaranteed membership in the Council of the Authority for the largest consumer of sea-bed minerals. He also recommended two other modifications on sea-bed matters: a revised draft resolution on pioneer in-. vestors, and provisions for a compensation fund and a special commission of the Preparatory Commission on the problems of developing country land-based mineral producers.

Two additional changes were proposed on other subjects: a revised draft resolution by Iraq to replace the draft decision proposed by the collegium on 2 April concerning the signature of the Final Act by national liberation movements, and deletion from annex IX, on participation in the Convention by intergovernmental organizations, of a paragraph restricting the mutual granting by members of an intergovernmental organization of special treatment on certain law of the sea matters (amendment by Belgium).

The Conference determined on 23 April that all efforts at reaching general agreement had been exhausted-a determination required by rule 37 of the rules of procedure before amendments could be put to a vote. On 26 April, the day fixed for voting, all but two sets of amendments were withdrawn by their sponsors, and the remaining two failed to receive the majority required for adoption. They were amendments by Spain on transit passage through straits used for international navigation and by Turkey to delete the article prohibiting States from entering reservations to Convention provisions. The Conference adopted by consensus a compromise proposal of the President authorizing the participation of Namibia, represented by the United Nations Council for Namibia, in the Preparatory Commission.

The Conference, on 28 and 29 April, heard the views of 53 delegations on the changes proposed by the President on 22 April. Following this discussion, the President, in a further report dated 29 April,[8] proposed four final changes in the draft Convention. These modifications added a paragraph on unfair economic practices in regard to sea-bed exploration and exploitation, inserted sentences on rules for the exploitation of sea-bed minerals other than those in nodules, changed from two thirds to three fourths the majority required for entry into force of future amendments on sea-bed matters and redrafted a paragraph on work plans of sea-bed mining applicants. The President proposed one further change in the draft resolution on pioneer investors: to authorize the Enterprise to have production authority for two mine sites rather than one during the period before the Convention entered into force.

On 30 April, the Conference agreed to incorporate in the draft Convention and associated resolutions all four sets of proposals made by the President and the collegium on 26 March and 2, 22 and 29 April, as well as the amendment on participation of Namibia in the Preparatory Commission approved on 26 April. It did so after rejecting a proposal by Israel to act separately on the draft resolution authorizing national liberation movements to sign the Final Act. It then adopted the Convention and four resolutions as a whole by a recorded vote, requested by the United States, of 130 to 4, with 17 abstentions, as follows:

In favour: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bhutan, Bolivia, Botswana, Brazil, Burma, Burundi, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Democratic Kampuchea, Democratic People's Republic of Korea, Democratic Yemen, Denmark, Djibouti, Dominican Republic, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Gabon, Ghana. Greece. Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iceland. India. Indonesia. Iran. Iraq. Ireland. Ivory Coast, Jamaica, Japan, Jordan,' Kenya, Kuwait, Lab People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Mozambique, Namibia, Nepal, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Against: Israel, Turkey, United States, Venezuela.

Abstaining: Belgium, Bulgaria, Byelorussian SSR, Czechoslovakia, German Democratic Republic, Germany, Federal Republic of, Hungary, Italy, Luxembourg, Mongolia, Netherlands, Poland, Spain, Thailand, Ukrainian SSR, USSR, United Kingdom.

Final drafting of the Convention was completed at the Conference's resumed session from 22 to 24 September.

Explanations of vote (April). A number of specific points relating to the Convention were raised by delegations on 30 April in explanation of their vote

on the Convention package (see following sections of this chapter for details).

Israel cited, in particular, objections to the resolution on observer status for national liberation movements. Turkey objected to the provision disallowing reservations and said it had voted negatively to show its determination to safeguard vital interests. The United States said that, although other provisions were basically acceptable, the Convention did not fully satisfy any of the objectives of the United States with regard to the sea-bed; although modest improvements had been made, there had been an unyielding refusal by some delegations to engage in real negotiations on most of the major concerns reflected in amendments submitted by the United States and others. Venezuela said that, since the Convention did not allow reservations, it could not accept the provisions on delimitation of maritime boundaries, the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts.

(Israel and Venezuela submitted details of their objections to the Conference President in letters of 13 April[2] and 24 April[3], respectively.).

Among those which did not participate in the vote, Albania cited objections to the provisions on the territorial sea, innocent passage and the sea-bed. Ecuador expressed concern about the clauses on the territorial sea and archipelagic States. The Holy See regretted that the Conference had been obliged to take a vote, since consensus was the best way of adopting a decision on administration of the common heritage of mankind; it hoped that, once the text was implemented, the need for a legal instrument to create a world of respect for the rights and obligations of States, of justice for the distressed and of universal enjoyment of resources would become obvious.

Explaining why it had abstained, Belgium, referring to the sea-bed provisions, said due regard had not been paid to the interests of the industrialized States, although they had made major concessions to the developing countries. The Federal Republic of Germany said negotiations should have been pursued in order to achieve a better balanced result, particularly in respect of the sea-bed. Italy voiced a similar reason for its abstention and the United Kingdom said it had been obliged to abstain because its aim of adopting the Convention by consensus had not been achieved. The Netherlands, noting the lack of consensus on the sea-bed provisions, remarked that a convention to which the major countries did not adhere would not provide an adequate solution to the world's problems.

Bulgaria, the German Democratic Republic, Hungary, Mongolia, Poland and the USSR explained that they had abstained because the resolution on pioneer investors contained provisions that discriminated against the socialist countries. Nevertheless, Bulgaria, Hungary and Poland emphasized their support for the other parts of the Convention, while the German Democratic Republic considered that it took account of the rights and interests of all States and peoples. Mongolia spoke of the enormous economic, political and other benefits offered by the Convention. The USSR said that, although the Convention did not take into account the interests of all States, it did not harm any of them and represented a balanced and satisfactory compromise.

Spain said it had abstained because its amendments concerning passage through straits used for international navigation had not been adopted; moreover, it objected to the resolution on the relation of the Convention to disputed territories. Thailand, citing problems with regard to provisions on fishing in the exclusive economic zone, said it had abstained pending a closer scrutiny of the text, but without precluding the possibility that it might later decide to become a party.

Among those which voted in favour, Argentina said the overwhelming vote for the Convention should lead the Governments which had not supported it to think the matter over and encourage them to sign; however, it regretted that an earlier provision on the participation of territories in the Convention had not been retained. Brazil said its affirmative vote, cast in conformity with the position of the Group of 77, was without prejudice to Brazil's decision on signing the Convention. Chile stressed the importance of the Convention's recognition of coastal States' rights within the 200-mile limit and described the Convention as a milestone in international law with regard to dispute settlement. Colombia made a similar point in regard to the 200-mile limit and said adoption of the Convention was a historic act of the highest importance. Honduras welcomed the contribution the Conference had made to the establishment of a just and peaceful order for the seas.

For Peru, the Convention reconciled to the greatest extent possible the basic interests of the international community regarding the utilization of the oceans; however, the provisions on the territorial sea and the exclusive economic zone affected Peru's Constitution and laws, and its support for the Convention was on condition that that conflict could be resolved in accordance with the provisions of its Constitution. Uruguay viewed the recognition of the right of sovereignty of the coastal State over its exclusive economic zone and continental shelf for all economic purposes, and its exclusive jurisdiction over scientific research, preservation of the marine environment and the establishment of offshore structures, as strengthening the validity of those institutions.

Bangladesh said its favourable vote should be read in the light of its special position with regard

to the drawing of coastal base lines from which areas of maritime jurisdiction were measured. China said the Convention was only the first step towards a new international legal order for the sea, because there were still imperfections and serious defects on such matters as pioneer sea-bed investors and the passage of warships through the territorial sea. Iran said it had voted for the Convention in a spirit of compromise and co-operation with the international community, but with reservations on the provisions concerning innocent passage of warships through the territorial sea, islands, right of access of land-locked States to the sea and pioneer investors. Japan cited difficulties with some of the changes introduced by the President in the sea-bed provisions but said that if no convention was adopted there would be increasing disorder and anarchy with regard to problems relating to the sea.

Canada, describing the Convention as one of the greatest achievements of the United Nations, expressed hope that those with reservations would understand that it was of decisive importance for their interests and would carefully examine not only the sea-bed provisions but the Convention as a whole. France said it had voted in favour because of such positive elements as the rules to protect pioneer investors and the constructive contribution of the Convention to the North-South dialogue; however, the sea-bed provisions had serious drawbacks which France hoped would be reviewed. Portugal disagreed with the provision on membership of the Council of the Authority and the lack of legal protection for sea-bed workers. In spite of its reservations on Council membership and the sea-bed technology transfer provisions, Switzerland supported the Convention as a reflection of the fact that the majority wanted order, not anarchy, on the oceans.

Romania said the Convention's provisions on boundary delimitation constituted a general framework that would have to be applied on the basis of international law, legal precedents and State practice, giving consideration to such factors as the need to ensure that small and unpopulated islands with no economic life of their own should not affect the maritime space of coastal States; it also made reservations or observations on provisions relating to passage of warships through the territorial sea, boundary delimitation, access to fisheries, exploitation of sea-bed resources and reservations to the Convention.

Egypt said it had wanted the question of reservations to be governed by the Vienna Convention on the Law of Treaties (which permitted certain kinds of reservations to multilateral treaties).(9) The Libyan Arab Jamahiriya said the Convention contained many positive elements which offset the difficulties caused by some other provisions; however, it felt that the exploitation of sea-bed resources should benefit all States, irrespective of their geographical position, and it rejected the idea that a small group of States should enjoy special benefits in regard to the sea-bed. Mali said the Convention had defined the political and legal elements of a promising future, which might well point the way to a fundamental change in the thinking that had brought about an unjust and deeply unbalanced world.

Sierra Leone appealed to all States to join in the new international legal order represented by the Convention, but voiced reservations on the breadth of the territorial sea, the pioneer investor arrangements and the veto principle in the decision-making process of the Sea-Bed Authority. Zaire regretted that power relationships characterized by the defence of narrow interests by certain States had made consensus impossible. Zambia voiced concern that the Convention would leave the vast bulk of ocean resources to coastal States rather than to the common heritage, and expressed dissatisfaction about some provisions on protection of land-based producers from the adverse effects of sea-bed mining and on access of land-locked States to the sea; however, it had voted for the Convention as an alternative to lawlessness on the seas.

Malaysia said it had voted in favour even though the Convention did not fully meet the requirements of all parties owing to the need for concessions; it read out a statement of understanding on the application of the Convention to the Straits of Malacca and Singapore. Pakistan reiterated its interpretation of the provision on passage of warships through the territorial sea and its objection to giving land-locked States a right of access to the sea through coastal States. The Republic of Korea said that, even though some articles did not fully correspond to its interests, it had voted for the Convention, taking into account the aspirations of most delegations including those of the Group of 77. Yemen recalled the reaffirmation of the rights of coastal States made by the sponsors of one of the amendments concerning the passage of warships through the territorial sea.

Final statements (December). At its concluding meetings at Montego Bay in December, the Conference heard general statements by delegations on various issues covered by the Convention and the related resolutions. Highlights of the general comments on the Convention follow (for comments on specific topics, see later sections of this chapter).

The Prime Minister of Jamaica, Edward Seaga, contrasted the achievements of the Conference with the gaps and failures of previous efforts on this subject, beginning in 1958: the Convention was an attempt to arrive at a compromise

protecting the legitimate concerns of all interest groups, including the developing countries; it was a single text covering all ocean uses, in place of the previous four separate conventions; it was the first to succeed in establishing an outer limit for the territorial sea; and it dealt with some vital issues ignored by earlier conferences, such as the rights and interests of archipelagic, land-locked and geographically disadvantaged States.

Many speakers stressed the Convention's significance in the codification and development of international law. Australia described it as a renegotiation of the rules giving title to all the resources of the sea and sea-bed and the rules governing most of the important uses of the sea, such as navigation, research and pollution control. Without a convention, said Barbados, a small country like itself could not hope to promote and protect its interests or to share in the benefits from sea-bed exploitation. China viewed the Convention as bringing about a change in a situation in which the law of the sea had served only the interests of a few big Powers. Old concepts which served the interests of the few had been revised or replaced, said Fiji, and new concepts had been introduced so that international law could respond more adequately to the aspirations of all nations.

The Ivory Coast saw significance in the fact that the Convention incorporated all aspects and dimensions of 71 per cent of the globe's surface, that it challenged four centuries of unfair maritime legal practices and opposed the hegemony of the strongest, that it involved the entire international community and that it established a new morality. It would be a serious mistake, said Malta, to think that the Convention would have less of an influence on the behaviour of States simply because some of them, however important, found objection to one part of it. Norway regarded it as the greatest legislative effort by the United Nations and probably the greatest ever undertaken in the annals of international law.

Senegal saw the Convention as an invaluable supplement to the Charter of the United Nations. Its comprehensive range of provisions on every aspect of the peaceful uses of the seas, together with more highly developed provisions on dispute settlement than had been thought possible, said Sri Lanka, gave the Convention the highest potential of any instrument in history to serve as the foundation for peace, justice and order in the oceans. The United Republic of Cameroon stressed that the Convention did not codify existing law, which the African States could not have accepted; for the first time it represented a universal law of the seas, and any State which did not accept it would divorce its case from any legal foundation. The United Republic of Tanzania thought historians would rank the signing of the Convention with the signing of the United Nations Charter in terms of political and historical magnitude.

Other benefits to be derived from the Convention were also mentioned. Costa Rica saw the opportunity to put technology currently available to a few into the hands of all, so that as many as possible could be in a position to take advantage of the sea's wealth; it also praised the Convention for stressing the importance of conservation and sound management of ocean resources. Grenada thought one of the greatest benefits of the Convention lay in its clarification of conflicting claims among neighbouring States, thereby helping to enhance the cause of peace. Guyana believed it would serve to inhibit States from going outside international law and placing their perceived national interests above those of the international community.

Austria, Chad, China, Cuba, the Democratic People's Republic of Korea, France, the Gambia, Grenada, the Libyan Arab Jamahiriya, Mauritius, Mongolia, the Niger, Norway, Sri Lanka, the Upper Volta, Viet Nam and Zaire viewed the Convention as a step, towards a new international economic order. Denmark saw it as a major progres-, sive step in the development of North-South relations. Sierra Leone, while acknowledging that the Convention incorporated elements of the new international economic order, did not see it as representing the establishment of such an order through the back door, as it contained many features that did not benefit African States.

The United Arab Emirates stressed the need to have educational and information institutions point out the significance of the Convention.

Many speakers made the point that, as a product of compromise, the Convention did not completely satisfy any State or group. Several added that it was nevertheless the best instrument that could have been achieved under the circumstances. Bahrain expressed this view, though adding that it was not convinced about the way in which the Convention dealt with the interests of developing States in general and of geographically disadvantaged States in particular. In the words of Cyprus, although there were ambiguities in place of clarity, complexities instead of streamlining and exceptions where there should have been a general rule, that was the price that had to be paid to reach an overall agreement by consensus.

Many developing States believed that the Convention would have a generally favourable impact on the third world. Bangladesh thought the Convention offered developing States the opportunity to participate in various organs and provided for the distribution of the oceans' wealth between developed and developing nations. Benin saw a more equitable distribution among all countries-

coastal, geographically disadvantaged or land-locked-and among all peoples, oppressed or sovereign. Haiti saw a chance for the rich to become richer and the poor less poor. Viet Nam thought the Convention met the interests of all countries, especially the developing ones.

France believed the Convention had achieved a compromise between the rights of coastal States and the interests of maritime countries, and between the use of the seas for resource exploitation and for communication. New Zealand also welcomed the balance achieved by the Convention when compared to existing law, which it saw as unduly weighted in favour of a small number of major maritime Powers. Switzerland said it favoured the Convention despite its shortcomings, because its many reciprocal compromises reflected the desire to see order and not anarchy reign over the seas; Switzerland would sign when the support of other States reflected a generally shared will to make the Convention the basis for the new law of the sea.

Several speakers welcomed the fact that developing States had had the opportunity of participating in the establishment of major rules of international law. Algeria said the Conference had implemented the principle of the democratization of international relations, which it would like to see implemented in other bodies, especially those used for the North-South dialogue. Unlike the past, when rules of international law were dictated by the great Powers, the Philippines and Uganda said, the Convention was a product of the combined will of the great majority of States. For the first time, said Togo, a large number of developing States, particularly African countries, had decided on rules that would govern their relations with other States in the realm of maritime communications and the exploitation of undersea and fishery resources.

Members of the group of socialist (Eastern European and other) States viewed the Convention as a balanced document that met the needs and legitimate interests of all groups of States. These States also regarded it as a welcome replacement of existing law which, as Czechoslovakia put it, would have allowed the riches of the seas to be monopolized by a few. Mongolia felt the Convention could erect a safe barrier against the unilateral claims of the imperialist Powers and their monopolies to the expanses and resources of the oceans. The Ukrainian SSR regarded it as an extremely important political document aimed at strengthening peace, security and co-operation among States with different social and economic systems. The USSR thought it could present a serious obstacle for those who would try to carry out a policy of arbitrary control and diktat on the oceans and would have great significance in the struggle to establish international relations based on equality and mutual respect.

Egypt said the Convention would help prevent unfair competition between States in exploiting marine resources and in navigation, thus making it a means of supporting international peace; but it must not become a breeding-ground for wide-ranging interpretations that would transform its provisions into problems. Indonesia, viewing with concern the increasing exploitation of marine resources along its coast by distant countries having advanced technology, thought it appropriate that the Convention would make the use of those resources more equitable. Mexico affirmed that the legitimate rights of coastal States, especially the developing countries and those wishing to administer and conserve their maritime resources for the benefit of their nationals, formed part of the permanent effort to secure full sovereignty over their natural resources. Saint Lucia was pleased that the Convention placed specific responsibility on all States for the preservation of marine resources, thus helping to ensure that adequate living resources would be available for the continued survival of mankind.

Bulgaria remarked that the Convention strengthened freedom of navigation, notwithstanding the establishment of the exclusive economic zone and a certain expansion of coastal State jurisdiction. Czechoslovakia, Finland, Hungary and India also stressed that the Convention ensured freedom of navigation.

Japan thought the Convention would serve the long-term interests of the world community and those of Japan; though it had not had time to complete a review of the text in time for signature in 1982, Japan's basic position was that the Convention merited its support and signature. Sweden expressed the view that the Convention did not affect the rights and duties of a neutral State in case of war; it believed also that the rules of armed conflict at sea were in need of revision.

Some States, though supporting the Convention as a whole, were critical of what they regarded as an excessive allocation of jurisdiction to coastal States, to the detriment of mankind as a whole. Thus, Austria said that in some ways the Convention, especially those parts concerned with areas of national jurisdiction, increased inequality among States and tended to serve the interests of the richer nations, though other parts were clearly designed with the needs of the poorer nations in mind. Hungary saw the land-locked countries as among the chief losers, due to maritime boundary provisions which reduced the area for the common heritage of mankind and heavily favoured States with broad continental shelves. Iraq said the Convention did not meet all of its needs as a geographically disadvantaged State.

Mauritius believed that the benefits to developed countries from exploiting the exclusive economic zone and the continental shelf were likely to exceed by far those gained by developing countries. Sierra Leone argued that the African States would obtain little from the Convention in return for the rights they had granted the maritime countries; in partitioning the oceans among countries with the longest coastlines, it did not provide for an equitable distribution of resources. Singapore said the provisions on the exclusive economic zone and the continental shelf gave too much to some and little or nothing to others. Uganda thought the developing countries, especially those which were land-locked and geographically disadvantaged, had received the short end of the stick in the negotiations.

The Niger, on the other hand, said the Convention opened up possibilities that could place a country such as itself in a better position to deal with the constraints of its geographically disadvantaged location.

Peru announced that it would not sign the Convention in 1982, since the constitutional and other issues it raised were still under study. Turkey, also stating that it would not sign, said the Convention failed to achieve a balance between different groups of interests stemming from different geographical situations; it added that the Convention's provisions on maritime boundaries could in no way be applied against Turkey. The United States, while regarding the Convention's sea-bed provisions as unacceptable, believed that most other provisions served the interests of the international community and reflected prevailing international practice.

Many States which announced their intention of signing the Convention urged others which had voiced objections, particularly the United States, to reassess their position and join with the majority in the interests of universality. United States participation in the Convention, said Malaysia, would enhance its national interests, while its non-participation and thus its isolation might turn out to be costly. No State could do without the Convention, said the Sudan, if it respected international legitimacy and international law.

A number of speakers, including Burundi, the Byelorussian SSR, Canada, Cape Verde, Colombia, Cuba, Czechoslovakia, Fiji, Pakistan, Romania, Saint Vincent and the Grenadines, the USSR, the United Republic of Cameroon and Zambia, said States must not arbitrarily select some of the rights and responsibilities laid down in the Convention to the exclusion of others.

Partial application was precluded, said Colombia, because that would destroy the Convention's balance between the interests of the community and those of States; moreover, once the Convention was in force it would not be possible to invoke custom against it. Any attempt by a State or small group of States to circumvent the Convention, stated the Libyan Arab Jamahiriya, would run counter to the will of the overwhelming majority of the international community and have no legal validity capable of commanding international recognition. The Convention, Zaire said, could not be viewed as merely a general guideline for helping countries to harmonize their national policies and legislation; the intention of the international community was to make it an indivisible whole, the acceptability or unacceptability of which could not be subject to any partial agreement.

Finland stated that the Convention constituted in many fields a progressive development of international law, the benefits of which could be enjoyed only by those States that adhered to it. Similarly, the German Democratic Republic and the Ukrainian SSR expressed the view that no State refusing to become a party could claim rights or privileges which the Convention granted to those that were also prepared to assume the obligations it imposed.

Speaking of the relationship between the Convention and existing international law, the Federal Republic of Germany said States were not subject to obligations under the Convention until it had been ratified and had entered into force for them; pending that time, States could rely on and were bound by all rules developed by the generally recognized practice of States or contained in conventions already in force. Addressing the legal situation which would arise if the Convention entered into force without enjoying general acceptance, the United Kingdom said the situation would be the same for both parties and non-parties with regard to provisions in which the Convention codified or clarified existing law; with regard to provisions that sought to make new law, the parties would assume among themselves a new contractual relationship without depriving others of existing rights such as those deriving from the freedom of the high seas.

On the other hand, the Dominican Republic, while acknowledging that the Convention could have legal force only among its parties, said that, given the nature of the negotiations that had led to it and the scope of its objectives, the presumption was that its norms and principles would also serve as guidelines for non-parties. In the view of Greece, all provisions of the Convention other than those pertaining to the international sea-bed area could be considered as already part of customary international law, since almost all States which had abstained on the Convention, and even those which had voted against, had indicated their acceptance of those parts.

The Conference President, in his closing statement on 10 December, described the Convention

as a monumental achievement of the international community, second only to the adoption in 1945 of the Charter of the United Nations. The provisions of the Convention were closely interrelated and formed an integral package, he added. Therefore, it was not permissible to claim rights under the Convention without being willing to shoulder the corresponding obligations. Any attempt to mine deep sea-bed resources outside the Convention would earn universal condemnation and incur grave political and legal consequences.

In addition to statements made at the plenary meetings in December, 19 States submitted written statements during the year detailing their position on the Convention or specific provisions, 5 States and a number of organizations submitted supplementary written statements in connection with the December meetings, and 10 States submitted statements in exercise of the right of reply to comments made at those meetings. All these statements were included in the official records of the Conference.[5]

Draft resolutions and decision. [1]Conference collegium, A/CONF.62/L.94.
Letters. [2]Israel, 13 Apr., A/CONF.62/L.129; [3]Venezuela, 24 Apr., A/CONF.62/L.134.
Memorandum. [4]Conference collegium, A/CONF.62/L.93 & Corr.1.
Publications. [5]Third United Nations Conference on the Law of the Sea. Official Records, vol. XVI: Summary Records of Meetings, Eleventh Session, New York, 8 March-30 April 1982 (Plenary meetings 156-182; First Committee, meetings 55 and 56; Second Committee, meeting 59) and Documents, Sales No. E.84.V.2; vol. XVII: Resumed Eleventh Session, New York, 22 and 24 September 1982; Final Part of Eleventh Session and Conclusion of Conference, Montego Bay, Jamaica, 6-10 December 1982 (Plenary meetings 183-193) and Documents, Sales No. E.84.V.3.
Reports. Conference President, [6]A/CONF.62/L.86, [7]A/CONF.62/L.132 & Corr.1 & Add.1 & Add.1/Corr.1, [8]A/CONF.62/L.141 & Add.1 & Add.1/Corr.1.
Yearbook references. [9]1969, p. .734; 1981, [10]p. 131, [11]p. 134.

Territorial sea

According to part II of the Convention on the Law of the Sea, the sovereignty of a coastal State extended, beyond its land territory and internal waters or archipelagic waters, to an adjacent belt of territorial sea, to the airspace over it, and to its bed and subsoil (article 2). The Convention set out rules for determining the limits of this belt (see below) and for innocent passage by foreign ships through it.

Limits

Convention provisions. Under the Convention on the Law of the Sea, every State had the right to establish the breadth of its territorial sea up to a limit of 12 nautical miles from coastal baselines (article 3). The outer limit of this zone was defined as the line every point of which was at a distance from the nearest point of the baseline equal to the breadth of the territorial sea (article 4). The normal baseline was the low-water line along the coast as marked on official charts (article 5). In the case of island atolls or islands with fringing reefs, the baseline was the seaward low-water line of the reef (article 6). The Convention set conditions for drawing straight baselines in localities where the coastline was deeply indented, had a fringe of coastal islands, or was unstable due to the presence of a delta or other natural conditions (article 7).

Waters on the landward side of the territorial sea baseline, except for archipelagic States, were defined as the State's internal waters (article 8).

Dealing with the effect of some particular geographical features on the placement of baselines, the Convention provided that, in the case of rivers flowing directly into the sea, the baseline was a straight line across the river mouth between points on the low-water line of its banks (article 9). Rules were provided for drawing baselines across the mouths of bays whose coasts belonged to a single State (article 10). For ports, the outermost permanent harbour works forming an integral part of the harbour system, excluding offshore installations and artificial islands, would be regarded as part of the coast (article 11). Roadsteads normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the territorial sea, were included in that sea (article 12). Low-tide elevations-above water at low tide but submerged at high tide-could be used as the baseline only if they were no farther from shore than the breadth of the territorial sea; otherwise, they had no territorial sea of their own (article 13).

The coastal State could determine baselines by any of the foregoing methods to suit different conditions (article 14). Where the coasts of two States were opposite or adjacent to each other, neither could extend its territorial sea beyond the median line between them, unless they agreed otherwise or where it was necessary by reason of historic title or other special circumstances to delimit the area differently (article 15). Coastal States would be required to publicize, and deposit with the Secretary-General, charts or lists of geographical coordinates specifying the baselines and limits of the territorial sea (article 16).

Conference consideration. Among the States which did not participate in the vote on the Convention and which explained their positions at the meeting on 30 April 1982 at which the Conference adopted it, Albania said it had established a 15-mile territorial sea and reaffirmed that every State could determine the breadth of its territorial sea in accordance with its defence requirements, taking account of the region's geograohical. biological

and oceanographic conditions and without prejudice to the interests of international navigation and neighbouring States. Ecuador said that, throughout the negotiations, it had defended its rights in its 200-mile territorial sea.

Bangladesh said its vote for the Convention should be understood in the light of the special position of Bangladesh with regard to the drawing of baselines from which areas of maritime jurisdiction were measured. Sierra Leone reiterated its advocacy of a 200-mile territorial sea.

During the final week of the Conference in December, Canada described the agreement on a 12-mile territorial sea-incorporated into the laws of more than 80 coastal States-as an outstanding accomplishment, since such agreement had eluded the international community for decades and even centuries. Cyprus noted with satisfaction that delimitation of the territorial sea between States with opposite or adjacent coasts was based as in the past on equidistance. Greece thought the 12-mile limit could be regarded as part of customary international law, since it was already being applied by a majority of United Nations Members. Agreement on the breadth of the territorial sea, said the United Republic of Tanzania, would reduce conflicts of jurisdiction and competence; however, the limits agreed upon would cause serious adjustment problems for many States.

The Philippines said it had problems with the 12-mile limit because under historic and legal title it claimed a territorial sea of unique configuration, ranging in breadth from less than 3 to more than 200 miles; however, the economic rights to be gained from the even larger exclusive economic zone almost compensated for the territorial sea problem. Somalia stated that it had had a 200-mile territorial sea since adopting a decree to that effect in 1972 but, to the greatest extent possible, it would harmonize that law with its obligations under the Convention. Turkey reiterated its objection to the extension of the territorial sea to 12 miles, stating that in the narrow seas around its coasts such a rule would create inequitable results and constitute an abuse of rights; further, in delimiting the territorial sea between States with opposite or adjacent coasts, the median line could be applied only if it produced an equitable delimitation.

Communication. In a letter of 30 November to the Secretary-General,[1] Viet Nam transmitted a government statement of 12 November defining its territorial sea and declaring that all differences with countries relating to sea areas and the continental shelf would be settled through negotiations on the basis of mutual respect for each other's independence and sovereignty.

Letter. [1]Viet Nam, 30 Nov., A/37/697.

Innocent passage

Convention provisions. The Convention on the Law of the Sea affirmed the right of innocent passage through the territorial sea for ships of all States (article 17). It defined "passage" as navigation through the territorial sea whether or not the purpose was to enter internal waters or call at a roadstead or port outside those waters; in either case, passage must be continuous and expeditious, and ships could stop and anchor only for purposes of ordinary navigation or for reasons of force majeure, or to help others in distress (article 18). Passage was innocent so long as it did not prejudice the peace, good order or security of the coastal State; that excluded such activities as threat or use of force against the coastal State, weapons practice, information gathering or propaganda acts prejudicial to the coastal State's defence or security, the launching or taking on board of aircraft or military devices, the loading or unloading of items or persons contrary to the coastal State's customs and other laws and regulations, wilful and serious pollution, fishing, research and surveying, interference with a coastal State's communications systems or other facilities, and any other activity not directly bearing on passage (article 19).

In the territorial sea, submarines were required to navigate on the surface and to show their flag (article 20).

The Convention listed subjects on which the coastal State could adopt laws and regulations relating to innocent passage and with which foreign ships in its territorial sea must comply, including safety of navigation and the regulation of maritime traffic, protection of navigational aids and facilities and other facilities or installations, protection of cables and pipelines, conservation of the living resources of the sea, prevention of infringement of the coastal State's fisheries laws and regulations, preservation of that State's environment and prevention and control of pollution thereof, marine scientific research and hydrographic surveys, and prevention of infringement of the coastal State's customs, fiscal, immigration or sanitary laws and regulations; but such laws and regulations could not apply to the design, construction, manning or equipment of foreign ships, except to give effect to generally accepted rules or standards (article 21).

The coastal State, having regard to safety of navigation, could require foreign ships to use designated sea lanes and traffic separation schemes (article 22). Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances must carry documents and observe special precautionary measures established by international agreements (article 23).

The coastal State must not hamper innocent passage except in accordance with the Convention;

in particular, it must not impose requirements having the practical effect of denying or impairing the right of innocent passage, or discriminate against the ships of any State or against ships carrying cargoes to, from or on behalf of any State (article 24). However, the coastal State could act to prevent passage that was not innocent, could prevent any breach of the conditions to which admission to internal waters or to a port was subject and, after due notice, could temporarily suspend innocent passage in specified areas when that was essential to protect its security, including weapons exercises (article 25). No charge could be levied on foreign ships for their passage, but non-discriminatory charges could be levied for specific services to the ship (article 26).

The Convention provided different sets of rules applicable to ships operated for commercial and non-commercial purposes while passing through the territorial sea. With regard to merchant ships and government ships operated for commercial purposes, it limited the circumstances under which the coastal State's criminal jurisdiction could be exercised on board a foreign ship and required prior notification to a diplomatic or consular officer of the ship's flag State (article 27). It also limited civil jurisdiction, providing that a foreign ship could not be stopped or diverted to enable a coastal State to exercise such jurisdiction in regard to a person on board, and that the coastal State could not levy execution against or arrest a ship for purposes of civil proceedings except in respect of the ship's own obligations or liabilities in connection with its passage through that State's waters (article 28).

With regard to warships and other government ships operated for non-commercial purposes, the Convention defined "warship" as a ship belonging to a State's armed forces, bearing distinguishing marks, commanded by a government-commissioned officer and manned by a crew under regular armed forces discipline (article 29). The coastal State could require any warship to leave its territorial sea immediately in the case of non-compliance with its laws and regulations (article 30). The Convention established international responsibility of the flag State for damage caused by such a ship resulting from non-compliance with coastal State laws and regulations on passage or with rules of international law (article 31). However, except as specified in the Convention, nothing in the Convention would affect the immunities of such ships (article 32).

Conference consideration. Three amendments on innocent passage were presented to the Conference on the Law of the Sea in April 1982, but none was pressed to a vote. Two of them concerned the laws and regulations of coastal States relating to innocent passage (article 21). The first of these, by Gabon, would have empowered a coastal State to adopt laws and regulations relating to the innocent passage of warships, including the right to require prior authorization and notification for passage through the territorial sea.[2] The other amendment on this topic, by 28 States, would have authorized a coastal State to adopt laws and regulations in respect of security.[1]

An amendment by Greece on the meaning of innocent passage (article 19) would have defined such passage as prejudicial to the peace, good order or security of the coastal State if the ship was engaged in any of the activities listed in the original text or in any "similar" (rather than any "other") activity.[3]

With respect to the two amendments on laws and regulations of the coastal State for innocent passage, the President reported on 22 April[4] that the Chairman of the Second Committee had convened a representative group of delegations but had been unable to find a generally acceptable solution. At a plenary meeting on 26 April, the President read out a statement to the effect that the sponsors of the 28-nation amendment had agreed not to press for a vote, without prejudice to the rights of coastal States to adopt measures to safeguard their security interests in accordance with the Convention.

During the Conference's discussion of amendments, support for the position that the national security interests of coastal States obliged them to enact legislation requiring warships passing through their territorial sea to notify them in advance of such passage and/or to receive prior authorization for passage was voiced by Albania, Algeria, Angola, Argentina, Bahrain, Barbados, Brazil, Cape Verde, China, the Congo, the Democratic People's Republic of Korea, Djibouti, Ecuador, Egypt, Gabon, Guyana, India, Iran, the Libyan Arab Jamahiriya, Malta, Morocco, Nigeria, Oman, Pakistan, Papua New Guinea, the Philippines, Qatar, the Republic of Korea, Romania, Sao Tome and Principe, Sierra Leone, Somalia, the Sudan, Suriname, Trinidad and Tobago, the United Arab Emirates, the United Republic of Cameroon, Uruguay and Zaire.

A contrary view, that the provision should be left unchanged since it already protected the security interests of coastal States and that prior authorization or notification would impose intolerable limits on freedom of navigation, was supported by Australia, the Bahamas, Bulgaria, Canada, France, the Federal Republic of Germany, Iraq, New Zealand, Spain, Sweden, the Ukrainian SSR, the USSR and the United Kingdom. Many other States, without specifically mentioning the issue of innocent passage, stated that the provisions in this part of the Convention represented a delicate balance and should not be altered.

Albania, explaining on 30 April its non-participation in the vote on the Convention, said foreign warships had no right to pass through the territorial sea without the coastal State's prior consent; thus, in its view, the Convention violated the sovereign rights of coastal States.

China and Pakistan, which voted for the Convention, expressed the view that its provisions on innocent passage did not prejudice the right of the coastal State to require prior authorization or notification for the passage of foreign warships through the territorial sea in accordance with its laws and regulations. Romania said the agreement reached with the sponsors of the 28-nation amendment should be understood as not prejudicing the right of coastal States to adopt measures to safeguard their security Iran also voiced reservations about this provision.

During the closing week of the Conference in December, Cape Verde, the Democratic People's Republic of Korea, Iran, Malta, Romania, Somalia and the Sudan reiterated their view that the Convention recognized the right of coastal States to enact legislation to safeguard their security interests in regard to innocent passage through the territorial sea. Saint Lucia found the provision on innocent passage vague and said it could be interpreted to mean that passage through the territorial sea by foreign warships was deemed not innocent unless proven to be so. Finland stated that the Convention's enumeration of instances in which the coastal State could make laws and regulations relating to innocent passage was extremely important for a coastal State like Finland. Sweden said the regime for passage of warships and other non-commercial government-owned ships through the Swedish territorial sea was consistent with the Convention and could be maintained.

Barbados expressed concern that the Conference had not adopted a provision requiring foreign warships to seek permission from the coastal State to pass through its territorial waters, especially as Barbados legislation contained such a provision. Papua New Guinea reiterated its misgivings over the free movement of warships through the territorial sea under the guise of freedom of navigation. The United Republic of Tanzania did not regard these provisions as satisfactory in that they did not adequately protect coastal State interests. Taking a similar stand, Yemen said the passage of foreign warships and nuclear-powered vessels through the territorial waters of small developing States could hardly be described as innocent, and it would be difficult to argue that such passage did not infringe those States' sovereignty. Vanuatu regretted that the right of innocent passage probably made it impossible to attain the ideal of securing a nuclear-free Pacific zone by excluding from territorial waters vessels carrying nuclear weapons and materials.

The United Kingdom remarked that the provision stating that innocent passage was not subject to prior notification or authorization by the coastal State was a restatement or codification of existing international law.

Amendment not pressed, (1)Algeria, Bahrain, Benin, Cape Verde, China, Congo, Democratic People's Republic of Korea, Democratic Yemen, Djibouti, Egypt, Guinea-Bissau, Iran, Libyan Arab Jamahiriya, Malta, Morocco, Oman, Pakistan, Papua New Guinea, Philippines, Romania, Sao Tome and Principe, Sierra Leone, Somalia, Sudan, Suriname, Syrian Arab Republic, Uruguay, Yemen, A/CONF.62/L.117 & Corr.1; (2)Gabon, A/CONF.62/L.97; (3)Greece, A/CONF.62/L.123.
Report. (4)Conference President, A/CONF.62/L.132.

Contiguous zone

The Convention on the Law of the Sea provided that, in a contiguous zone extending not more than 24 nautical miles from the coastal baselines, a coastal State could exercise the control necessary to prevent and punish infringement of its customs, fiscal, immigration or sanitary laws and regulations committed within its territory or territorial sea (article 33).

In general statements made during the closing week of the Conference on the Law of the Sea in December 1982, Morocco remarked that the contiguous zone had been retained because it still had a function in view of the different kinds of jurisdictions exercised in the territorial sea and the exclusive economic zone. Turkey, however, considered the contiguous zone to have become obsolete in view of the establishment of the exclusive economic zone; it added that delimitation of the contiguous zone between opposite or adjacent States should be governed by the delimitation principles applied to the exclusive economic zone and the continental shelf.

Straits used for international navigation

Convention provisions. Legal rules governing straits used for international navigation, including the passage of foreign ships through such straits, made up part III of the Convention on the Law of the Sea.

These provisions began with a statement that the régime of passage through straits did not in other respects affect the legal status of the waters in those straits or the exercise by the States bordering them of their sovereignty or jurisdiction over such waters and their airspace, bed and subsoil (article 34). Nor did the provisions on straits affect internal waters within a strait, the legal status of the waters beyond the territorial sea of a bordering State or the legal regime in straits where passage was governed by long-standing international conventions (article 35). Further, this part of the Convention did not apply to straits through which ships could pass on a convenient route without leaving an exclusive economic zone or the high seas (article 36).

The Convention went on to define the right of transit passage through straits used for international navigation between different parts of an exclusive economic zone or the high seas (article 37). It provided that all ships and aircraft were to enjoy the right of transit passage, which it defined as the exercise of freedom of navigation and overflight solely for the purpose of continuous and expeditious transit from one part of the seas to another, without precluding passage for the purpose of entering, leaving or returning from a State bordering the strait (article 38).

Ships and aircraft in transit passage must proceed without delay through or over the strait, refraining from any threat or use of force against the bordering State and any activities other than those incident to their normal modes of continuous and expeditious transit, save in cases of force majeure or distress; ships must comply with generally accepted international regulations, procedures and practices for safety at sea and for the prevention and control of pollution from ships, and aircraft must observe the Rules of the Air set by the International Civil Aviation Organization (ICAO) and monitor the assigned air traffic control radio frequency (article 39). Ships could not carry out any research or survey activities without the bordering State's prior authorization (article 40).

States bordering straits could designate sea lanes and prescribe traffic separation schemes for navigation where necessary to promote safe passage, but such arrangements must conform to generally accepted international regulations and be approved by the competent international organization (article 41). Bordering States could also adopt non-discriminatory laws and regulations governing the safety of navigation and regulation of maritime traffic, prevention and control of pollution by giving effect to international regulations regarding the discharge of noxious substances, prevention of fishing, and the loading or unloading of any item or person in contravention of the customs, fiscal, immigration or sanitary laws of the bordering State (article 42). User and bordering States should co-operate in the establishment and maintenance of navigational and safety aids or other navigational improvements, and for the prevention, reduction and control of pollution from ships (article 43). Bordering States must not hamper transit passage and must publicize any known danger to navigation or overflight (article 44).

The regime of innocent passage, as defined elsewhere in the Convention, was to apply in straits excluded from application of the rules for transit passage, including those used for passage between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State; and innocent passage through such straits could not be suspended (article 45).

A provision on straits (article 233) in the part of the Convention concerned with protection of the marine environment allowed bordering States to take appropriate enforcement measures against a foreign commercial vessel whose violation of national laws on safety of navigation or pollution control caused or threatened major damage to the marine environment of the straits.

Conference consideration. Two of the three amendments voted on by the Conference on the Law of the Sea in April 1982 were proposals by Spain on issues relating to transit passage throuh straits used for international navigation.[2] Neither was approved.

One of these amendments, to the article on duties of ships and aircraft during transit passage (article 39), would have deleted the word "normally" from the provision that State aircraft in transit passage would normally comply with the ICAO Rules of the Air. This was rejected by a recorded vote of 21 to 55, with 60 abstentions.

Under the second amendment, affecting laws and regulations of States bordering straits relating to transit passage (article 42), bordering States would have been entitled to give effect to "generally accepted" (rather than "applicable") international regulations on the discharge of oil, oily wastes and other noxious substances in straits. This amendment failed to receive a simple majority (79) of the 157 delegations participating in the session-the vote having been 60 to 29, with 51 abstentions.

Spain did not press for a vote on another part of its amendment affecting the same provision, which would have broadened the reference to "wastes" by deleting "oily".

Three amendments by Greece on the transit passage of aircraft over straits were not pressed to a vote.[1] One, on the duties of ships and aircraft during such passage (article 39), would have added a clause specifying that the width of a strait, particularly for the purpose of passage by aircraft, should be at least equal to the width of an international airway. The second, affecting the provisions on sea lanes and traffic separation schemes (article 41), would have added a paragraph requiring bordering States to designate predetermined air routes and prescribe air traffic procedures for the purpose of promoting the safe and efficient passage of aircraft over straits. The third amendment, concerning the laws and regulations of bordering States relating to transit passage (article 42), would have authorized States to enact laws and regulations on air traffic safety and the rules, regulations and procedures of ICAO.

During the Conference's discussion, Bulgaria, Hungary, Mongolia, Singapore, the Ukrainian SSR and the USSR opposed amendments to change the articles on straits, on the ground that

they would erode freedom of navigation or that the articles were part of a negotiated package. Malaysia supported the Spanish amendment to delete "normally" from the provision on compliance with the Rules of the Air but the United Kingdom opposed it while supporting the other two Spanish amendments. Denmark and Sweden said they could accept the proposed rules regarding passage through straits, which maintained (in article 35) the existing régime in straits where passage was regulated in whole or in part by long-standing international conventions-a situation applicable to the strait between them.

Spain, explaining on 30 April why it had abstained in the vote on the Convention, cited the fact that the Conference had not accepted its amendments on transit passage through straits; it added that Spain did not regard the Convention's provisions on that matter as constituting a codification of customary law.

During the closing week of the Conference in December, Canada spoke of the new provisions on transit passage through straits used for international navigation as offering a major inducement to maritime States to sign the Convention. Iraq said the application in good faith of the régime of navigation in straits, and its extension to access to straits and their islands, could make of such straits a channel of co-operation and peace.

On the other hand, Israel, citing its special interest in freedom of navigation and overflight through the Strait of Tiran and the Gulf of Aqaba as governed by its peace treaty with Egypt, said the Convention contained regressive elements caused by distortions introduced in the interests of political opportunism; those distortions caused great difficulty for Israel, except to the extent that broader rights were accorded to the users of some straits through particular stipulations and understandings. The United Republic of Tanzania viewed the provisions on straits as having little to do with the peaceful uses of the seas, since their main purpose was, military.

Greece said it intended to submit an interpretive declaration to facilitate the just and effective application of the provisions concerning transit passage through straits used for international navigation.

Amendments. (1)Greece, A/CONF.62/L.123 (not pressed): (2)Spain, A/CONF.62/L.109 & Corr.2 (para. 1, rejected: para. 2, not adopted).

Archipelagic States

Convention provisions. The Convention on the Law of the Sea, in part IV, defined archipelagic States as those constituted wholly by one or more archipelagos, which it further defined as groups of islands, interconnecting waters and other natural features so closely interrelated as to form an intrinsic geographical, economic and political entity, or which historically had been regarded as such (article 46).

For the purpose of defining their maritime zones, archipelagic States could draw straight archipelagic baselines up to 100 nautical miles long joining the outermost points of their outermost islands and drying reefs, so long as the ratio of water to land area within those lines did not exceed 9 to 1 and provided that the resulting area did not cut another State off from the high seas or the exclusive economic zone (article 47). The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf would be measured from those baselines (article 48). The sovereignty of an archipelagic State extended to the waters enclosed by those baselines as well as to the airspace above and the bed and subsoil below (article 49). The rules for delimiting internal waters were the same as those for the territorial sea of continental States (article 50).

Traditional fishing rights of neighbouring States were to be respected by the archipelagic State, along with existing agreements with and existing submarine cables laid by other States; the terms and conditions for the exercise of rights and activities, including the areas to which they applied, were to be regulated by bilateral agreements at the request of any of the States concerned (article 51).

Ships of all States enjoyed the right of innocent passage through archipelagic waters, though such passage could be temporarily suspended in specilied areas by the archipelagic State if that was essential to protect its security (article 52). The archipelagic State could designate sea lanes and air routes for passage through or over those waters by ships and aircraft travelling from one part of the high seas or an exclusive economic zone to another (article 53). Archipelagic sea lanes passage was to be governed, *mutatis mutandis*, by the same rules as transit passage through straits used for international navigation in respect of the duties of ships and aircraft during passage, research and survey activities, and duties and laws and regulations of the bordering State (article 54).

Conference consideration. Greece proposed in April 1982 but later withdrew an amendment that would have added a new article applying to archipelagos forming part of a State's territory the same rules for measuring maritime zones that applied to States consisting entirely of an archipelago.(1)

Canada, speaking after the adoption of the Convention in April, described the concept of archipelagic States as an important innovation that had solved one of the Conference's most delicate problems.

Speaking during the Conference's final week in December, several archipelagic States welcomed

the Convention's clauses on this topic. The Bahamas saw them as balanced between the legitimate interests of archipelagos to be regarded as a single entity and the interest of the international community in free and unobstructed movement of legitimate maritime traffic. Cape Verde hailed these provisions as a major achievement for the protection of its legitimate interests in preserving the unity and integrity of its territory. Fiji said it had already incorporated the concept into its legislation.

Indonesia observed that it had promulgated the archipelagic State concept in 1957, enacted it into law in 1960 and was gratified to see it incorporated into the Convention. Malaysia, noting that it had concluded in February 1982 a treaty with Indonesia which provided for the continuance of Malaysia's legitimate rights and interests, said the Convention respected such rights and interests in cases where the archipelagic waters of one State lay between two parts of an adjacent State. The Netherlands Antilles, also welcoming the Convention's provisions on this topic, said it had taken them as a point of departure in negotiations with Venezuela on maritime boundaries which had resulted in a treaty.

Papua New Guinea, while welcoming the new regime, said freedom of navigation through archipelagic waters must always be weighed against security risks to the archipelagic State; it voiced misgivings over what it referred to as the newly created right (under article 53) of submarines to remain below the surface when passing through archipelagic sea lanes. The Philippines said the fact that the Convention recognized the sovereignty of the archipelagic State over archipelagic waters, and the airspace above and sea-bed below them, was the weightiest consideration leading it to sign the Convention; in exercise of that sovereignty, the archipelagic State could designate sea-lanes for the passage of foreign ships and enact legislation to ensure that they complied with Convention obligations, including the duty to refrain from force against the archipelagic State.

India reiterated its view that a group of islands which was an integral part of a State's territory should be entitled to the status of an archipelago. Spain thought it unfair that the Convention excluded such archipelagos from the archipelagic régime.

Amendment withdrawn. (1)Greece, A/CONF.62/L.123.

Exclusive economic zone

Convention provisions. Part V of the Convention on the Law of the Sea defined a legal régime for the maritime area beyond and adjacent to the territorial sea known as the exclusive economic zone, where the rights and jurisdiction of the coastal State and the rights and freedoms of other States were governed by the Convention (article 55). In that zone, the coastal State had sovereign rights over natural resources and economic activities, such as production of energy from water and wind, as well as jurisdiction over offshore structures, marine scientific research, and protection and preservation of the marine environment (article 56). The breadth of the zone must not extend beyond 200 nautical miles from the baselines used to measure the breadth of the territorial sea (article 57).

With regard to the rights and duties of other States in this zone, the Convention affirmed that they enjoyed the freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and related lawful uses such as the operation of ships, aircraft and submarine cables and pipelines (article 58).

Conflicts between States over rights and jurisdiction in this zone should be resolved on the basis of equity and in the light of all relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole (article 59).

Delimitation of the exclusive economic zone between States with opposite or adjacent coasts was to be effected by agreement on the basis of international law in order to achieve an equitable solution; failing agreement within a reasonable time, States were to resort to the dispute settlement procedures provided for in the Convention (article 74). States were required to give due publicity to charts showing the outer limits of their zone or, where appropriate, lists of geographical coordinates, and to deposit copies with the Secretary-General (article 75).

This part of the Convention also dealt with artificial islands, installations and structures in the zone and with the conservation and utilization of its living marine resources.

Conference consideration. Lesotho proposed in April 1982 but did not press to a vote an amendment (to article 56) that would have required each coastal State, particularly the developed ones, to contribute in cash or kind to a Common Heritage Fund from their proceeds from exploitation of the non-living resources of the exclusive economic zone.[1] Contribution rates, as a percentage of production volume or net revenue, would be determined by the International Sea-Bed Authority, which would divide the revenue among parties to the Convention on the basis of equitable sharing criteria, using some of it to protect the marine environment, to foster marine technology transfer and to help finance the Authority's Enterprise.

Zaire proposed, but did not press, a new article (75 bis) permitting States to apply to competent international bodies for the determination of

technical norms related to the zone and requiring them to utilize a conciliation commission to settle disputes regarding the Convention's provisions on the zone.[2]

Support for a Common Heritage Fund was voiced by Algeria, Nepal and Singapore. Though expressing sympathy for the idea, Trinidad and Tobago reserved its position on the amendment proposed by Lesotho. Yugoslavia also favoured the concept but opposed any change in the pertinent article. The United Kingdom opposed the proposal.

Explaining their positions on the Convention following its adoption on 30 April, Chile, Colombia, Ecuador and Peru, the members of the Permanent Commission of the South Pacific, reiterated the Commission's position, stated in a 28 April letter to the Conference President,[3] that the universal recognition of the coastal State's rights of sovereignty and jurisdiction within the 200-mile limit, provided for in the Convention, was a fundamental achievement of the Commission's members. Canada viewed the zone as one of the Conference's greatest compromises, in which reciprocal concessions had been made to accommodate various interests.

During the Conference's final week in December, Brazil expressed its understanding that the Convention did not authorize other States to carry out military exercises or manoeuvres within the zone, particularly those involving weapons or explosives, or to operate any installation or structure there, without the prior consent of the coastal State. Cape Verde observed that the zone was a compromise concept that prejudiced the national interests of States such as Cape Verde which had proclaimed a broader territorial sea. Chile, observing that it had been the first country to declare such a zone-in 1947—described the zone as the essential legal concept of the Convention.

The Cook Islands, stressing the importance of the exclusive economic zone to a country such as itself with a land area of 244 square kilometres that claimed a zone of 1,360,000 square kilometres in the centre of the Pacific Ocean, was willing to negotiate on resource exploitation with other States having much greater technological capabilities. Nauru and Vanuatu also pointed out the significance of the zone for countries like themselves with few land resources. New Zealand observed that, as small Pacific island countries lacked the ability to enforce their resource jurisdiction, they would obtain the full benefit of such zones only if more powerful States respected their international obligations.

Fiji said the South Pacific countries had been the first to establish a regional fisheries organization—the South Pacific Forum Fisheries Agency-based solely on the exclusive economic zone concept. India said the Convention protected the legitimate interests of coastal States in the seas around them, including exploitation of their living and non-living resources. Mexico pointed to the exclusive economic zone concept as one of the most important achievements of the Convention and recalled that it had pioneered in establishing such a zone as far back as 1976. Morocco mentioned its national legislation, dating back to 1973, establishing a 70-mile exclusive fishing limit, and said the establishment of that zone had not precluded the application of principles of international co-operation there.

Ireland and Italy believed that the provisions on the exclusive economic zone reconciled the interests of coastal States and others. The United Republic of Tanzania said the introduction of the zone distributed resources fairly between coastal States and the international community, and instituted a more rational system of management; however, coastal States should have been given more responsibilities and power in regard to marine scientific research and preservation of the marine environment.

Somalia opposed efforts to internationalize the exclusive economic zone, which it said was not part of either the territorial sea or the high seas. Uruguay, observing that the Convention's provisions on maritime areas adjacent to coasts were compatible with the principles underlying its own legislation, said the zone was a *sui generis* area of national jurisdiction that was not part of the high seas, where the coastal State had rights and a residual competence and where non-peaceful uses by third States were excluded, as were their installations and structures.

Iraq found the exclusive economic zone unacceptable but believed its shortcomings could be redressed with good faith on the part of the countries of each region, which could conclude additional conventions on fisheries, pollution and joint scientific research. Sweden said it had suffered as a result of the extension of the fishery zones of other States; the land-locked and geographically disadvantaged States were the losers in the hard competition for the sea's riches.

The United Kingdom said it did not agree with statements made in the Conference which purported to modify the effect of the Convention's provisions on the zone.

Delimitation. During the March/April Conference debates, some States, including Turkey, the United Arab Emirates and Venezuela, felt that the solution to the delimitation of the exclusive economic zone and the continental shelf was not clear enough and needed redrafting; Turkey sought to have delimitation through agreement between the parties based on equity, while the United Arab Emirates favoured the median line principle (drawing the boundary midway between the two coastlines).

Another group of States-including the Bahamas, Cape Verde, Cyprus, Finland, Guyana and Iraq-argued that the articles on delimitation, though not satisfactory in all respects, represented a balance resulting from arduous negotiations, and therefore opposed reopening the debate on them. A number of other States, though not specifically mentioning the delimitation provisions, believed that the parts of the Convention pertaining to the various maritime zones under national jurisdiction should be left unamended.

Venezuela based its vote against the Convention on its position that, since the Convention did not allow reservations, it could not accept the provisions on delimitation of maritime boundaries and the continental shelf between States with opposite or adjacent coasts. Thailand also cited difficulties with the delimitation provisions when explaining on 30 April why it had abstained in the vote.

During the December discussion, Bulgaria said it viewed the delimitation provisions positively in that they provided for agreement between States in accordance with international law and took account of geographic features and special circumstances with a view to achieving a just solution. In the view of Colombia, the delimitation provisions stressed the predominant role of the Convention and placed customary law in second place; conciliation was the Convention's key contribution to the settlement of maritime disputes. Guyana warned against attempts to insinuate into bilateral relations, under the guise of maritime delimitation, disputes inspired by ambitions rooted in territorial aggrandizement.

Somalia understood the delimitation provisions to mean that an equitable solution was the goal. Turkey also stressed the goal of an equitable solution as the primary factor in resolving delimitation disputes and said the article's reference to international law did not lead to a presumption that equidistance was preferred over other methods; it added that delimitation in semi-enclosed seas could be settled only through agreement reached directly between the parties on the basis of equity.

Some States reiterated their preference for the median line as the normal guide for drawing boundaries in delimitation disputes. The Bahamas was of this view, though adding that it could accept the Convention's provisions. Cyprus would have preferred a more clear-cut formulation and reiterated its view that the overall objective in delimitation should be an equitable result in accordance with international law through application of the median line where appropriate. Democratic Yemen said it would be bound by the median line principle in regard to delimitation of all maritime boundaries with its neighbours. The United Arab Emirates reiterated its belief that the median line should be employed.

Amendments not pressed. (1)Lesotho, A/CONF.62/L.115; (2)Zaire, A/CONF.62/L.107.
Letter. (3)Chile, Colombia, Ecuador, Peru, 28 Apr., A/CONF/62/L.143.

Offshore structures

The Convention on the Law of the Sea gave the coastal State the exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and structures in the exclusive economic zone, and it set up safety and other conditions for their operation and removal (article 60).

The 1981 text of this article had stipulated that any such offshore structures which were abandoned or disused must be entirely removed. The final version, taking account of factors such as cost and safety which might make complete removal impractical, provided for removal to ensure safety of navigation, taking account of generally accepted international standards and with due regard to fishing, protection of the marine environment, and the rights and duties of other States; it added that the depth, position and dimensions of structures not entirely removed must be publicized.

This change came about through the incorporation into the draft Convention of an informal United Kingdom amendment originally made in 1981[(4)] and reiterated at an informal meeting of the Second Committee on 16 March 1982. This was done by the Conference collegium in its memorandum of 2 April 1982[(2)], after the Second Committee Chairman, in a report of 26 March[(3)], had found the proposal to be the only one at that stage that had broad enough support for inclusion in the Convention.

A proposal by France that would have set precise limits on the height of unremoved portions of disused structures[(1)] was not pressed to a vote.

The United Kingdom amendment was supported during the Conference's March/April debates by Australia, Barbados, Brazil, Chile, Colombia, the Federal Republic of Germany, Guyana, Iceland, India, Ireland, Japan, Madagascar, Malaysia, the Netherlands, Nigeria, Norway, Oman, Portugal, Sierra Leone, Singapore, Sweden, and Trinidad and Tobago. Several of them felt that it provided an equitable balance between the interests of coastal States and those of other users of the sea, ensuring the safety of navigation and protection of the marine environment without interfering with fishing or shipping. The Ivory Coast preferred the text as it stood, saying that the amendment, by requiring only partial removal of offshore structures, could create obstacles to shipping and endanger fishing nets.

France, supported by the Ivory Coast, Madagascar and Yugoslavia, said in favour of its amendment that it was necessary to add specifics regarding the maximum height of any parts of

installations that were not to be removed, in order to limit the danger to navigation and the risk of damage to fishing equipment. Malaysia, Trinidad and Tobago, and the United Kingdom could not support the French amendment.

Amendment not pressed. (1)France, A/CONF.62/L.106.
Memorandum. (2)Conference collegium, A/CONF.62/L.93.
Report. (3)2nd Committee Chairman, A/CONF.62/L.87.
Yearbook reference. (4)1981, p. 136.

Living resources of the zone

Convention provisions. Various rules for the protection and utilization of the fisheries resources of the exclusive economic zone, and for the rights and duties of coastal and other States in relation to those resources, were included in the Convention on the Law of the Sea.

The basic rule in regard to conservation was that the coastal State was to determine the allowable catch in the zone and, taking into account the best scientific evidence available, to ensure through proper conservation and management that the resources were not endangered by over-exploitation (article 61). Opportunities to share in those resources were offered under a provision requiring a coastal State which did not have the capacity to harvest the entire allowable catch to give other States access to the surplus; at the same time, the fishermen of other States must comply with the conservation measures and other fisheries rules established by the coastal State (article 62).

The Convention called for international agreement on conservation in the two types of cases when stocks occurred beyond a single State's exclusive economic zone ("straddling stocks"): when the stocks ranged between the zones of two or more coastal States, those States were to seek agreement; and when the stocks ranged beyond the zone into an adjacent high seas area, the coastal States and those fishing in the adjacent area were to seek agreement on conservation in that area (article 63).

With regard to highly migratory species, States whose nationals fished for them were to co-operate with coastal States on conservation and optimum utilization measures throughout the region, both within and beyond the exclusive economic zone (article 64). Such species, including tuna, mackerel, marlins, swordfish, oceanic sharks, dolphins and cetaceans (porpoises and whales), were listed in annex I to the Convention. Coastal States and international organizations could prohibit, limit or regulate the exploitation of marine mammals more strictly than required by the Convention (article 65).

The Convention provided separately for the conservation of anadromous stocks, such as salmon and shad, which ascend rivers from the sea at certain seasons for breeding, and catadromous species, such as eels, which live in fresh water but go to the sea to spawn. States in whose rivers anadromous stocks originated were given primary responsibility for such stocks and, as a rule, fisheries would be limited to waters landward of the outer limits of the exclusive economic zone (article 66). Responsibility for management of catadromous species was placed on the coastal State in whose waters they spent the greater part of their life cycle, and harvesting would be limited to waters landward of the outer limits of the exclusive economic zone (article 67). Sedentary species in the zone were excluded from the application of all fisheries rules contained in this part of the Convention (article 68); they were among the resources covered by the coastal State's sovereign rights over its continental shelf (article 77).

The Convention set out the right of land-locked States (article 69) and of geographically disadvantaged States (article 70) to participate, on an equitable basis and in agreement with the States concerned, in exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States in the same region or subregion, taking into account the economic and geographical circumstances of all States concerned. "Geographically disadvantaged States" were defined as-coastal States whose geographical situation made them dependent for adequate fish supplies on the living resources of the zones of other States in the region or subregion, and coastal States with no exclusive economic zone. These provisions for access by other States would not apply, however, in the case of a coastal State whose economy was overwhelmingly dependent on fisheries in its zone (article 71). Nor could these rights of access be transferred to others by lease or licence, joint ventures or otherwise, unless agreed by the States concerned (article 72).

The Convention gave coastal States the right to enforce their fisheries laws and regulations in the zone, but required prompt notification to the flag State when its vessel was arrested and release of vessels and crews on the posting of reasonable bond or other security; it also forbade imprisonment or other corporal punishment as a penalty for violation (article 73).

Conference consideration. Several amendments on living resources in the exclusive economic zone were presented to the Conference on the Law of the Sea in April 1982, but were not pressed to a vote.

A proposal by Romania (to article 70) on the rights of States with special geographical characteristics[3] would have had the effect of a similar amendment by Romania and Yugoslavia (to article 62) on utilization of the zone's living resources[4]-namely, to increase the access of developing States to fisheries in zones outside their

own region or subregion. An amendment by Lesotho (to article 62) would have added a provision allowing developing land-locked States to participate in exploiting the allowable catch of the living resources of the zones in the same region or subregion.[2]

Zaire proposed amendments to amplify the concept of "surplus" (in article 62) by replacing it with a phrase giving other States, by agreement, access to the part of the entire allowable catch not effectively harvested by the coastal State.[5] It also proposed to delete what it called a superfluous provision stating that the provisions for access by other States did not apply in the case of a coastal State whose economy was overwhelmingly dependent on fisheries in its zone (article 71).

Eight States-Australia, Canada, Cape Verde, Iceland, the Philippines, Sao Tome and Principe, Senegal and Sierra Leone-proposed a new paragraph (in article 63) to strengthen conservation measures for "straddling stocks" in areas adjacent to the exclusive economic zone.[1] It would have made the adoption of such measures mandatory and empowered an international tribunal to establish definitive or provisional measures for such areas if the coastal and fishing States concerned could not agree.

During the Conference's March/April debate, Austria, the German Democratic Republic, Hungary, Iraq, Romania and Zimbabwe said the provisions on the exclusive economic zone should offer more just and adequate solutions to the problems of States fishing in distant waters and to those of the land-locked and geographically disadvantaged States. Canada, Cape Verde, Guyana, Iceland, Madagascar, New Zealand, Sao Tome and Principe, Somalia, Suriname, Uruguay and Yugoslavia sought a further refinement of the provision (article 63) on conservation of "straddling stocks" in areas beyond and adjacent to the exclusive economic zone in order to enlarge the scope of the coastal State's rights over the resources in its zone, as provided in the proposal by the eight States and in an informal proposal submitted by Argentina in 1980.[6] Japan, the Ukrainian SSR and the USSR opposed a change in this provision, stating that arrangements for the conservation of such stocks should be based on voluntary agreement (Japan) and that the amendment would curtail freedom to fish on the high seas (USSR).

Thailand, explaining on 30 April why it had abstained in the vote on the Convention, said its fishing industry would be adversely affected by the exclusive economic zone provisions, to the detriment of a large sector of the population.

Romania, though voting for the Convention, said the provisions on the right of access to the fishery resources of economic zones did not take sufficiently into account the situation of countries like Romania which were in regions or subregions poor in fishery resources and therefore needed access to fisheries elsewhere; Romania hoped its situation would be taken into account in bilateral fishing agreements and the arrangements of international agencies. Zambia recalled its advocacy of regional economic zones and continental shelves that would not operate to the exclusion of land-locked States.

Bulgaria said in December that it accepted the establishment of the exclusive economic zone as an essential concession to coastal States but thought there should be no unjustifiable limitation of the reasonable utilization of living resources and access by other interested countries, especially the geographically disadvantaged or those with limited fisheries of their own, whose economy depended on fishing and which had made considerable investments in long-distance fishing. The German Democratic Republic remarked that, in the interest of world-wide co-operation, especially for the benefit of developing countries, it had accepted compromises entailing substantial economic losses, as its population depended on distant-water fishing, especially in the North Atlantic, and it had had to shoulder considerable additional burdens since the introduction of economic zones. Yugoslavia said the priority attached to exploiting surpluses within a region or subregion did not preclude bilateral co-operation between developing coastal States of different regions and subregions.

Canada remarked that, after the so-called fish wars prior to 1973, the Conference had rightly recognized the need to assign to coastal States control over all living resources within a 200-mile zone. Iceland particularly welcomed the provisions on the exclusive economic zone, observing that their policy guidelines had been incorporated into Icelandic law in 1948.

Chad viewed the provision on access to the exclusive economic zones of States in the same region as a safeguard, although minimal, for the land-locked States. Mauritius said it was gratified to see the Convention reflect the basically African idea of permitting land-locked States access to the surplus of living resources. Morocco said it had long advocated the right of all States in a region to have access to the sea and, if possible, to use its living resources to meet the needs of all neighbouring States. Trinidad and Tobago believed the Convention did not properly accommodate the position of land-locked and geographically disadvantaged States in respect of access to the living resources of the exclusive economic zones of States in the same region or subregion; an accommodation should have been made for States which had traditionally fished in such areas prior to the declaration of the zones.

India said it was intensively developing its fishing capability to meet its protein needs and would base its computations of allowable catches on the ultimate level of that capability. In the view of Iran, the rights of geographically disadvantaged States were without prejudice to the exclusive right of coastal States on enclosed and semi-enclosed seas, such as the Persian Gulf and the Sea of Oman, with large populations predominantly dependent on relatively poor fishery stocks. Mauritania emphasized that land-locked and geographically disadvantaged countries could have access to another State's exclusive economic zone only on the basis of bilateral, subregional or regional agreements.

Cane Verde remarked that the Convention obliged States fishing for straddling stocks in an area adjacent to the exclusive economic zone to enter into agreement with the coastal State on the measures necessary to conserve such stocks and associated species. Costa Rica said its national law requiring-foreign vessels to pay for permits to fish in its exclusive economic zone applied also to highly migratory species such as tuna, in conformity with the Convention. Noting that highly migratory species were the major living resource of the exclusive economic zones of many small Pacific island countries, New Zealand said such countries were developing co-operation with distant-water-fishing nations that were prepared to respect their sovereign rights over such resources, including tuna.

Amendments not pressed. [1]Australia, Canada, Cape Verde, Iceland, Philippines, Sao Tome and Principe, Senegal, Sierra Leone,' A/CONF.62/L.114 & Corr.1; [2]Leso;ho, A/CONF.62/L.99; [3]Romania, A/CONF.62/L.96; [4]Romania. Yugoslavia. A/CONF.62/L.112: [5]Zaire. A/CONF.62/L.107.
Yearbook reference. [6]1980, p. 151.

Continental shelf

Convention provisions. Rules relating to the continental shelf were set out in part VI of the Convention on the Law of the Sea.

The shelf was defined (article 76) as comprising the sea-bed and subsoil of the submarine areas that extended beyond the territorial sea to the outer edge of the continental margin-the submerged prolongation of a coastal State's land mass, short of the deep ocean floor-or, where the outer edge of the continental margin did not extend that far, to a distance of 200 nautical miles from the baselines from which the territorial sea was measured (in the latter case it would have the same outer limits as the exclusive economic zone). A State would have two options for establishing the outer edge of its continental margin: one based on the thickness of sedimentary rocks beyond the foot of the continental slope and the other defined by a line not more than 60 miles beyond the foot of the slope. Two alternative outer limits would be fixed for States whose shelf extended beyond 200 miles: 350 miles from the coastal baselines or 100 miles beyond where the ocean depth reached 2,500 metres.

A Commission on the Limits of the Continental Shelf, composed of 21 experts elected by the States parties to the Convention and set up under annex II of the Convention on the basis of equitable geographical representation, would make recommendations to coastal States on matters related to the establishment of the shelfs outer limits. Such recommendations would require the approval of two thirds of the Commission members present and voting. The limits established by the coastal State on the basis of those recommendations would be final and binding.

The coastal State would have sovereign rights to explore the shelf and exploit its natural resources, consisting of non-living resources and sedentary living species; no one could undertake such activities without its consent (article 77). However, those rights would not affect the legal status of the water or airspace above the shelf and there must be no unjustifiable interference with navigation and other rights and freedoms of others (article 78).

With regard to specific activities on the shelf, all States were entitled to lay submarine cables and pipelines there, though the coaštal State could specify conditions and the course of pipelines would be subject to its consent (article 79). The rules for artificial islands, installations and structures in the exclusive economic zone would also apply to those on the shelf (article 80). The coastal State would have the exclusive right to authorize and regulate drilling on the shelf (article 81).

The Convention would require coastal States to contribute to the International Sea-Bed Authority, in cash or kind, a portion of the value or volume of production from any exploitation of the outer shelf beyond 200 miles from the coastal baselines, at a rate that would rise from zero during the first five years of exploitation at any given site to 1 per cent in the sixth year and then to a maximum of 7 per cent in the twelfth year and thereafter; the proceeds would be distributed to States parties to the Convention on the basis of equitable sharing criteria, taking account of the needs of developing countries and particularly the least developed and land-locked (article 82).

The Convention's rules for delimiting the shelf between States with opposite or adjacent coasts were similar to those governing delimitation of the exclusive economic zone-calling for agreement on the basis of international law and, failing agreement, resort to dispute settlement procedures (article 83). The requirements for charts and lists of geographical co-ordinates to

define the shelf's outer limits (article 84) were also similar to those for the exclusive economic zone.

The Convention confirmed the right of coastal States to exploit the subsoil of their shelf by means of tunnelling (article 85).

A statement of understanding annexed to the Conference's Final Act[3] set out a special method for establishing the outer edge of the continental margin in the southern part of the Bay of Bengal (affecting Sri Lanka in particular).

Conference consideration. Two amendments relating to the continental shelf were submitted to the Conference on the Law of the Sea in April 1982 but neither was pressed to a vote. A United Kingdom amendment would have required States to fix the outer limits of their shelf (under article 76) after "taking into account" (rather than "on the basis of') recommendations by the Commission on the Limits of the Continental Shelf.[2] Lesotho proposed that the payments from the proceeds of exploiting the outer shelf (article 82) be made to the proposed Common Heritage Fund.[1]

Canada, speaking in December, stated that the Conference had achieved a balance between coastal States with broad and narrow continental shelves. Ireland believed the acknowledgement of the coastal State's basic jurisdiction throughout its geographical continental margin was balanced by the adoption of criteria and methods for defining the outer boundary that cut off parts of the margin from national jurisdiction, and also by the coastal State's obligation to share revenue from the outer shelf areas with the international community.

Algeria, on the other hand, thought that the extension of the continental shelf of certain coastal States beyond the limits of the exclusive economic zone was a distortion of equity. Paraguay regarded such an extension as a serious erosion of the common heritage principle and hoped the formula governing the international sharing of some of the revenues from the outer shelf would be revised in the future so as to provide a new and important source of revenue for development. The United Arab Emirates reiterated its view that the shelf should not extend beyond 200 miles. Yugoslavia added that it had accepted the Convention's compromise on this point with reluctance.

Other developments. The International Court of Justice had two cases before it in 1982 concerned with the delimitation of the continental shelf in the Mediterranean Sea: between the Libyan Arab Jamahiriya and Malta and between the Libyan Arab Jamahiriya and Tunisia (see LEGAL QUESTIONS, Chapter I).

Amendments not pressed. [1]JLesotho, A/CONF.62/L.115; [2]United Kingdom, A/CONF.62/L.126.
Final Act. [3]A/CONF.62/121.

High seas

Convention provisions. Part VII of the Convention on the Law of the Sea pertained to all parts of the sea not included in the exclusive economic zone, the territorial sea or internal waters, or in archipelagic waters (article 86).

The high seas were open to all States, and freedom of the high seas included freedom of navigation and overflight, freedom to lay submarine cables and pipelines and to construct artificial islands and similar installations, and freedom of fishing and scientific research (article 87). The area was reserved for peaceful purposes (article 88) and no State could claim sovereignty over any part of it (article 89).

The Convention affirmed the right of every State to sail ships flying its flag on the high seas (article 90). Every State must fix the conditions for granting to ships its nationality and the right to fly its flag; a genuine link must exist between the State and the ship (article 91). Ships could sail under the flag of one State only and, save in exceptional cases, were subject to its exclusive jurisdiction on the high seas (article 92). These provisions did not prejudice the question of ships employed on the official service of the United Nations, its specialized agencies or the International Atomic Energy Agency, flying the flag of the organization (article 93).

In respect of the duties of the flag State, the Convention required every State to exercise effectively its jurisdiction and control in administrative, technical and social matters over ships flying its flag, and to take, in conformity with generally accepted regulations, procedures and practices, such measures for those ships as were necessary to ensure safety at sea (article 94). Complete immunity from the jurisdiction of any State other than the flag State was accorded to warships (article 95) and ships owned and operated by a State and used only on government non-commercial service (article 96), while on the high seas. The Convention regulated penal jurisdiction in the event of a collision or any other navigation incident, stating in particular that no arrest or detention of a ship, even for investigation, could be ordered by any authorities other than those of the flag State (article 97).

The Convention spelt out the duty of every State to require the master of a ship flying its flag, in so far as he could do so without serious danger to the ship, crew or passengers, to assist any person found at sea in danger of being lost, to proceed with all possible speed to the rescue of persons in distress and, after a collision, to assist the other ship, its crew and its passengers (article 98).

The transport of slaves was prohibited (article 99).

The Convention established the duty of all States to co-operate in the repression of piracy on

the high seas or anywhere outside the jurisdiction of any State (article 100). Piracy was defined as any illegal acts of violence, detention or depredation committed for private ends by the crew or passengers of a private ship or aircraft, directed on the high seas against another ship or aircraft or against persons or property on board, or the participation in or incitement to such acts (article 101). Acts of piracy committed by a warship or government ship or aircraft whose crew had mutinied and taken control were assimilated to acts committed by a private ship or aircraft (article 102). A pirate ship or aircraft was one that was intended by those in control to be used for such acts, or one that had already been used to that end and remained under the control of the guilty persons (article 103). Such a ship or aircraft could retain its nationality, depending on the law of the State from which that nationality had been derived (article 104).

The Convention allowed every State to seize on the high seas, or anywhere outside the jurisdiction of any State, a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and to arrest the persons and seize the property on board (article 105). In cases where seizure had been effected without adequate grounds, however, the State making the seizure was liable to the flag State for damages (article 106). Seizure on account of piracy could be carried out only by warships or military aircraft, or others clearly marked and identifiable as being on government service and authorized to that effect (article 107).

States were required to co-operate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions (article 108). They must also co-operate in the suppression of unauthorized broadcasting from the high seas, defined as sound or television transmission intended for public reception contrary to international regulations (article 109).

Except where provided by treaty, a warship could not board a ship on the high seas unless there was reasonable ground for suspecting that it was engaged in piracy, the slave trade or unauthorized broadcasting, or was without nationality or, though flying a foreign flag or refusing to show its flag, had in reality the same nationality as the warship (article 110). Hot pursuit of a foreign ship could be undertaken by a military or government craft of a coastal State when that State's authorities had good reason to believe that the foreign ship had violated that State's laws or regulations; hot pursuit could be commenced in the coastal State's waters only after a signal to stop had been issued at a distance which enabled it to be seen or heard by the foreign ship (article 111).

All States were entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf, having due regard to those already in position (article 112). Wilful or negligent breaking or injury of a submarine cable or pipeline was a punishable offence (article 113). Submarine cable or pipeline owners who injured another cable or pipeline while laying or repairing their own must bear the cost of repairs (article 114). Shipowners who could prove that they had sacrificed an anchor, a net or other fishing gear in order to avoid injuring a submarine cable or pipeline were to be indemnified by the cable or pipeline owner, provided that the shipowner had taken all reasonable precautions beforehand (article 115).

Conference consideration. In the general statements made during the Conference's final week in December 1982, Bulgaria and Mongolia welcomed the fact that the Convention confirmed the freedom of the high seas, including freedom of navigation and overflight, the laying of submarine cables and pipelines, the construction of artificial islands and installations, fishing, the conduct of scientific research and other recognized uses.

The United Republic of Tanzania said it was unfortunate that the high seas were not included in the common heritage of mankind.

Living resources of the high seas

The Convention on the Law of the Sea provided for the right of all States to fish on the high seas (article 116). It also established their duty to take, or to co-operate with other States in taking, measures for their nationals needed for the conservation of the area's living resources (article 117). States whose nationals exploited identical living resources, or different ones in the same area, must negotiate on conservation measures and, as appropriate, establish subregional or regional fisheries organizations to that end (article 118).

In determining the allowable catch and other conservation measures, States were to take measures designed, on the best scientific evidence available, to maintain or restore populations of harvested species at levels which could produce maximum sustainable yields, taking into consideration the effects on associated or dependent species and without discriminating against the fishermen of any State (article 119). The rule for conservation and management of marine mammals in the exclusive economic zone-that their exploitation could be prohibited, limited or regulated more strictly than provided for in the Convention-applied also to the high seas (article 120).

Islands

The Convention on the Law of the Sea, in part VIII, defined an island as a naturally formed land area surrounded by water and above water at high

tide; it gave islands the same territorial sea, contiguous zone, exclusive economic zone and continental shelf as other land areas, except that rocks which could not sustain human habitation or economic life had no exclusive economic zone or continental shelf (article 121).

In April 1982, Romania proposed to the Conference on the Law of the Sea a new paragraph stating that uninhabited islets should not have any effect on the maritime spaces belonging to the main coasts of States,(1) and the United Kingdom proposed deletion of the provision on rocks.(2) Neither amendment was pressed to a vote.

Introducing its amendment, Romania said it was aimed at preventing any State from encroaching on the maritime zones of another State by invoking the existence of uninhabited islets in the delimitation area. The amendment was supported by Algeria and Mozambique, but was opposed by the Byelorussian SSR, Ecuador. the German Democratic Republic, Japan, Malta, Portugal, Trinidad and Tobago, the Ukrainian SSR, the USSR, the United Kingdom and Uruguay.

The United Kingdom, introducing its amendment, said there was no reason to discriminate between different forms of territory for the purposes of delimiting maritime zones. This amendment was opposed by Algeria, Bulgaria, the Byelorussian SSR, Colombia, Denmark, the German Democratic Republic, Mongolia, Pakistan, Trinidad and Tobago, the USSR, Uruguay and Yugoslavia, on the ground that there was no justification for an uninhabited rock to have a 200-mile exclusive economic zone. It was supported by Brazil, Ecuador, Iran, Japan and Portugal.

During the general statements on the Convention made in December, Cyprus said the principle that islands were entitled to the same maritime zones as continental territories was an example of the way the Convention incorporated rules of law that had stood the test of time; Cyprus had argued strenuously against discrimination against islands by attempting to create artificial distinctions based on size, population or location. The Netherlands Antilles also welcomed this aspect of the Convention. Turkey was of the view that the article on islands was not applicable to those located in maritime areas subject to delimitation between two States.

Colombia said the rule that rocks were entitled only to a territorial sea since they could not sustain human habitation was the logical result of the economic concept that the continental shelf and the exclusive economic zone had been granted to benefit the inhabitants. Romania reiterated its view that small and uninhabited islands lacking their own economic life could not influence the delimitation of maritime space.

On the other hand, Iran expressed the view that islets in enclosed and semi-enclosed seas which potentially could sustain human habitation or an economic life of their own, but which had not been developed for climatic or other reasons, had full effect in maritime boundary delimitation. Venezuela cited the provision on rocks as one of the reasons why it did not sign the Convention.

Some States were of the view that groups of islands forming part of a State's territory should be given the same legal treatment as archipelagic States.

Amendments not pressed. (1)Romania, A/CONF.62/L.118; (2)United Kingdom, A/CONF.62/L.126.

Semi-enclosed seas

Under part IX of the Convention on the Law of the Sea, an "enclosed or semi-enclosed sea" meant a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet, or one that consisted entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States (article 122). States bordering such seas should co-operate with each other, directly or through a regional organization, in regard to their rights and duties under the Convention regarding such matters as management and conservation of the sea's living resources, protection and preservation of the marine environment, and scientific research (article 123).

At the Conference on the Law of the Sea in April 1982, Iraq proposed but did not press a new paragraph (in article 123) providing that freedom of navigation through waterways within semi-enclosed seas must be maintained.(1)

Speaking in December, Bulgaria said it would begin to apply the provisions on semi-enclosed seas in co-operation with its Black Sea neighbours. Cyprus said it was satisfied with those provisions, as it had consistently favoured co-operation between States bordering such seas, but it opposed attempts to create particular rules for such seas in derogation of the Convention's universal rules. Malta looked forward to a regional approach in delimiting boundaries and governing other uses of the seas in the Mediterranean. The Republic of Korea stressed its readiness to co-operate and consult with its neighbour on the Yellow Sea in regard to environmental protection as well as delimitation of the continental shelf and the exclusive economic zone. Viet Nam expressed similar willingness to co-operate with its neighbours on the South China Sea, particularly in the settlement of maritime boundary disputes.

Israel said it was not satisfied that some of the Convention's major concepts were fully applicable in the narrow, semi-enclosed seas on which its two coasts lay.

Amendment not pressed. (1)Iraq, A/CONF.62/L.110.

Access of land-locked States to the sea

Convention provisions. Part X of the Convention on the Law of the Sea was concerned with the right of access of land-locked States to and from the sea and freedom of transit.

It dealt with "traffic in transit", defined as transit of persons, baggage, goods and "means of transport" (transport vehicles and, if the States so agreed, pipelines and gas lines) across the territory of a "transit State" (one lying between the land-locked State and the sea) as part of a longer journey which began or terminated within the "land-locked State" (State with no sea-coast) (article 124). The Convention assured land-locked States such right of access and freedom of transit, under terms and modalities for transit agreed upon between the States concerned, and allowing transit States to ensure that their legitimate interests were not infringed (article 125). States were not required to extend to other States, under the most-favoured-nation clause of treaties, the rights and facilities established by the Convention or special agreements on account of the special geographical position of land-locked States (article 126).

Traffic in transit must not be subject to customs duties, taxes or other charges except charges for specific services; means of transport and other facilities used by land-locked States must not be subject to taxes or charges higher than those levied for the means of transport of the transit State (article 127). Free zones or other customs facilities could be provided for such traffic at the transit State's ports of entry and exit, by agreement between the States concerned (article 128). Transit and land-locked States could co-operate in constructing or improving means of transport used for that traffic (article 129). Transit States must take all appropriate measures to avoid delays or other technical difficulties affecting that traffic (article 130). Ships flying the flag of land-locked States were entitled to treatment equal to that accorded to other foreign ships in maritime ports (article 131). The Convention did not entail the withdrawal of transit facilities greater than those it provided for, nor did it preclude the grant of greater facilities in the future (article 132).

The rights of land-locked and geographically disadvantaged States to participate in exploiting the living resources of exclusive economic zones of States in the same region or subregion were recognized in the part of the Convention dealing with that zone.

Conference consideration. Lesotho proposed to the Conference on the Law of the Sea in April 1982, but did not press, an amendment (to article 124) adding "aircraft" to the means of transport covered by this part of the Convention.[1]

Although voting in favour of the Convention, Pakistan said on 30 April that a right of access to the sea by land-locked States and freedom of transit would impinge on the sovereignty of coastal States and was therefore unacceptable; such freedom of transit would continue to be governed by bilateral agreements. Zambia expressed concern that the Convention's provisions on access of land-locked States to the sea might be interpreted by some as dependent on the negotiation of bilateral agreements. Hungary found those provisions acceptable.

During the Conference's concluding round of statements in December, Angola said the right of transit and access to the sea were matters for negotiation between the States involved; Angola would consider them on the basis of solidarity, co-operation and friendship, not as another State's inherent right under any convention. Iran expressed a similar view.

Burundi was grateful that the Convention recognized the rights of the land-locked countries, if only symbolically. Czechoslovakia remarked that, though the granting of the right of access to the sea by land-locked States was largely symbolic, it was the end result of 50 years of efforts to codify that rule in a universal convention, and was thus of great significance to those States. Although far from perfect, said Hungary, the provisions on land-locked States ensured certain basic rights without which the Convention would be meaningless for those States. Poland thought the Convention would be beneficial for the development of transit traffic through transit and land-locked States, based on the principle of reciprocity.

Several land-locked and geographically disadvantaged States were critical of the Convention's provisions designed to accommodate their interests. Bhutan thought the land-locked countries had had to be satisfied with very little. Mongolia said some provisions did not fully protect their rights and interests, and gave only limited rights of access to the exclusive economic zone. Nepal was not satisfied with the provisions on the transit rights of land-locked countries. Paraguay, while pleased with the provisions aimed at ensuring the participation of land-locked countries in the exploitation of the high seas, the international sea-bed area and the exclusive economic zone, said it was not as satisfied with the way in which the Convention dealt with the fundamental right of such States to access to the sea and freedom of transit.

Amendment not pressed. [1]Lesotho, A/CONF.62/L.99.

Sea-bed

Convention provisions. The legal regime governing the deep sea-bed area beyond national jurisdiction, including the constitutional provisions for the International Sea-Bed Authority, was set out in part XI of the Convention on the Law of the Sea and in two annexes: annex III, on basic

conditions of prospecting, exploration and exploitation, and annex IV, containing the Statute of the Enterprise, the Authority's sea-bed mining organ. In addition, resolution I of the Conference on the Law of the Sea provided for the establishment of a Preparatory Commission to exercise certain interim authority until the Convention entered into force, and resolution II governed preparatory investment in pioneer activities relating to polymetallic nodules on the deep sea-bed. The resolutions were adopted by the Conference on 30 April 1982 as part of a package with the Convention.

The Convention and associated resolutions provided in detail for arrangements regarding sea-bed mining, the structure and functions of the Authority and special dispute settlement machinery. They also contained a number of general provisions and principles relating to what the Convention referred to as the Area-defined in part I as the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction-and to activities in the Area, delined in part I as resource exploration and exploitation.

The Convention defined the resources it covered to include all solid, liquid or gaseous mineral resources in the Area at or beneath the sea-bed, including polymetallic nodules (mineral masses yielding mainly copper, nickel, cobalt and manganese) (article 133). Part XI of the Convention applied to the Area (article 134) and had no effect on the legal status of the waters or airspace above (article 135).

The section defining the principles governing the Area began with the statement that the Area and its resources were the common heritage of mankind (article 136). No State could claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor could any State, person or entity appropriate any part thereof; all rights in the Area's resources were vested in mankind as a whole, on whose behalf the Authority was to act (article 137).

The general conduct of States in relation to the Area was to be in accordance with this part of the Convention, the principles of the Charter of the United Nations and other rules of international law, in the interests of maintaining peace and security and promoting international co-operation and mutual understanding (article 138). The Convention made States parties and international organizations responsible for ensuring that activities in the Area carried out by them or by persons under their control conformed to the Convention, and also made them liable for damage caused by failure to carry out that responsibility (article 139).

Activities in the Area were to be carried out for the benefit of mankind as a whole, taking into particular consideration the interests and needs of developing States and of peoples who had not attained full independence or self-government; the Authority was to provide for the equitable and non-discriminatory sharing of financial and other economic benefits derived from the Area (article 140). The Area was open for use exclusively for peaceful purposes by all States without discrimination (article 141). Activities in the Area with respect to resource deposits lying across limits of national jurisdiction must be conducted with due regard to the rights and legitimate interests of the coastal State concerned, including consultations with that State and a system of prior notification; the coastal State retained the right to protect its coastline from grave and imminent danger due to pollution or other hazards resulting from activities in the Area (article 142).

Marine scientific research in the Area must be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole; both the Authority and States parties could conduct such research, and the latter were obliged to promote international co-operation by participating in international programmes, ensuring that programmes were developed to strengthen the research capabilities and train the personnel of developing States, and disseminating research results (article 143). Technology transfer was to be promoted (article 144).

Measures were to be taken to ensure effective protection of the marine environment from harmful effects arising from activities in the Area; these were to include the adoption by the Authority of rules, regulations and procedures (referred to below as rules) for the control of pollution and other environmental hazards resulting in particular from such activities as drilling, dredging, excavation, waste disposal, and construction and operation or maintenance of installations, pipelines and other devices (article 145). Measures to ensure protection of human life were to include the adoption by the Authority of rules to supplement existing international law (article 146). The Convention set out conditions for installations used to carry out activities in the Area, including due notice of emplacement and removal, non-interference with navigation and fishing, safety zones, and use exclusively for peaceful purposes; such installations would not have the status of islands (article 147).

The Convention called for promoting the participation of developing States in activities in the Area, with particular regard for the special need of land-locked and geographically disadvantaged States to overcome obstacles arising from their disadvantaged location and remoteness from the Area (article 148). It also provided that archaeological and historical objects found in the Area must be

preserved or disposed of for the benefit of mankind as a whole, with particular regard to the preferential rights of the country of origin (article 149).

Conference consideration. The sea-bed provisions of the Convention and associated resolutions were the most controversial matters before the Conference on the Law of the Sea in its final year, and negotiations on several aspects continued until 30 April, the day on which the "Convention package" was adopted. In particular, the resolution spelling out the rules for pioneer investors, covering the period before entry into force of the Convention, was largely worked out during the first part of the 1982 session, in March/April.

On 29 March, the Chairman of the First Committee, which dealt with sea-bed issues, submitted a report(6) in which, among other things, he discussed the effects of the United States return to the negotiations, following a period in 1981 while it was reassessing the progress of the Conference.(7) Speaking of the United States President's announcement on 29 January 1982 that the United States was returning to the Conference to seek an acceptable treaty, the Chairman said it could have been interpreted either as an ultimatum, setting out inflexible terms which the Conference had to satisfy as the price of United States participation, or as an appeal for understanding, suggesting adjustments to the draft Convention 'within the parameters of existing packages,

Referring to informal consultations in New York in February which had preceded the opening of the Conference's March/April meetings, he noted that the United States had circulated, on 24 February, a document on approaches to major problems in the sea-bed provisions of the draft Convention. The document had addressed eight problems: decision-making, the review conference, mining access, technology transfer, production limitations and policies, the Enterprise, national liberation movements and "grandfather rights" (for pioneer investors).

After consultations, the Chairman went on, the United States had informally presented a so-called "green book" containing a multiplicity of sweeping amendments. Apart from some industrialized countries, all interest groups, including many Western countries, had expressed the view that the paper could not possibly provide a good basis for negotiations.

The Co-ordinators (the Conference President and the First Committee Chairman) of the Working Group of 21 on sea-bed issues had sought in vain to find some basis for negotiating the United States concerns, the Chairman continued, but the inflexibility in the United States position had provoked inflexibility elsewhere.

In the resulting hiatus, he said, a group of delegation heads from Western developed countries, known as the "group of 11" (Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden, Switzerland) and acting in their personal capacities, had developed proposals to bridge the gap between the United States and other potential Western sea-bed mining countries on the one hand and the Group of 77 developing countries on the other. However, although those proposals had addressed the broad critical aspects of the United States concerns, the United States and four other industrialized countries (France, Federal Republic of Germany, Japan, United Kingdom) could not accept them as a basis for negotiations on the ground that they had not treated all subjects. Moreover, the Group of 77 had rejected the proposals, feeling that the issues raised by the United States but not addressed by the group of 11 were not negotiable. The Chairman believed the proposals offered a prospect of securing agreement and that negotiations based on them would substantially meet the United States concerns, especially bearing in mind proposals by the Co-ordinators of the Working Group of 21 on pioneer investors and the Preparatory Commission.

The first set of changes in the sea-bed provisions resulted from negotiations during the first three weeks of the session. These were made in a memorandum of 2 April(3) in which the President and other collegium members proposed a draft resolution on pioneer investors and a sentence on the membership of land-based mineral-producing countries in the Economic Planning Commission of the Authority's Council.

When the Conference decided in April to receive amendments, the sea-bed proposals of two groups of Western industrialized States-the group of 11(1) and a seven-nation group (Belgium, France, Federal Republic of Germany, Italy, Japan, United Kingdom, United States)(2)—were placed before it in two documents covering a wide range of related issues. A number of other amendments addressed specific aspects of the sea-bed provisions. None of these amendments was pressed to a vote.

When the President reported on 22 April on the results of his negotiations on these amendments,(4) he said he felt able to recommend only three changes that met the criterion of offering a substantially improved prospect of general agreement. They related to general resource development policy, decision-making at a future review conference and guaranteed membership in the Council of the Authority for the largest consumer of sea-bed minerals. He also recommended two other modifications on sea-bed matters: the inclusion of changes proposed by Peru on behalf of the Group of 77 to provide for a compensation fund and a special commission of

the Preparatory Commission on the problems of developing country land-based mineral producers, and a revised draft resolution on pioneer investors, based on consultations with various regional groups.

In his final report to the Conference on 29 April,[5] the President disclosed one last set of changes which he said would enhance the prospects of signature and ratification of the Convention by the United States and the other major industrialized countries without hurting the interests of the developing countries or the Eastern European socialist States. These modifications added a paragraph on unfair economic practices in regard to sea-bed exploration and exploitation, inserted sentences requiring the Council to establish rules for the exploitation of sea-bed minerals other than those in nodules when a State requested such action, raised from two thirds to three fourths the majority required for the entry into force of future amendments on sea-bed matters, and redrafted a paragraph to oblige the Authority to approve work plans submitted by sea-bed mining applicants as long as they complied with non-discriminatory requirements. The President proposed one further change in the draft resolution on pioneer investors: to authorize the Enterprise to have two mine sites rather than one during the period before the Convention entered into force.

In proposing these changes, the President said he believed the Conference was willing to pay a price in order to obtain United States support for the Convention, but that price was not an unlimited one. It must not hurt the interests of other countries, including the developing ones.

All of the changes proposed by the President and the collegium were incorporated into the draft Convention before it was adopted on 30 April.

The formal amendments proposed by delegations in April included three pertaining to the articles on principles governing the Area, all of them proposed by the group of seven Western States.

The first of these would have deleted a sentence from the provision on the legal status of the sea-bed and its resources (article 137) stating that minerals recovered from the Area could be alienated only in accordance with the Convention and the Authority's rules; this change would have been complemented by another amendment (to annex III, article 1) providing that title to recovered minerals would pass to the operator. The second amendment would have added a paragraph to the provision on the general conduct of States in relation to the Area (article 138) binding Convention signatories to enforce internationally recognized labour standards on working conditions and maritime safety. The third amendment would have deleted a phrase according to which the interests and needs of peoples not fully independent or self-governing would be taken into particular consideration; this would have been removed from the provision requiring activities in the Area to be carried out for the benefit of mankind (article 140).

During the Conference debate, developing countries voiced regret at attempts by the United States to introduce radical changes. Pakistan, as Chairman of the Group of 77, stated on 8 March that they would have the effect of scuttling the whole sea-bed regime and sending the negotiations back to the early 1970s; the Group rejected any piecemeal negotiation on issues which had already been agreed to and included in the draft Convention as a package.

The socialist States of Eastern Europe largely shared the views of the developing countries with regard to the changes proposed by the United States. They said it was not too late for the United States and the small group of countries which supported it to give up their destructive attitude, adopt a constructive and realistic approach and join with the overwhelming majority so as to make consensus possible.

Amendments not pressed. (1)Australia. Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden, Switzerland, A/CONF.62/L.104 & Add.1; (2)Belgium, France. Germany, Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/-L.121.

Memorandum. (3)Conference collegium, A/CONF.62/L.93 & Corr.1 (related proposals, A/CONF.62/L.94).

Reports. Conference President, (4)A/CONF.62/L.132 & Corr.1 & Add.1 & Add.1/Corr.1, (5)A/CONF.62/L.141 & Add.1 & Add.1/Corr.1; (6)1st Committee Chairman, A/CONF.62/L.91.

Yearbook reference. (7)1981, p. 132.

Sea-bed mining

Convention provisions. With respect to the development of resources of the sea-bed area beyond national jurisdiction, the Convention laid down several broad objectives for activities in the Area, including: the development and orderly, safe and rational management of resources; expansion and enhancement of opportunities for participation by all States parties, and prevention of monopolization; participation in revenues by the Authority and technology transfer to the Enterprise and developing States; increased availability of sea-bed minerals as needed in conjunction with minerals from other sources; promotion of just and stable prices remunerative to producers and fair to consumers, and promotion of long-term equilibrium between supply and demand; protection of developing countries from adverse economic effects on mineral prices or exports caused by sea-bed activities; development of the common heritage to benefit mankind as a whole; and conditions of

access to mineral markets that were no more favourable to sea-bed minerals than to those from other sources (article 150).

A "parallel system" for exploring and exploiting the deep sea-bed was to be established (article 153). Under this system, activities in the Area would be organized, carried out and controlled by the Authority, which would be authorized to conduct its own mining operations through its Enterprise. At the same time, the Authority would contract with States or State enterprises or private ventures to give them mining rights, including security of tenure. The Authority was required to avoid discrimination in the exercise of its powers and functions, though special consideration was permitted for developing States, particularly the land-locked and geographically disadvantaged (article 152).

The whole range of sea-bed activities, as well as other aspects of the system's operation, were to be governed by rules to be established by the Authority in accordance with basic conditions of prospecting, exploration and exploitation set out in the 22 articles of annex III to the Convention.

Prospecting could be conducted only after the Authority received a satisfactory written undertaking that the proposed prospector would comply with the Convention and the Authority's rules; no further authorization would be required (annex III, article 2). Exploration and exploitation, however, would require approval by the Authority of a plan of work, in the form of a contract, conferring on the operator the exclusive right to explore for and exploit specified categories of resources in a specified geographical area (article 3). A contract applicant would have to meet certain financial and technical qualifications and would have to be sponsored by its Government, a State party to the Convention (article 4).

Each application would have to cover an area large enough and of sufficient commercial value to allow two mining operations; the Authority would reserve one of them for its future use and assign the other to the applicant (article 8). The reserved area would then be available to the Enterprise, which could decide whether it intended to carry out activities there, either by itself or in a joint venture with another entity; an area where the Enterprise did not elect to work would be available to an applicant from a developing State (article 9).

Once an applicant was found qualified and a site was assigned, the mining contractor would need two more approvals before it could operate in the international area: a plan of work, authorizing it to develop the minesite (article 6), and a production authorization, permitting it to produce up to a specified quantity of minerals from that site (article 7). The Authority would be required by the Convention to approve plans of work and production authorizations which met the specified requirements-including anti-monopoly provisions designed to prevent any country from obtaining access to an excessive share of the Area-except that there would be a selection system for production authorizations to keep them within an overall production limitation. An operator which had an approved plan of work for exploration would be given preference over other applicants for a plan of work covering exploitation of the same area and resources (article 10).

With respect to the financial terms of contracts, the annex outlined a schedule of payments to the Authority, including a $500,000 fee for approval of a plan of work, a $1 million annual fee payable once the contract entered into force and, once production started, a production charge-actually, a tax scheme-based on a percentage of the market value of the processed metals produced; if the operator chose, it could pay a combination of production charge and a share of net proceeds (article 13).

In addition to the aforementioned obligations, the operator would be required to transfer to the Authority whatever data it needed to exercise its powers and functions in the area covered by the plan of work (article 14), and to transfer technology to the Enterprise.

In return for these contractual obligations, the Authority would accord to the operator the exclusive right to explore and exploit the area covered by the plan of work, and ensure that no other entity operated in the same area for a different category of resources in a manner that might interfere with the contractor's operations (article 16). The operator's rights under the contract could be suspended or terminated, or monetary penalties imposed, only in cases in which its activities had resulted in serious, persistent and wilful violations of the contract's fundamental terms, the Convention or the Authority's rules (article 18). The contractor and the Authority would be responsible or liable for any damage arising out of wrongful acts in the conduct of their operations, liability being for the actual amount of damage (article 22).

Where either party believed that a contract had become inequitable or that its objectives could no longer be achieved because of changed circumstances, the parties would enter into negotiations on its revision (article 19). Rights and obligations under the contract could be transferred only with the Authority's consent (article 20). The applicable law for judging rights and obligations under the contract would be the terms of the contract itself, the Authority's rules, the sea-bed provisions of the Convention and other compatible rules of international law (article 21).

The Convention and annex III also provided for a system of production control, technology transfer from contractors to the Enterprise and developing countries, principles for the operation of the Enterprise and future reviews of the operation of the entire sea-bed mining system. For the period pending entry into force of the Convention, a Conference resolution established a scheme for regulating pioneer investors.

Conference consideration. A number of amendments were offered to these sea-bed mining provisions, though none was pressed to a vote. As noted above, the most extensive were two sets of amendments by Western States: one by seven potential sea-bed mining States-Belgium, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom and the United States[3]—and the other by 11 medium-sized Western industrialized States, introduced by Norway.[1]

With regard to policies relating to activities in the Area (article 150), the group of seven proposed to delete a phrase according to which minerals produced from other sources would be taken into account in supply and pricing policies for the sea-bed.

The group of seven also proposed a new article (150 bis) specifying development of the sea-bed resources as an objective by which the Authority must at all times be guided. The group of 11 proposed, as an alternative, the addition of a sub-paragraph placing development of the resources of the Area at the head of the list of objectives in the article on sea-bed policies. This alternative was incorporated into the Convention on the proposal of the Conference President, in his report of 22 April.[6]

A new paragraph to this article obliging States parties to the Convention to avoid unfair economic practices was proposed by Australia and Canada.[2] Though the amendment was not pressed, a provision on the topic was added to the article on production control.

The seven Western States sought to limit the clause making special provision for developing States (in article 152), by restricting it to clauses in the Convention specifically authorizing such treatment. In the provision defining the parallel system of exploration and exploitation (article 153), they proposed to delete a clause specifying that all sea-bed activities must be carried out in association with the Authority, and to add a clause requiring the Authority to rely in the first instance on measures by States parties to ensure that sea-bed activities carried out by entities which they sponsored complied with the Convention and the Authority's rules.

A number of amendments were proposed to annex III, seeking to change various elements in the basic conditions of prospecting, exploration and exploitation. The first of these, by both groups of Western States (to article 1), would have added a phrase specifying that title to sea-bed minerals would pass to the operator on their recovery from the ocean floor.

After defining "operator" as an entity forwhich the Authority had approved a plan of work for sea-bed activities, the seven-nation amendments would have limited an applicant's undertakings in the plan of work (article 3) so that it would have to accept only those rules of the Authority which were in force at the time the plan of work was approved and only those decisions directed to the operator. The 11-nation amendments to this article were essentially similar, except for the reference to the Authority's decisions: the applicant would have had to undertake to accept decisions in force at the time the plan of work was approved. Under annex III as approved by the Conference, these undertakings must be made as part of the prospective operator's application rather than at the later stage of contract approval; moreover, they would extend to acceptance of all of the Authority's rules and decisions.

The seven-nation amendments would have written into the annex (article 4) the qualifications required of applicants rather than leaving them to be spelt out in the Authority's rules; to qualify, an applicant would have to have the financial capacity to meet minimum-expenditure rules established by the Authority, to provide a financial guarantee of performance and to certify that no previous contract with the Authority had been terminated by way of penalty. The 11-nation amendments were similar in regard to minimum-expenditure rules and a financial guarantee, but they would also have authorized the Authority to establish additional technical and financial standards. As approved by the Conference, the article provided simply that the qualification standards were to relate to the applicant's financial and technical capabilities and its performance under previous contracts; the actual standards would be set out in the Authority's rules.

Under the seven-nation amendments, a new article (4 bis) would have placed on States sponsoring an applicant the responsibility for certifying to the Authority, that it was in full compliance with the qualification standards and the Authority's rules. The 11-nation amendments were essentially similar, except that the certification would have been limited to compliance with the qualifications and the Authority's rules relating to such standards.

The seven Western States proposed to replace the provision on approval of plans of work (article 6) with a system offering greater assurances of

approval to applicants certified by their States as qualified. This scheme would have called for a presumption that applicants certified by States had met the requirements unless the Council's Legal and Technical Commission decided otherwise by a three-fourths vote. The 11-nation amendments contained an essentially similar proposal, but without a 120-day time-limit for action by the Commission as proposed by the seven.

Although these amendments were not pressed, the Conference approved a change to this article proposed by the President on 29 April[7] which omitted a clause in the earlier text providing for an investigation by the Authority into whether the plans of work complied with the Convention and the Authority's rules. This was the only change to annex III approved by the Conference in 1982. As adopted, the article on approval of plans of work obliged the Authority to approve such plans provided that they met the uniform and non-discriminatory requirements of the Authority's rules, unless they covered areas overlapping with others on which action was pending or were in certain environmentally protected areas or violated the anti-monopoly provisions.

France and the USSR each proposed an amendment to the paragraph in this article intended to prevent monopolization of the sea-bed by individual States or their companies. France would have made the clause applicable to all sea-bed areas, including those reserved for the Enterprise and developing States, instead of only to non-reserved sites.[4] The USSR would have limited the maximum sea-bed area that could be allotted to any one State or its nationals to 1 per cent rather than 2 per cent of the total sea-bed area available for exploitation by States and private entities.[5]

The seven Western States proposed to revise the system for determining which of two mine sites in each sea-bed area would be exploited by an applicant for a mining contract and which would be reserved for the Authority (article 8). Under their amendments, the choice would be made by agreement between the applicant and the Enterprise or, failing that, by random allocation by the Legal and Technical Commission; after the contract was signed, the operator would submit all the data it had on the reserved site. As approved by the Conference, the applicant would turn over such data in advance, after which the Authority would designate the area it wanted to reserve.

With regard to activities in areas reserved for exploitation by the Authority or developing States (article 9), the seven Western States proposed an arrangement according to which areas remaining unexploited for 10 years would be made available to other entities, first through a joint venture with a developing State or States, then to the entity which had originally applied for the area that included the site in question, and finally to any other qualified entity.

The seven Western States proposed to add a subparagraph by which exploration for and exploitation of sea-bed resources other than polymetallic nodules would have been added to the list of matters to be covered by the Authority's future rules (article 17), and to limit the matters covered by the rules to those listed in this article, eliminating the phrase "inter alia" from the text. Although these amendments were not pressed, the Conference accepted an amendment (to article 162 of the Convention on the powers and functions of the Council) requiring the Council to adopt such rules within three years after any member of the Authority requested it to do so.

Explaining on 30 June its vote against the Convention, the United States presented live objections, all relating to the sea-bed: the sea-bed provisions would deter the development of deep-sea mineral resources by denying the play of basic market forces; access by existing miners to those resources was not assured, while the Enterprise would benefit from a system of privileges that would discriminate against private and national miners; the decision-making process for the sea-bed régime did not give a proportionate voice to the countries most affected by the decisions and would thus not effectively reflect and protect their interests; the Convention would allow amendments to come into force for a State without its consent, which was incompatible with United States treaty processes; and the provisions on mandatory technology transfer, potential distribution of benefits to national liberation movements and production limitation created inappropriate precedents. Repeating these objections in the General Assembly on 3 December, the United States added that it continued to enjoy the right to carry out deep sea-bed mining, which it called a lawful use of the high seas.

Explaining its non-participation in the vote on the Convention, Albania said the sea-bed provisions would allow the two super-Powers and a small group of capitalist industrial States, together with a handful of transnational corporations, to monopolize sea-bed resources to the detriment of mankind as a whole.

Among the States which abstained in the vote, Belgium said the proposed sea-bed régime might discourage investments for exploitation in the interests of both developing and industrialized countries; it also failed to meet Belgium's concerns for equitable representation on the organs of the Authority, for a decision-making process that took account of the interests of all groups of States, for a review procedure which did not call into question the basis of the system established by the Convention, and for realistic provisions on technology transfer. The Federal Republic of Germany, which

also abstained, said it was particularly disappointed at the treatment accorded to the sea-bed proposals submitted by the major Western industrialized States. Italy said it had had to abstain because the Conference had not agreed to its request to continue negotiations on the sea-bed provisions. The Netherlands said that, without the participation of major countries, the elaborate system for exploitation of sea-bed resources would not function as envisaged; it would have preferred to continue the search for generally acceptable solutions.

France, which voted for the Convention, said the sea-bed provisions had serious drawbacks which it hoped would be reviewed in order to reach wider agreement and to give the Authority real prospects of success. The Libyan Arab Jamahiriya rejected the idea that a small group of States should enjoy special benefits in regard to the sea-bed and opposed any parallel system for the area. Romania considered it essential that implementation of the sea-bed provisions and the resolution on pioneer investors should not impair the common heritage and should ensure its exploitation for the benefit of all countries.

Austria, addressing the Conference in December, said the Convention provided a unique opportunity to create new forms of scientific-industrial co-operation between North and South, but if not applied in the foreseeable future it would run the risk of being overtaken by scientific and technological changes. Canada stated that the Convention provided a mechanism for the management of sea-bed resources without infringing State interests. Cape Verde thought the interests of all countries in the exploitation of these resources had been properly accommodated. Czechoslovakia said the Convention offered the less developed countries the hope of obtaining a just share of the riches of the sea-bed through membership in a new international organization. Finland believed that the sea-bed régime represented the best possible balance that could be achieved.

The Ivory Coast said the aim of the new regime was to banish the idea of the sea as an area of conflict and as private property for the exclusive profit of some maritime Powers, and open the way to the concept of sharing and developing the sea for the benefit of all. Mongolia stressed the importance of the anti-monopoly and anti-discrimination provisions. Morocco believed that, in translating this new legal regime into concrete terms, the Conference had reached the greatest possible degree of consensus without sacrificing the greatest benefit for the largest number and without compromising any acquired right. Nigeria thought the developed States ought to be pleased to see the developing States have a chance to move away from poverty by sharing in the management and wealth of the sea's resources.

The Republic of Korea said its policy was to encourage its private companies to participate in deep sea-bed mining and a modest number of them were preparing to participate actively. Under the Convention, said Tunisia, developing countries had the same right to profits from the sea-bed as developed countries with the money and technology to exploit those resources.

Algeria stated that the developing countries had gone far to meet the position of their negotiating partners with regard to the sea-bed, granting advantages to developed States that were far removed from the principles and objectives of the new international economic order. Similarly, Brazil described the sea-bed provisions as a complex of concessions made by the great majority of nations to the few that aspired to reap greater and more immediate benefits. The Bahamas thought that, in accepting those provisions as a compromise, the developing countries had barred ideological differences and concentrated on obtaining the best possible formula, which should have been acceptable to all. Iraq would have preferred a regime immune from exploitation by monopolies belonging to a handful of States. Mauritius and Yugoslavia shared the position of the Group of 77 that the sea-bed provisions represented the upper limit of concessions; to go further would render the common heritage principle meaningless.

Pakistan thought the Convention did not adequately reflect the concept of the sea-bed as a common heritage; it believed that a few industrialized countries would be the major beneficiaries. Trinidad and Tobago said it would have preferred a unitary system of exploitation rather than the parallel system provided for in the Convention, for it believed that only one limb of the parallel system, the private entity, would work. Also expressing preference for a system in which all sea-bed activities would be undertaken jointly by all States, the United Republic of Tanzania said that, under the Convention, private companies would have almost automatic access to the sea-bed, while the ability of the Enterprise to explore and exploit would be hindered by loopholes that would impede its access to capital and technology.

Several industrialized States reiterated their concern about the workability of the sea-bed régime to be established under the Convention. Belgium believed that the spirit of compromise seen in other parts of the Convention had not been maintained to the same degree with respect to the sea-bed provisions, which Belgium would have to study more closely. The Federal Republic of Germany, recalling its past criticism of the sea-bed régime, said it was especially concerned over the provisions on technology transfer, production limitation and the review conference, as well as over financial burdens resulting from the system.

Italy believed that the proposed new institutions, by their number and complexity, would be able only with great difficulty to ensure a viable system; the establishment of organs which might not guarantee profitable exploitation could become a heavy burden for the international community, including the developing countries. The United Kingdom said the sea-bed provisions, including technology transfer, were unacceptable and it wished to explore prospects for significantly improving them.

Several States viewed the Preparatory Commission's task of writing sea-bed mining rules as affording an opportunity to remedy what they or others regarded as defects in the Convention. Denmark said the future mining code must ensure that decisions would be based on objective rules and on fairness, equity and normal business practices, taking account of the interests of those that had already signed the Convention and of those that might do so later. France said some of the sea-bed provisions, such as those on mandatory technology transfer and the financing of the Authority, had serious defects which had to be corrected by the rules to be worked out by the Preparatory Commission.

Ireland believed that any shortcomings in the scheme could be met in the short term by adaptation and ultimately be remedied by the review conference. The Netherlands said it would continue efforts to implement the sea-bed provisions during the preparatory stage in such a way as to remove objections by the industrialized States which made it uncertain that the new regime would function effectively enough to enable companies to operate in the Area.

The Ukrainian SSR said it regretted the refusal of the United States to uphold agreements about the sea-bed which had been reached with its active participation.

Australia said it had long been acknowledged that the doctrine of freedom of the high seas did not provide a basis for the grant of exclusive title to mine the deep sea-bed; any attempt to exploit those resources outside the Convention would be highly divisive and the country concerned would incur the hostility of the bulk of the world. Bahrain, Brazil, Bulgaria, Chile, the Democratic People's Republic of Korea, Democratic Yemen, the German Democratic Republic, Indonesia, Iraq, Lesotho, Mauritius, Papua New Guinea, Romania, Tunisia and Yugoslavia also expressed the View that exploration and exploitation of deep sea-bed resources could legally be undertaken only under the régime established by the Convention.

For States to opt out of the Convention and pursue bilateral arrangements would be to affect the integrity of the new régime, said Barbados, and that could threaten international order, peace and security.

Amendments not pressed. (1)Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden, Switzerland, A/CONF.62/L.104 & Add.1; (2)Australia, Canada, A/CONF.62/L.98; (3)Belgium, France, Germany, Federal Republic of, Italy, Japan, United Kingdom, United States. A/CONF.62/L.121; (4)France, A/CONF.62/L.106; (5)USSR. A/CONF.62/L.124.

Reporls. Conference President, (6)A/CONF.62/L.132 & Corr.1 & Add.1 & Add.1/Corr.1; (7)A/CONF.62/L.14l/Add.l.

Production control

The Convention on the Law of the Sea set out a sea-bed production policy whose basic aim would be to encourage sea-bed production at prices remunerative to producers and fair to consumers, with the least possible harm to land-based producers of the same minerals (article 151). This policy would be enforced through the issuance by the Authority of production authorizations to approved sea-bed operators, specifying an annual production rate for each. An annual sea-bed production ceiling would be fixed, based on the trend of nickel consumption, calculated in such a way as to allow sea-bed producers a share of any increase in such consumption and leaving the rest to land-based producers. Under the pioneer investors' scheme provided for in Conference resolution II, such investors would have certain guarantees in regard to production authorizations.

To the extent that economic hardship for land-based producers could not be avoided, a compensation scheme would be set up for their benefit. Initial steps in respect of this scheme would be taken by the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, which would establish a special commission on the subject.(14) Once the Authority became operational, its Assembly would be empowered to establish, on the recommendation of the Council based on advice from its Economic Planning Commission, a compensation system or other economic adjustment assistance measures (article 160).

The Authority would be obliged to issue production authorizations if all of those applied for could be approved without exceeding the overall production limitation or contravening the Authority's obligations under a commodity agreement (annex III, article 7). If a selection had to be made among applicants in order to remain within the overall limit, the Authority would apply objective and non-discriminatory standards to be specified in its rules, giving priority to applicants which provided better assurance of performance or earlier financial benefits, had already invested the most or had not been selected in earlier periods.

The likely effects of the production control system on land-based producers were the subject of extensive discussion during 1982, as in previous years, in the Conference on the Law of the Sea. As requested by the Conference's First Committee in August 1981,[15] the Secretary-General presented in March 1982 a report on the possible impact of the Convention, with special reference to production policies, on developing countries which produced and exported minerals of the kind to be extracted from the sea-bed.[13] The report contained no quantitative conclusions, in view of the fact that the Committee had not given any specific guidance on the assumptions to be used for economic projections. Rather, it outlined a plan for further investigations which could take the form of a full-scale study. Annexes to the report outlined the existing production patterns of the four major sea-bed minerals-copper, nickel, cobalt and manganese-and described the role of the mineral industries in three countries deemed most likely to be affected-Gabon, Zaire and Zambia.

As requested by Zambia and endorsed by the Committee on 9 March, the Secretary-General submitted an addendum to the report showing possible production ceiling tonnages under certain assumptions about land-based production, market growth rates and start-up time for sea-bed production.

To meet some of the concerns of the land-based producers, the First Committee Chairman, in his 29 March report to the Conference[12], made two proposals: to give the Preparatory Commission the power to undertake studies on those concerns, and to approve a proposal by the Group of 77 that would guarantee membership of at least two representatives of developing land-based producer countries in the Economic Planning Commission of the Authority's Council. The first of these proposals was incorporated in revised draft resolution I, on the Preparatory Commission, submitted by the Conference collegium on 2 April.[8] The second was included in the collegium's memorandum of the same date on changes in the draft Convention, where it was revised to state that the Economic Planning Commission's membership would include at least two members from developing countries whose exports of the types of minerals found on the sea-bed had a substantial bearing on their economies.(")

When presenting his proposals on 2 April, the First Committee Chairman indicated that Gabon, Zaire, Zambia and Zimbabwe had not considered them sufficient. They would have been happier with a provision to have the Authority set up a compensation fund on the recommendation of the Preparatory Commission.

In line with this idea, Peru, on behalf of the Group of 77, submitted two formal amendments: to add to the list of the Authority's funds (article 171) a mention of the compensation fund, whose sources would be recommended by the Economic Planning Commission, and to require the Preparatory Commission to establish a special commission on the problems of developing land-based producers likely to be seriously affected by sea-bed production.[5] These proposals were incorporated in the draft Convention and in draft resolution I, respectively, after the President announced, in his 22 April report, that he had determined in consultations that the amendments had widespread support.[10]

Gabon proposed but did not press amendments that would have included among the functions of the Authority's Assembly the establishment of a compensation fund for the exclusive benefit of land-based producers whose export receipts or economies would be affected by sea-bed exploitation (article 160), and would have guaranteed seats for two such States on the Council's Legal and Technical Commission (article 165).[4] Also not pressed was an amendment by Zaire that would have authorized the Authority to limit the production of sea-bed copper, cobalt and manganese to amounts less than the maximum that could be produced under the limits applying to nickel.[7]

Two further changes in the production control article were introduced into the Convention at the instance of the President in his final report of 29 April.[11] First, a paragraph was added stating that rights and obligations relating to unfair economic practices under multilateral trade agreements would apply to sea-bed exploration and exploitation, and that parties to such agreements could have recourse to the dispute settlement procedures contained therein. In this connection, Australia and Canada did not press an amendment (to article 150, on policies relating to activities in the Area) that would have applied the prohibition of unfair economic practices to all parties to the Convention by obliging them, in the production, processing, transport and marketing of sea-bed minerals and commodities derived therefrom, to avoid unfair economic practices which caused, or threatened to cause, material injury to the interests of another State party.[1] The second change in the Convention authorized the Authority to adopt regulations limiting the production of sea-bed minerals other than those from nodules.

Proposed changes relating to production control were included in the package of sea-bed amendments submitted by five Western European States, Japan and the United States.[2] They would have: limited the Authority's participation in commodity agreements to the production of the Enterprise rather than to all sea-bed production; added a sentence giving sea-bed production a

gradually increasing share of the world nickel market, rising from 60 per cent of the annual increase in world nickel consumption (the limit in the Convention) to a maximum of 80 per cent; deleted a reference to a compensation scheme for land-based producers; and added a paragraph to ensure that all pioneer sea-bed investors would receive authorization to produce minerals even if this created a temporary excess over the allowable ceiling in a given year or years.

With regard to the approval of production authorizations (annex III, article 7), the seven Western States proposed to spell out in greater detail the entitlements of the authorized operators. Under their scheme, the Authority would have been required to issue authorizations in the order of application, the operator would have been able to commence production at any time within five years after approval, the period could be extended by the Authority if production was delayed for reasons beyond the operator's control, and once mining began at that site the operator would have been entitled to engage in commercial production according to its stated requirements.

France and the USSR did not press amendments that would have given priority for a production authorization to a State or its nationals which did not have any over a State which already had one (USSR[6]) or two or more (France[3]).

Zambia, though voting for the Convention, observed on 30 April that its past proposals to mitigate the adverse effects of sea-bed mining on its economy had not been approved and that the establishment of the compensation fund it had proposed had been postponed; Zambia hoped the weak provision for that much-needed fund would none the less result in its establishment.

In December, Indonesia, expressing concern at prospects of competition between sea-bed minerals and those produced in developing countries, said it was essential that the Authority regulate the development of sea-bed resources. Gabon and Papua New Guinea, other mineral exporters, voiced a similar concern about the production control features.

Sierra Leone envisaged a situation in which several African mineral-producing States would find themselves competing with sea-bed mines and might even go out of business, while the industrialized countries became self-sufficient in such resources. Zaire regarded the production control mechanism as one of the Convention's flagrant weaknesses, one which would result in the eviction of land-based mineral producers from the market; it hoped the Authority would close the gap between that mechanism and the principle of equity expressed in the Convention (article 150), that developing countries should be protected from the adverse effects resulting from a reduction of price or volume of a mineral export.

The Republic of Korea, voicing the interests of a mineral-consuming country, stressed the importance of secure supplies at a reasonable price.

Amendments not pressed. [1]Australia, Canada, A/CONF.62/L.98; [2]Beglium, France, Germany, Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/L.121; [3]France, A/CONF/62/L.106; [4]Gabon, A/CONF.62/L.97 & Corr.1; [5]Peru, for Group of 77, A/CONF.62/L.116; [6]USSR, A/CONF.62/L.124; [7]Zaire, A/CONF.62/L.107.

Draft resolution. [8]Conference collegium, A/CONF.62/L.94.

Memorandum. [9]Conference collegium, A/CONF.62/L.93.

Reports. Conference President, [10]A/CONF.62/L.132 & Add.1, [11]A/CONF.62/L.141/Add.1; [12]1st Committee Chairman, A/CONF.62/L.91; [13]S-G, A/CONF.62/L.84 & Add.1.

Resolution (1982). [14]Conference (Final Act, A/CONF.62/121 & Corr.3): I, paras. 5 (i) & 9, 30 Apr.

Yearbook reference. [15]1981, p. 132.

Technology transfer

The Convention on the Law of the Sea contained general rules empowering the Authority to acquire for the Enterprise technology and scientific knowledge relating to sea-bed activities and to promote and encourage their transfer to developing States (article 144). Specific provisions were laid down in annex III (article 5), obliging contractors to make available to the Enterprise, on commercial terms, the technology they employed in their sea-bed mining ventures. That obligation extended to technology owned by the contractor or which he was otherwise entitled to transfer to others, as well as to so-called "third-party" technology; in the latter instance, the contractor would be obliged to acquire from the owner the right to transfer the technology to the Enterprise if that could be done without substantial cost. Disputes over these undertakings would be subject to compulsory settlement. If the Enterprise was unable to obtain the technology it needed, a group of States parties with access to such technology would be convened to take measures to ensure that it was made available to the Enterprise on fair and reasonable terms and conditions.

In order to ensure that the Enterprise was able to operate in the Area before the Convention entered into force in such a manner as to keep pace with States and other entities, Conference resolution II established the same technology transfer obligations for every registered pioneer investor.[7]

In addition, the part of the Convention concerned with marine technology development and transfer contained a set of objectives to be followed by the Authority in helping developing States to obtain such technology.

Responding to United States concerns in this sphere, the First Committee Chairman, in his report of 29 March summing up the results of the Committee's work in 1982, suggested three

changes in the technology transfer provisions: a new clause requiring a contractor to undertake a general obligation to co-operate with the Authority in its efforts to acquire technology on fair and reasonable terms and conditions; adjustments to make the technology transfer obligations less stringent by including an element of consent; and a revision to make more precise the obligations of all States, especially States sponsoring sea-bed ventures, with regard to ensuring the commercial viability of the Enterprise.[6]

The Conference did not approve either of two similar sets of changes, aimed at limiting the obligations of contractors to transfer technology and removing most of the mandatory features, proposed separately by five Western European States together with Japan and the United States,[2] and by 11 medium-sized industrialized Western States (known as the group of 11).[1]

Both sets of amendments would have limited the transfer obligation to technology which the contractor had made available or was willing to make available to third parties. They would have eliminated clauses providing that the contractor could use a particular technology only if he obtained written assurance from the owner that he could make it available to the Authority, and that, when a contractor exercised effective control over the owner of technology, his failure to acquire the right to transfer that technology would be taken into account whenever he applied for any subsequent plan of work. The contractor's obligation to help the Enterprise acquire technology on the open market, not spelt out in the Convention, would have been limited to identifying possible sources and advising on how to obtain the best terms and conditions. References to penalties would have been removed from the paragraph on dispute settlement.

Both sets of amendments would also have removed the provision for convening a meeting of States to ensure that the Enterprise could obtain technology on fair and reasonable terms. They would have replaced it with a clause requiring States parties to take effective measures to ensure that the provisions on contractors' obligations were brought into effect and to take measures consistent with national law to prevent persons under their jurisdiction from engaging in a concerted refusal to supply technology to the Enterprise on commercial terms and conditions. The seven-nation amendments would have added a sentence requiring the Authority to rely on States to enforce the technology transfer obligations.

Norway, which described the technology transfer provisions as crucial for obtaining a universal convention, explained in introducing the amendments of the group of 11 that, while they sought to reduce the burden of a mandatory transfer, the mandatory feature would still apply whenever the owner of technology placed it on the open market; moreover, the contractor would still be under an obligation to secure for the Enterprise technology he did not own, but only if he could do so without substantial cost.

In the Conference's debate on amendments, these proposals were opposed by Sierra Leone (on behalf of the African Group), Trinidad and Tobago, and the United Republic of Tanzania on the ground that they removed the mandatory aspect of technology transfer, thereby eroding the guarantees essential to the Enterprise.

In the only formal amendment to the technology transfer clause of resolution II, Peru, on behalf of the Group of 77, proposed[3] that the Conference collegium's version of 2 April,[4] which had provided that pioneer investors should "be prepared" to perform their transfer obligations prior to the entry into force of the Convention, should be changed to require them to "perform" those obligations. As redrafted by the President on 22 April[5] and approved by the Conference, pioneer investors must "undertake" to perform those obligations.

Japan, Switzerland and the United States expressed misgivings about the technology transfer provisions when explaining their votes on the Convention on 30 April. Japan said it was greatly disappointed that the provisions on mandatory transfer of technology owned by a third party had not been improved. Switzerland said the provisions could not be considered a precedent in the ongoing negotiations on the subject in other bodies.

Canada, addressing the Conference in December, said the temporary and unique nature of the technology transfer provisions could not make them precedents for other international negotiations. The Netherlands said those provisions were subject to objections.

The United Republic of Cameroon stressed the importance of training nationals of developing countries in mineral exploitation of the deep seabed so that the Authority's technicians would not be drawn almost exclusively from industrialized countries.

Amendments not pressed. [1]Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden, Switzerland. A/CONF.62/L.104 & Add.1; [2]Belgium, France, Get-many, Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/-L.121; [3]Peru, for Group of 77, A/CONF.62/-L.116.

Draft resolution. [4]Conference collegium, A/CONF.62/L.94.

Reports. [5]Conference President, A/CONF.62/L.132 & Corr.1 & Add.1 & Add.l/Corr.1; [6]lst Committee Chairman, A/CONF.62/L.91.

Resolution (1982). [7]Conference (Final Act, A/CONF.62/121): II, para. 12 (a) (iii), 30 Apr.

Review

The Convention on the Law of the Sea provided for a review of the operation of the sea-bed mining system every five years by the Assembly of the Authority (article 154) and 15 years after the start of commercial production by a Review Conference (article 155). The Review Conference would consider whether the system had achieved its aims, reserved areas had been effectively exploited, sea-bed development had fostered a healthy world economy and balanced growth of international trade, monopolization had been prevented, the production policies had been fulfilled and benefits had been equitably shared. It could, by a three-fourths majority vote, introduce amendments to the system that would take effect for all parties after ratification or accession by three fourths of them. Prior to the Review Conference, amendments not prejudicing the exploitation system could be made with the approval of both the Council and the Assembly, subject to the same ratification procedure.

In April 1982, the two groups of Western States proposed amendments to have the Review Conference take its decisions according to the rules used by the Conference on the Law of the Sea, avoiding voting until all efforts at consensus had been exhausted. Moreover, under the proposals by live Western European States, Japan and the United States,[2] amendments to the Convention approved by the Review Conference would not take effect until all States parties had adhered, following which sea-bed activities would be governed by the Convention as amended. Under the proposals by the group of 11,[1] introduced by Norway, adherence by two thirds of the States parties would suffice to bring the amendments into force but, while sea-bed activities would thereafter be governed by the amended Convention, a State which had not ratified the amendments would continue to enjoy the rights and perform the obligations of the Convention's other provisions.

Although these two sets of amendments were not pressed by their sponsors, the final text of the Convention incorporated, at the President's suggestion, provisions to have the Review Conference follow the procedure of avoiding voting until all efforts at achieving consensus had been exhausted[3] and to require a three-fourths majority, instead of the two-thirds majority specified in the 1981 draft Convention, for adoption of amendments by the Conference and for their entry into force.[4]

The United States, when explaining in April its objections to the sea-bed provisions, said with respect to the review and amendment procedure that the clause allowing amendments to come into force for a State without its consent was clearly incompatible with United States processes for incurring treaty obligations.

Welcoming the provisions for review, Kenya said in December that future. technological advances and other economic and social changes might require taking another look at the sea-bed provisions to see whether they had worked satisfactorily and to initiate adjustments.

Amendments not pressed. [1]Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden, Switzerland, A/CONF.62/L.104 & Add.1; [2]Belgium, France, Germany, Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/L.121.
Reports. Conference President, [3]A/CONF.62/L.132/Add.l, [4]A/CONF.62/L.141/Add.l.

Pioneer investors

The scheme devised by the Conference on the Law of the Sea to protect investments made by States and private consortia before the Convention entered into force was set out in resolution II,[16] adopted along with the Convention. In addition, under resolution I, the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea was to exercise powers and functions in relation to those investments.[15]

The scheme would enable States and private investors to qualify for registration by the Commission as pioneer investors. This would entitle them to explore-but not commercially exploit-a selected area of the sea-bed beyond national jurisdiction until the Convention entered into force. It would also guarantee them priority over all others-except for the Authority's Enterprise—once the Authority permitted commercial production from the sea-bed.

Pioneer investors were defined by the resolution, which placed them in three groups: (1) France, India, Japan and the USSR, and their State enterprises and corporations; (2) four entities made up of firms having the nationality of or controlled by Belgium, Canada, the Federal Republic of Germany, Italy, Japan, the Netherlands, the United Kingdom or the United States, or any combination of those States; and (3) any developing State or group of such States, or any State enterprise or corporation from such State. To qualify for pioneer status, the State concerned must have signed the Convention and the applicant would have had to have spent at least $30 million on sea-bed activities by 1 January 1983 (1 January 1985 in the case of the developing States other than India), not less than 10 per cent of which must have been spent on investigation of a specific portion of the sea-bed.

Pioneer investors would be confined during the pre-Convention period to exploration and prospecting for polymetallic nodules in an allocated area; commercial exploitation would be excluded before the Convention entered into force. Each applicant would receive only one site, not to exceed 150,000 square kilometres. The resolu-

tion specified that nothing in it derogated from the anti-monopoly provisions of the Convention.

In order to obtain pioneer investor status, the prospective pioneer, certified by a signatory State, would have to apply to the Preparatory Commission for registration. Certifying States would have to ensure, before applications were submitted, that claims for particular areas did not overlap.

Sites would be allocated in a manner similar to that provided for in the Convention: The applicant would have to present an area large enough for two commercial mining operations, whereupon the Commission would allocate one part to the pioneer investor and reserve a commercially equivalent part for development by the Enterprise. Within the area allocated to it, the pioneer investor would have exclusive exploration rights. However, it would have to relinquish progressively half of the pioneer area over an eight-year period, freeing those portions for future allocation.

Each pioneer investor would pay to the Commission a $250,000 registration fee, plus another $250,000 to the Authority-instead of the $500,000 provided for in the Convention-when it applied for a plan of work (mining contract). There would be an additional fee of $1 million a year from the time the pioneer area was allocated, payable to the Authority when the investor's plan of work was approved. Investors would have to spend a minimum amount on their site, as determined by the Commission in relation to the size of the area and the expenditures expected of an operator that intended to mine the site commercially within a reasonable time.

Pioneer investors would be guaranteed entry into sea-bed mining under the Convention once it entered into force. This would be accomplished by a provision requiring the Authority to approve their contract application as long as they met the requirements applicable to all, but only if their certifying State was a party to the Convention. In addition to a contract, they would be entitled to a production authorization permitting them to produce from at least one mine site each, while the Enterprise would be guaranteed production authorizations for two sites.

The resolution spelt out three commitments which pioneer investors would have to undertake in order to ensure that the Enterprise was able to carry out sea-bed activities in such a manner as to keep pace with States and other entities: at the Commission's request, to explore the area reserved for the Enterprise, for which their costs would be reimbursed; to provide training for personnel designated by the Commission; and to undertake to perform the technology transfer obligations prescribed in the Convention. To the same purpose, every certifying State would ensure that the necessary funds were available to the Enterprise once the Convention entered into force and would report to the Commission on its sea-bed activities and those carried out by entities under its jurisdiction.

Resolution II was initially negotiated in the First Committee's Working Group of 21 during the first three weeks of the March/April 1982 session. Its Co-ordinators—the Conference President and the First Committee Chairman—reported to the Committee on 29 March on the results of the negotiations and resented the first formal draft of the resolution.[14]

Explaining some of the rationale of the scheme, the Co-ordinators noted that six consortia and one State had been investing in the development of sea-bed mining technology and equipment, and the industrialized countries concerned had been demanding that the Conference and the Convention recognize those preparatory investments. The Co-ordinators felt that to be a legitimate request provided that those investments were brought within the framework of the Convention and that the interim arrangement was transitory.

The First Committee Chairman, in his 29 March report to the Conference, commended the draft resolution as providing a sufficient basis for widespread support and possible consensus.[13]

Following debate in the Conference on all aspects of the Convention and associated documents, the Conference collegium, in its memorandum of 2 April[9] and related texts,[7] decided to incorporate this draft resolution, with a few changes, into the draft Final Act. There were two main changes: the paragraph on the relationship between the pioneer investor scheme and the Authority, which originally would simply have required the Authority and its organs to be governed by the terms of the resolution, was revised to provide that the Authority and its organs must act in accordance with the resolution and the Preparatory Commission decisions taken pursuant to it; and a paragraph which would have terminated the scheme after five years was replaced by one which kept it in effect until the Convention entered into force. In addition, the collegium added a paragraph to the Convention (article 308) requiring the Authority to act in accordance with the resolution and with Commission decisions pursuant to it.

When the Conference decided to receive formal amendments, six proposals or sets of proposals were submitted relating to resolution II. After the Conference heard delegations' views on these amendments, the President and the First Committee Chairman consulted with their sponsors and with all regional groups. On the basis of those consultations, the President, in his report of 22 April,[11] presented an extensively revised draft

which he considered to enjoy widespread and substantial support and to offer a substantially improved prospect of achieving general agreement. All of the President's changes, as well as one more made on 29 April, were later incorporated in the final text. Following is a summary of the amendments, their relation to the collegium's draft of 2 April and the subsequent changes introduced by the President on 22 April.

The President's text revised the definition of "pioneer investor" by limiting such investors to eight nationalities-France, India, Japan and the USSR in the first group, and four entities from seven Western States and Japan (see above) in a second group-plus an unspecified number from developing States.

Four of the amendments related to the qualifying criteria for pioneer investors. With regard to the minimum figure for prior investments, the collegium's text specified $30 million but would have allowed the Preparatory Commission to set a lower amount for developing States. Gabon(3) and Japan(4) proposed that the $30-million figure be applied to all investors. Gabon also proposed to remove the requirement that pioneers spend no less than 10 per cent of their total sea-bed investment on a specific site. The President's text retained the $30-million minimum for all investors and the 10 per cent requirement for a specific site.

Under the collegium's text the $30-million expenditure would have had to have been made by 1 January 1983 for any investor to qualify as a pioneer. Japan and Peru-the latter on behalf of the Group of 77(5)—proposed that investors in developing States be given up to 1 January 1985 to qualify, whereas France(2) proposed 1 January 1982 for all investors. The President adopted the formula proposed by Japan and Peru.

France proposed a sentence to prevent a component of a group qualifying as a pioneer investor to claim that status for itself. To similar effect, Japan would have prohibited pioneer investors from dividing into two or more entities in the eight months prior to 1 January 1983—the proposed cut-off date for pioneer status. The President's text did not deal with this issue except to add a sentence stating that the rights of a pioneer investor could devolve upon its successor.

Gabon proposed to extend the definition of "pioneer activities" to cover exploration for all sea-bed resources, not just polymetallic nodules. The definition in the President's text was unchanged.

Japan would have limited to 60,000 square kilometres rather than 150,000 the exploratory area allotted to each pioneer. Peru also proposed 60,000 square kilometres but sought to add a clause enabling the Preparatory Commission to fix another size. Gabon proposed to delete any reference to the size of the area. The President's text retained the 150,000-square kilometre area but added a provision requiring the pioneer to relinquish half of the area in stages over eight years.

In regard to the application and allocation procedure, Belgium, the Federal Republic of Germany, Italy, the United Kingdom and the United States(1) proposed to add clauses requiring that information on mine sites and nodules submitted by applicants for pioneer status be kept confidential. Also, the part of each sea-bed area reserved for future exploitation by the Enterprise would be chosen by random selection. The President added a confidentiality-of-data clause as well as a provision requiring the Preparatory Commission to make within 45 days its allocation of areas between the applicant and the reserved area, without the possibility of deferral by a further 45 days permitted in the earlier draft.

A Peruvian amendment would have required applicants to submit details of the amounts they had invested in sea-bed activities, .for the Commission's verification. No such provision was included in the President's text.

To a clause in the earlier draft stating that no investor could have more than one area, the President added a phrase to the effect that none of the components of a consortium could apply for a site in its own right or in association with a developing country.

The five Western States sought to add to the resolution a procedure for resolving conflicting claims before applications were made to the Commission. Conflicts that could not be resolved voluntarily by the claimants would be submitted to binding arbitration, with the outcome to be based on such factors as when the claimants had first presented their claims to their own Governments, how extensively they had worked in the disputed area, when they had begun working there and how much they had spent. They also proposed to allow commercial production after 1 January 1988 if the Convention had not entered into force by then. The President's text added a conflict resolution procedure substantially similar to that proposed by the Western States.

Referring to the $500,000 registration fee in the collegium's draft, the five Western States proposed that if the application cost less to process the Commission would refund the difference. Peru, on the other hand, would have required each pioneer investor to pay the Commission an annual fixed fee of $1 million in addition to the registration fee. The President's text provided for a $250,000 registration fee for the Commission plus $250,000 to the Authority when the pioneer applied for a plan of work. A '$1-million annual fee was added, but it was to be payable to the Authority when the investor's plan of work was approved.

Peru would also have required each pioneer to spend not less than $10 million a year on its allotted sea-bed area, rather than the $l-million minimum in the collegium's text. The five Western States proposed that the minimum be reduced to $500,000. The President's text said that the minimum expenditure would be determined by the Commission in relation to the size of the area and the expenditures expected of an operator that intended to mine the site commercially within a reasonable time.

Under the President's text, pioneer investors would have up to six months from the time the Convention entered into force to apply to the Authority for approval of a plan of work; the collegium's draft had had no time-limit. The President's text added that the plan must comply with and be governed by the Convention as well as the Authority's rules, including operational and financial requirements and undertakings regarding technology transfer. With regard to the second group of investors-from Japan and countries of North America and Western Europe other than France-the draft added the requirement that all the States whose firms comprised the pioneer investor must have ratified the Convention before it could receive a contract from the Authority.

To a paragraph in the collegium's draft giving pioneer investors priority over all others except the Enterprise in obtaining production authorizations from the Authority, Peru proposed to specify that such authorization be granted in the order in which applicants applied for it. Peru also proposed that a pioneer lose its priority if it did not apply for production authorization within five years of the time the Authority approved a plan of work for the investor's sea-bed activities. The five Western States proposed that production authorizations be issued first to entities which had registered claims for specific sites with their own Governments prior to the date of signing of the Final Act. This would have replaced a provision in the collegium's draft stating that competition between pioneer investors for production authorization would be resolved by the Convention's provisions for selection among applicants unless they agreed to another arrangement.

The President's text contained expanded provisions relating to production authorizations to be granted by the Authority to pioneer investors. It retained priority for such investors but contained more elaborate rules to deal with situations in which the production limit would be exceeded if all investors were allowed to produce whatever quantities they wished. In such a case, the investors could agree either to apportion the allowable tonnage among themselves or to let one or more of them begin exploitation ahead of the others, within the overall ceiling. If they chose apportionment, they would be allowed to produce up to the full amount requested as soon as the overall production ceiling permitted. But whichever choice they made, no other applicant would receive a production authorization until all the pioneers were permitted to produce as much as they wished.

The production authorization paragraph in the President's text contained two other new elements. First, after each pioneer investor had obtained production authorization for its first site, the Enterprise would have priority as long as it was exploiting fewer sites than private and State entities. Second, production authorizations would be issued within 30 days of the date on which the pioneer investor notified the Authority that it would commence mining within live years, with a possibility of extension for up to five years more.

Peru proposed that an investor lose its pioneer status if its sponsoring State failed to ratify the Convention within six months after application to the Authority for approval of a plan of work. Another Peruvian amendment would allow a pioneer to alter its nationality and sponsorship-as would the collegium's text-but only if it selected a State party to the Convention which had effective control over it. The President's text incorporated both concepts.

The live Western States proposed changes in the paragraph setting out what should be done to ensure that the Enterprise was able to carry out sea-bed activities in step with States and others. Whereas the collegium's text would place obligations directly on pioneer investors for exploration of the Authority's area, training of personnel, technology transfer and ensuring funds for the Enterprise, the five States sought to place those obligations on the States which certified pioneer investors, in co-operation with the investors. Exploratory work in the Authority's area would be carried out on a "reimbursable basis in accordance with normal commercial practice" (rather than on a "cost-reimbursable basis").

A Peruvian amendment affecting the technology transfer provision was taken into account in the President's revision. That revision made three other changes in the paragraph spelling out the responsibilities of pioneer investors and their States towards the Enterprise: (1) As in the earlier draft, the pioneers might be required to explore a sea-bed area for the Enterprise, on a cost-reimbursable basis; but the revised text specified reimbursement of costs plus interest at the rate of 10 per cent a year. (2) Certifying States, rather than investors, would ensure that funds were made available to the Enterprise in a timely manner. (3) Certifying States would report periodically to the Preparatory Commission on their activities or those of their sea-bed entities, an obligation not mentioned in the collegium's draft.

In place of the clause in the collegium's draft requiring the Authority and its organs to act in accordance with the provisions of resolution II, the President's text would require them to recognize and honour the rights and obligations arising from the resolution.

Gabon proposed to restore the provision in the earlier text by the Co-ordinators of the Working Group of 21 terminating the pioneer investor scheme and all rights granted thereunder if the Convention had not entered into force within five years. The President's text made no change in this regard.

The USSR proposed a new paragraph stating that nothing in the resolution derogated from the anti-monopoly and non-discrimination provisions of the Convention.(6) This idea was incorporated in the President's text.

Finally, Peru proposed a new paragraph to the effect that no activity in respect of resources other than polymetallic nodules was authorized by the resolution and that all activities relating to such resources could take place only under the Convention.

In his report of 29 April,(12) the President presented one final change, giving the Enterprise production authorization for two mine sites rather than one during the early years of the Convention.

The President reported that this change had been made in informal consultations at the suggestion of the Group of 77, which had also proposed two other changes: to reduce the size of the pioneer area and accelerate the timetable by which the pioneer investor would be required to relinquish parts of it, and to obtain the assistance of the industrialized States in financing the exploration and exploitation of the Enterprise's second mine site. The latter demand had been opposed by the USSR and others, which argued that it was an unacceptable attempt to reopen negotiations on financial matters that had been settled. The outcome had been that the Group of 77 did not insist on changes in the size of the pioneer area and the industrialized States had agreed to letting the Enterprise have two mine sites.

The President also reported on an objection by the USSR that the definition of a pioneer investor discriminated against the States in the first (France, India, Japan, USSR) and third (developing States) investor groups by requiring them to sign the Convention before they or their State enterprises could obtain pioneer status, whereas consortia from North America and Western Europe (excluding France) could receive such status if only one certifying State from that group signed. The President observed that this provision had been agreed to by the Group of 77 in return for the even greater concession that no plan of work for exploration and exploitation could be obtained by a Western consortium unless all the States to which its constituent members belonged became parties to the Convention. He also remarked that the USSR was guaranteed one mine site whereas seven Western States had to share four sites.

The USSR, at meetings of the Conference and in a letter to the President dated 22 April,(8) also objected that the Conference did not have the competence to grant the status of pioneer investor to private companies. The United Nations Legal Counsel, in memoranda of 21 April (annexed to the USSR letter) and 27 April, expressed the opinion that such an action would be legally permissible,(10) and the President, in his report of 29 April, said he concurred with that opinion.

Bulgaria, the German Democratic Republic, Hungary, Mongolia, Poland and the USSR, explaining on 30 April why they had abstained in the vote on the Convention and associated resolutions, said the provision in resolution II on pioneer investors, requiring States to sign the Convention before they could acquire pioneer status whereas private consortia could qualify even if some of their States had not signed, discriminated against socialist countries and had been drafted in response to the demand of various Western States which wanted to accommodate the interests of a number of transnational corporations. They said they would have voted against the resolution, had there been a separate vote. Several of these States, along with the Ukrainian SSR and Viet Nam, repeated this objection during the closing week of the Conference, at which time Hungary expressed hope that the Preparatory Commission would ensure that no State circumvented the Convention by taking advantage of legal loopholes.

Among those voting for the Convention, China thought the resolution on pioneer investors had accommodated too many of the demands of a few industrialized Powers, and insisted that its implementation be in accordance with the provisions of the Convention. France, explaining its favourable position on the Convention and associated resolutions, cited the regime for the protection of preparatory investment as one of the positive elements. Japan said one of the changes introduced by the President on 22 April (on the granting of production authorizations to pioneer investors) would add to the already congested list of authorization applicants.

Reservations on resolution II were also expressed by Iran and Sierra Leone, the latter adding in December that the scheme would reduce the Authority to a licensing organ and authorize the Enterprise to mine only two sites while States and international consortia could have up to eight.

Chile said the Preparatory Commission must give priority consideration to the adoption of rules for exploration and exploitation of sea-bed resources other than polymetallic nodules.

The Conference President and a number of developing countries and Eastern European States commented on reports of an agreement by France, the Federal Republic of Germany, the United Kingdom and the United States to establish a reciprocating States' regime, referred to by many as a "mini-treaty", governing exploration of the deep sea-bed. Mexico and Peru (speaking for the Group of 77) urged them not to take this step, which they regarded as illegal and contrary to the universal regime established under the Convention. Others expressing this view included Bulgaria, the Byelorussian SSR, China, Grenada, Iran, Pakistan, Somalia, Suriname, Uganda, the USSR, Vanuatu, Viet Nam and Zambia.

Grenada thought such a step would put the interests of transnational corporations above those of the world's peoples, and would widen the socio-economic and technological gap between nations. Suriname endorsed a statement made by the President at a press conference in May that the General Assembly would be requested to ask for an advisory opinion from the International Court of Justice on the legality of mining outside the Convention if the mining companies proceeded to mine under unilateral legislation or a limited multilateral agreement.

Many countries, such as China, and Trinidad and Tobago, also expressed the view that national legislation to allow deep-sea mining would be null and void. The activities of no State, however powerful or technically advanced, said Bangladesh, should acquire legitimacy through unilateral exploration and exploitation of the common heritage of mankind.

Addressing the Conference in December, Canada said its position as a sea-bed mining State had been secured under resolution II; it had initiated negotiations to resolve overlapping mining claims in a manner compatible with the resolution and the Convention. India said it had already spent the minimum sum qualifying it as a pioneer investor and had obtained useful data and samples from surveys of the Central Indian Basin of the Indian Ocean. Romania stressed that implementation of the pioneer investor scheme must in no way violate the principle that the resources of the Area should be exploited for the benefit of all mankind.

A number of States-including Canada, Finland and Norway-made the point that the decisions of several States on whether to ratify the Convention, and therefore the future of the new legal regime, would depend on whether the Preparatory Commission was able to find satisfactory solutions to the problems of regulating sea-bed mining.

Amendments not pressed. [(1)]Belgium, Germany, Federal Republic of, Italy, United Kingdom, United States, A/CONF.62/L.122; [(2)]France A/CONF.62/L.106; [(3)]Gabon, A/CONF.62/L.97; [(4)]Japan, A/CONF.62/L.105; [(5)]Peru, for Group of 77. A/CONF.62/L.116; [(6)]USSR, A/CONF.62/L.125.

Draft resolution. [(7)]Conference collegium, A/CONF.62/L.94.

Letter. [(8)]USSR, 22 Apr., A/CONF.62/L.133.

Memoranda. [(9)]Conference collegium, A/CONF.62/L.93; [(10)]Legal Counsel, A/CONF.62/L.139 & Corr.1,2.

Reports. Conference President, [(11)]A/CONF.62/L.132 & Corr.1 & Add.1 & Add.1/Corr.1, [(12)]A/CONF.62/L.141 & Add.1; [(13)]1st Committee Chairman, A/CONF.62/L.91; [(14)]Working Group Co-ordinators, A/CONF.62/C.1/L.30.

Resolutions (1982). Conference (Final Act, A/CONF.62/121 & Corr.3), 30 Apr.: [(15)]I, para. 5 (h); [(16)]II.

Meeting records. Conference: 1st Committee, A/CONF.62/-C.1/SR.56 (29 Mar.); plenary, A/CONF.62/SR.158-166, 168-179, 182 (30 Mar.-30 Apr.), A/CONF.62/PV.185-192 (6-9 Dec.).

Sea-Bed Authority

The Convention on the Law of the Sea provided for the establishment of the International Sea-Bed Authority, with all States parties to the Convention as members and with its seat in Jamaica (article 156). The Authority was described as the organization through which States parties would organize and control activities in the international sea-bed area in accordance with the Convention (article 157). Its principal organs would be an Assembly, a Council and a Secretariat; there would also be an Enterprise for mining operations. Advance arrangements for the Authority were to be made by the Preparatory Commission.

As part of their April 1982 package of amendments to sea-bed provisions of the Convention, two groups of Western States-Belgium, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom and the United States constituting one group[(2)] and 11 medium-sized industrialized States (known as the group of 11) the other(1)-proposed but did not press to reword a sentence (in article 158) obligating each principal organ to "avoid taking" action which might derogate from or impede the exercise of the powers and functions of other organs, so that it would read, "No organ shall take any action that derogates from or impedes" the exercise of another's powers and functions.

Amendments not pressed. [(1)]Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden, Switzerland. A/CONF.62/L.104 & Add.1; [(2)]Belgium, France, Germany, Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/L.121.

Assembly

The Assembly, composed of all members of the Authority, would take decisions on all matters of substance by a two-thirds majority of those present and voting (article 159). It was described by the Convention as the supreme organ of the Authority, with the power to establish general policies on any

question within the Authority's competence, and specifically authorized to elect the members of the Council and the Governing Board of the Enterprise, assess budgetary contributions and approve the Authority's annual budget, approve rules for sea-bed mining and the Authority's financial management and administration, decide on the equitable sharing of benefits from sea-bed activities, examine reports from the Council and the Enterprise, initiate studies and make recommendations to promote international co-operation on sea-bed activities, establish a compensation system or other economic adjustment measures for affected land-based producers, and suspend the rights and privileges of members (article 160).

The Assembly would meet on the date the Convention entered into force, at which time it would elect the Council (article 308).

As part of their April 1982 package of amendments relating to the sea-bed provisions of the Convention, Belgium, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom and the United States proposed to add to the paragraph characterizing the Assembly as the supreme organ (article 160) a sentence stating that this did not derogate from the provision (in article 158) on the division of powers among organs.(2) same amendment was also put forward by the group of 11 medium-sized Western industrialized States.(1) The seven also proposed to add a sentence requiring the Assembly, if it did not approve the proposed budget, to return it to the Council for reconsideration and resubmission. These amendments were not pressed.

Discussing the motivation of the first of these amendments, the Chairman of the Conference's First Committee, reporting to the Conference on 29 March,(4) said it was designed to allay the apprehension, especially by the United States, that the unqualified supremacy of the Assembly might interfere at times with the efficient management of the Authority's operations,

Gabon proposed to add to the Assembly's functions the establishment of a compensation fund to benefit developing States that were land producers of the same minerals as those extracted from polymetallic nodules and whose export receipts or economies would be affected by sea-bed exploitation.(3) Although this amendment was not pressed, the Convention was revised to include mention of a compensation fund in one of its financial provisions.

Amendments not pressed. (1)Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand. Norway, Sweden, Switzerland, A/CONE62/L.104 & Add.1; (2)Belgium, France, Germany, Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/L.121; (3)Gabon, A/CONF.62/L.97.

Report. (4)lst Committee Chairman, A/CONF.62/L.91.

Council

Several aspects of the membership, voting procedures, functions and subsidiary bodies of the executive organ of the Authority-the Council—were spelt out in the Convention on the Law of the Sea. All of these aspects were under consideration in 1982 during the final negotiating and amendment stages of the Conference on the Law of the Sea.

Membership. The Convention provided for a Council of 36 members, each elected by the Assembly for a four-year term at elections to be held every second year (article 161). Half of them would come from one of four major interest groups, while the rest would be elected in such a way as to ensure equitable geographical representation in the Council as a whole. The four groups were: the major consumers or importers of the minerals found on the sea-bed (four States), major land-based exporters of the same minerals (four States), the largest investors in sea-bed mining (four States), and developing countries representing "special interests" (six States). The "special interests" category included developing States with large populations, the land-locked or geographically disadvantaged, major mineral importers, potential producers of the minerals in question and the least developed.

The First Committee Chairman, in his report of 29 March to the Conference,(9) noted that Austria, Finland, Greece, Portugal, Spain, Sweden, Switzerland and Turkey had presented an informal proposal calling for the addition of one developed and one developing State to the Council's membership, so as to give more adequate representation to the countries concerned and still maintain a fair geographical distribution overall. However, the Chairman was unable to report consensus on that issue, which had to be considered in the light of the balance of the Council's membership and the consequences for its voting system (see below). He thought the next alternative would be to increase the size of the Council to 48 members, but added that that idea had been condemned because of its effect on efficiency.

Several amendments were presented in April relating to the Council's membership.

Five States-Austria, Greece, Spain, Switzerland and Turkey-which favoured increased representation for medium-sized industrialized States proposed an amendment to that effect.(2) It would have enlarged the Council from 36 to 38 members: 19 (instead of 18) representing special interests, the additional seat to be available for a developing State, and 19 (instead of 18) elected to ensure overall geographical balance. This proposal would enable each regional group to have at least two members from the geographical category, except for Eastern Europe which was already

guaranteed two seats among the special interest categories.

Austria, Lesotho, Swaziland, Switzerland and the Upper Volta proposed to increase the representation of land-locked and geographically disadvantaged States to a degree reasonably proportionate to their representation in the Assembly.[3]

Proposals on Council membership were included in the packages of sea-bed amendments presented by two groups of Western States-one by Belgium, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom and the United States[4] and the other by the group of 11, introduced by Norway. [1] Both groups proposed that the largest consumer of sea-bed minerals be entitled to a seat. The seven-nation amendments also provided that all four of the sea-bed investors' group and two of the large-consumers' group be chosen from among the eight States parties to the Convention which were the largest contributors to the United Nations regular budget. The 11-nation amendments would also have specified the overall regional composition of the Council as nine from Western European and other States, three from Eastern European (socialist) States, and 24 from Africa, Asia and Latin America.

Canada proposed, but later withdrew, an amendment that, without altering the size of the Council, would have guaranteed a seat to the State contributing the largest share of financing.[5]

None of these amendments was pressed to a vote. Following the Conference's debate on amendments, the Conference approved only one change affecting the Council's membership, as proposed by the President on 22 April.[7] It was to guarantee a seat in the Council for the largest consumer of sea-bed minerals, which the First Committee Chairman had identified as the United States,

Portugal and Switzerland, which voted for the Convention, expressed reservations on the Council membership clause, which Switzerland said would deny a seat to many medium-sized industrialized States.

Canada said in December that, as a major land-based producer of the minerals found on the sea-bed, a potential mining State and a major financial contributor, it expected to be a member of the Council. Sweden expressed regret that provisions discriminating against small and medium-sized industrialized States in regard to Council membership remained in the Convention.

Vooting procedures and functions. The Convention provided for an elaborate scheme of decision-making majorities in which the Council was to decide the most important questions by consensus rather than voting (article 161). Consensus—defined as the absence of a formal objection—would be required for adoption of the rules, regulations and procedures (referred to below as rules) for all sea-bed activities, pending approval by the Assembly, and rules for the Authority's administration and financial management, as well as measures to protect land-based producing countries from adverse economic effects of sea-bed mining, recommendations to the Assembly on economic adjustment assistance for such countries and adoption of amendments to the sea-bed provisions of the Convention. Other substantive matters would be resolved by voting majorities of three fourths or two thirds, depending on the nature of the issue. The Council was to have the power to establish, in conformity with the Convention and the general policies established by the Assembly, the specific policies to be pursued by the Authority (article 162).

The seven Western industrialized States proposed amendments affecting voting majorities and the definition of functions of the Council. With regard to voting (article 161), they proposed that decisions on a number of substantive matters, which under the existing text would require majorities of two thirds or three fourths, be taken by a three-fourths majority which must include a majority of each of the four special interest categories on the Council (investors, consumers, land-based producers and developing States with special interests) and of each geographical region. Also, all decisions on specific policies to be pursued by the Authority would have had to be taken by consensus, as would recommendations on a compensation system or other economic assistance for land-based producers. With regard to the Council's powers and functions (article 162), they proposed a number of limitations and other alterations, one of which would have replaced the function of exercising control over sea-bed activities with that of investigating the adequacy of enforcement practices by States parties.

The group of 11 proposed only one change in the voting arrangements: that Council decisions on the Authority's budget require a majority of three fourths plus one, rather than simply three fourths, of the members present and voting.

The Conference approved one change in the list of the Council's powers and functions, adding a provision that, in adopting rules for sea-bed activities, the Council was to give priority to those covering polymetallic nodules, and that rules governing other resources would have to be adopted within three years after a member of the Authority requested that this be done. This addition was proposed by the Conference President in his report of 29 April.[8]

The United States, explaining on 30 April its vote against the Convention, cited as one of the reasons its view that the decision-making process did not give a proportionate voice to the countries

most affected by the decisions and would thus not fairly reflect and effectively protect their interests.

During the final week of the Conference in December, the United Republic of Tanzania criticized the composition and decision-making procedures of important organs of the Authority, stating that they were plainly undemocratic in accommodating such notions as permanent members and veto powers masquerading under the euphemisms of "special interests" and "consensus".

Subsidiary bodies. The Convention established, as organs of the Council, an Economic Planning Commission and a Legal and Technical Commission, each to have 15 members elected by the Council with due regard for equitable geographical distribution, or more if the Council decided to expand their membership having due regard to economy and efficiency (article 163). The Economic Planning Commission-which would include at least two members from developing States whose exports of minerals also found on the sea-bed had a substantial bearing on their economies-was to review supply, demand and prices of sea-bed materials; make recommendations to the Council on likely adverse effects of sea-bed mining on land-based producing countries, and propose a compensation system or other economic adjustment measures for such countries (article 164). The Legal and Technical Commission was to make recommendations on plans of work for sea-bed activities, supervise activities in the international area, recommend environmental protection measures, formulate and submit to the Council the rules governing the sea-bed mining system, calculate the production ceiling and recommend production authorizations for individual contractors (article 165).

The seven Western industrialized States proposed that each of the four special interest groups represented in the Council elect three members to each of its two commissions. They would have deleted the references to geographical balance and to possible enlargement of the commissions. They also proposed an additional subparagraph stating that the Legal and Technical Commission would utilize the Secretariat's legal staff to the maximum extent possible but that its decisions and recommendations would be its own.

Gabon proposed to revise the phrase defining the category of land-based producers on the Economic Planning Commission to cover those whose export receipts and economies would be affected by sea-bed exploitation, and to provide that two such States be represented also on the Legal and Technical Commission.(6)

Amendments not pressed. (1)Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden, Switzerland, A/CONF.62/L.104 & Add.1; (2)Austria, Greece, Spain, Switzerland. Turkey, A/CONF.62/L.100; (3)Austria, Lesotho, Swaziland, Switzerland, Upper Volta, A/CONF.62/L.103; (4)Belgium, France, Germany, Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/L.121; (5)Canada, A/CONF.62/L.113 (withdrawn); (6)Gabon, A/CONF.62/L.97.

Reports Conference President, (7)A/CONF.62/L.132/Add.l, (8)A/CONF.62/L.141/Add.l; (9)lst Committee Chairman, A/CONF.62/L.91

Enterprise

The Convention on the Law of the Sea provided that the Authority's Enterprise was to carry out sea-bed activities directly, as well as the transport, processing and marketing of recovered minerals (article 170). Specific provisions were set out in a 13-article Statute which constituted annex IV to the Convention.

As stated in this annex, the Enterprise was to operate in accordance with sound commercial principles (article 1). It was to enjoy autonomy in the conduct of its operations, while acting in accordance with the general policies of the Authority's Assembly and the directives of the Authority's Council (article 2). A Governing Board of 15 members elected by the Assembly was to decide all matters by simple majority vote (article 5). The Board was to direct the operations of the Enterprise, including preparation of plans of work and production authorizations for approval by the Council, authorization of negotiations for the acquisition of technology. approval of the results of negotiations with other entities for joint ventures and other joint arrangements, and borrowing of funds (article 6). A Director-General, nominated by the Board and elected by the Assembly on the Council's recommendation, was to be chief executive, responsible for the staff (article 7). The principal office of the Enterprise was to be at the seat of the Authority (article 8).

The Enterprise was to submit financial reports to the Council on a regular basis (article 9). It was to make the same payments to the Authority as any commercial producer, except during an initial grace period of not more than 10 years, intended to enable it to become self-supporting; aside from a share to be retained as reserves, it was to transfer its net income to the Authority (article 10). Its funds were to include amounts from the Authority, voluntary contributions by States parties to the Convention, borrowings and income from operations; half of the funds received from the Authority were to come from long-term interest-free loans which each State party must provide according to its share of the United Nations regular budget, and the other half from Enterprise borrowings guaranteed by those States (article 11).

The Enterprise was to sell its products on a non-discriminatory basis, and only commercial

considerations were to he relevant to its decisions (article 12). Its property and assets were to he immune from seizure and discriminatory restrictions, and it was to negotiate tax exemptions in States where its offices were located (article 13).

The Enterprise's sea-bed activities were to he governed by the Authority's rules and decisions (annex III, article 12). A special commission for the Enterprise was to he established by the Preparatory Commission.[2] As part of the scheme for pioneer investors, and to ensure that the Enterprise would he able to keep pace with States and other entities engaged in sea-bed activities, those investors, prior to the entry into force of the Convention, were to he required to explore areas reserved for the Enterprise on a cost-plus-interest basis, train personnel and undertake to transfer technology as provided in the Convention; in addition, the States certifying those investors were to ensure that funds were made available to the Enterprise for its first two mining operations.[3]

The role of the Enterprise in the parallel system of sea-bed mining to be established under the Convention was spelt out in annex III, on basic conditions for prospecting, exploration and exploitation.

Amendments relating to the Enterprise were included by the United States and six other Western States in their April 1982 package of amendments on sea-bed provisions of the Convention.[1] With regard to activities by the Enterprise (annex III, article 12), they proposed to replace the provision that such activities would be governed by the Convention and the Authority's rules and decisions by a sentence stating that the Convention and the Authority's rules and decisions would apply to the Enterprise in the same manner as to any other sea-bed operator except where the Convention expressly provided otherwise. They also proposed that the Governing Board include members from States to which it owed at least half of its outstanding debts (annex IV, article 5). With regard to financing (annex IV, article 11) they proposed that no more than a third of the total of loans and guarantees which each State would be required to make to finance the Enterprise's first mining operation would he payable in any given year, and that the Authority's rules must specify procedures to he followed in the event of default by the Enterprise.

In separate amendments to Conference resolution II on pioneer investors, Belgium, the Federal Republic of Germany, Italy, the United Kingdom and the United States proposed changes in the paragraph on what would be done to ensure that the Enterprise could carry out sea-bed activities in step with States.

One of the reasons cited by the United States in explaining on 30 April its vote against the Convention was its view that the system of privileges established for the Enterprise would discriminate against private and national miners.

On the other hand, Mauritius, speaking in December, questioned whether the industrialized countries had fulfilled their commitment to provide the means to make the Enterprise viable. Trinidad and Tobago expressed the view that the Enterprise had not been given adequate guarantees to receive mining technology and engage in mining on an equal footing with private entities. Yugoslavia regarded the provisions on technology transfer to the Enterprise and on its initial financing as the essence of the parallel system.

The Byelorussian SSR said the secretariat of the Enterprise should be enabled to choose personnel at all levels in conformity with equitable geographical distribution.

Amendments not pressed. [1]Belgium, France. Germany, Federal Republic of, Italy Japan, United Kingdom, United States, A/CONF.62/L.121.

Resolutions (1982). Conference (Final Act, A/CONF.62/121 & Corr.3). 30 Apr.: [2]I, para. 8; [3]II, para. 12.

Financing

According to the Convention on the Law of the Sea (article 171), the International Sea-Bed Authority was to he financed from six sources: assessed contributions from its member States on a scale based on that used by the United Nations for its regular budget, receipts from the taxes (fees and charges) collected from sea-bed operators, part of the Enterprise's net income, possible borrowings, voluntary contributions, and payments to a compensation fund for affected land-based producing States. The Authority's annual budget would be subject to approval by the Assembly after consideration by the Council (article 172). Any funds not needed for administrative expenses could he shared with member States, transferred to the Enterprise or used to compensate developing States that suffered economic harm from sea-bed production (article 173).

The Authority would he empowered to borrow funds within limits imposed by the Assembly and with specifics to he decided by the Council (article 174). The financial statements and accounts would he audited annually by an independent auditor appointed by the Assembly (article 175).

Resolution I of the Conference on the Law of the Sea, on preparations for the Authority, provided that the budget for the Authority's first financial period was to be recommended by the Preparatory Commission.[1]

The Convention made separate arrangements for the financing of the Enterprise, initially through loans and loan guarantees arranged, through the Authority and eventually from the proceeds of its mining activities. Resolution II, on

pioneer investors, provided that States certifying such investors (sea-bed mining States) were to ensure that funds were made available to the Enterprise for its initial mining operations.[2]

During the Conference's final week in December 1982, Sierra Leone questioned whether African States would gain much from a scheme which required them to pay approximately $1 million each to join the Authority with no guarantee that their investment would yield dividends.

Resolutions (1982). Conference (Final Act, A/CONF.62/121 & Corr.3, 7, 8). 30 Apr.: [1]II, para. 5 (c); [2]II, para. 12.

Other aspects

The Convention on the Law of the Sea provided for the establishment of a Secretariat of the Authority, headed by a Secretary-General elected by the Assembly for a four-year, renewable term from candidates proposed by the Council (article 166). As in the case of the United Nations Secretariat, the paramount consideration in staff recruitment would be efficiency, competence and integrity, with due regard to recruitment on as wide a geographical basis as possible (article 167). Staff members would he prohibited, even after the termination of their functions, from disclosing industrial secrets or other confidential information they had learned by reason of their employment with the Authority (article 168). The Secretary-General was empowered to make arrangements for consultation and co-operation with international and non-governmental organizations (article 169).

The Authority was to have the legal capacity needed for the exercise of its functions (article 176). This was to include certain privileges and immunities (article 177) including immunity from legal process (article 178) and from search and seizure of its property and assets (article 179), and exemption from restrictions, regulations, controls and moratoria (article 180). Its archives were to he inviolable and its official communications were to be accorded treatment no less favourable than that given to other international organizations (article 181).

Representatives of States parties attending meetings, as well as the Secretary-General and staff, were to be immune from legal process with respect to their official acts, and were to be accorded the same exemptions from immigration restrictions and alien registration requirements, and the same treatment with regard to currency exchange restrictions and travel facilities, as officials and employees of comparable rank of other States parties (article 182). The Authority was to he exempt from direct taxes and customs duties on its property and official transactions, and the staff were to he exempt from paying income tax to any State other than that of which they were nationals (article 183).

A State party that fell two years or more in arrears in respect of its financial contributions to the Authority would have its voting rights suspended, unless the Assembly decided that failure to pay was due to conditions beyond the member's control (article 184). Gross and persistent violations of the sea-bed provisions, as determined by the Sea-Bed Disputes Chamber, could lead to a decision by the Assembly, on the Council's recommendation, to suspend the rights and privileges of membership (article 185).

One of the amendments submitted in April 1982 by Belgium, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom and the United States would have lifted the Authority's legal immunity against the enforcement judgements by the Sea-Bed Disputes Chamber.[1]

Amendment not pressed. [1]Belgium, France, Germany; Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/L.121.

Sea-bed disputes

The establishment of a Sea-Bed Disputes Chamber as an organ of the International Tribunal for the Law of the Sea was provided for in the Convention on the Law of the Sea (article 186). This Chamber would handle disputes between States parties to the Convention on the interpretation or application of the sea-bed provisions, as well as disputes involving the Authority and contractors (article 187). States could also submit their disputes to a special chamber of the Tribunal or an ad hoc chamber of the Sea-Bed Disputes Chamber; contract disputes could he submitted to a commercial arbitral tribunal for binding arbitration (article 188). The Sea-Bed Disputes Chamber could not decide questions involving the discretionary powers of the Authority or the validity of its rules, regulations and procedures (referred to below as rules) (article 189). A State sponsoring a corporation involved in a dispute would be entitled to take part in the proceedings (article 190). The Assembly or the Council could obtain advisory opinions from the Chamber on legal questions (article 191).

Further details regarding this Chamber were set out in the Tribunal's Statute (annex VI to the Convention). The Chamber would be composed of 11 members of the Tribunal, selected by a majority of the Tribunal's members to serve a three-year term (article 35). The Chamber would form an ad hoc chamber to deal with a particular dispute, composed with the approval of the parties (article 36). The Chamber would he open to the States parties to the Convention, the Authority and other entities (article 37). It would apply the rules of the Authority and the terms of contracts governing sea-bed activities (article 38). Its decisions would be enforceable in the territories of States parties in the same manner as judgements of the State's highest court (article 39). The other provisions of

the Tribunal's Statute not incompatible with those specifically relating to the Chamber applied to the Chamber (article 40).

Belgium, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom and the United States, in their April 1982 package of amendments to the sea-bed provisions of the Convention,(1) sought two changes to enlarge the scope of the dispute settlement machinery: to extend the jurisdiction of special or ad hoc chambers to disputes between a State and the Authority, rather than limiting it to disputes between States (article 188); and to authorize the Sea-Bed Disputes Chamber to determine whether the application of the Authority's rules in individual cases would conflict with the rights and obligations of the parties and determine claims concerning lack of competence or misuse of power (article 189).

Amendments not pressed. (1)Belgium, France, Germany, Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/L.121.

Protection of the marine environment

Convention provisions. Part XII of the Convention on the Law of the Sea placed on States parties the obligation to protect and preserve the marine environment (article 192). The right of States to exploit their natural resources was made contingent on that duty (article 193).

Following several general provisions explaining these obligations, the Convention outlined types of global and regional co-operation which were to be undertaken to fulfil them. It then dealt with more specific activities-technical assistance, monitoring and environmental assessment, and international rules and national legislation-to prevent, reduce and control marine pollution. Various kinds of enforcement measures were authorized, balanced by safeguards against the misuse of enforcement powers. The special status of ice-covered areas was recognized. Finally, this part of the Convention dealt with responsibility and liability for environmental damage, sovereign immunity for warships or government vessels, and the relationship of the provisions of part XII with obligations under other conventions for protection of the marine environment.

The general provisions obliged States parties to take all necessary measures consistent with the Convention to prevent, reduce and control pollution of the marine environment from any source, while refraining from unjustifiable interference with the activities of other States; they were also obliged to ensure that activities under their control or jurisdiction did not cause damage by pollution to other States or their environment (article 194). In taking such measures, States would have the duty not to transfer damage or hazards to another area or transform one type of pollution into another (article 195). Pollution control measures would have to be taken when new technologies were used or when alien or new species that could cause harmful environmental changes were introduced (article 196).

States were required to co-operate globally and, as appropriate, regionally-directly or through international organizations—in formulating international rules, standards, and recommended practices and procedures (referred to below as rules) to protect and preserve the marine environment, taking regional features into account (article 197). When a State became aware of threatened or actual environmental damage, it would have to notify other States likely to be affected, as well as the competent international organizations (article 198). In such cases, States in the area and organizations would have to co-operate in eliminating the effects of pollution and preventing or minimizing damage, and develop contingency plans to respond to pollution incidents (article 199). States would co-operate to promote studies, undertake research programmes, encourage information exchange and participate in regional and global pollution assessment programmes (article 200). In the light of such information, they would co-operate in establishing scientific criteria for pollution control rules (article 201).

States would commit themselves to promote scientific and technical assistance to developing States on this subject, to assist other States to minimize the effects of major environmental incidents and to help with environmental assessments (article 202). Developing States would be entitled to preference by international organizations in the allocation of funds and technical assistance and the utilization of specialized services (article 203).

The Convention required States to monitor the risks or effects of marine pollution (article 204) and publish reports of the results or provide reports to international organizations for dissemination (article 205). They must also assess the potential effects of planned activities under their jurisdiction or control whenever they had reasonable grounds for believing that substantial pollution or other significant harmful environmental changes might result (article 206).

The obligation to formulate international rules and national legislation for pollution control, and to harmonize national policies, was spelt out in reference to several kinds of pollution sources.

With regard to land-based sources-including rivers, estuaries and pipelines-the obligation would fall largely on national laws and regulations, taking internationally agreed rules into account (article 207). To control pollution from sea-bed activities subject to national jurisdiction, coastal States would be required to adopt laws and regulations no less effective than international rules

(article 208). For pollution from activities in the international sea-bed area, international rules would be established and national legislation no less effective would be adopted by States for operations by vessels and installations under their authority (article 209). Pollution by dumping would be governed under both national law and global and regional rules-the national to be no less effective than the global-and no dumping could be carried out without permission by State authorities (article 210).

Pollution from vessels would be controlled by: international rules and routeing systems designed to minimize the threat of accidents; flag States, through laws and regulations for vessels under their authority having at least the same effect as that of generally accepted international rules; coastal States, for vessels calling at their ports or offshore terminals, entering their internal waters or passing through their territorial sea or exclusive economic zone, except that in respect of the zone the legislation could not go beyond generally accepted international rules; and international standards for special, environmentally sensitive areas in an exclusive economic zone, to be enacted by the coastal State (article 211). Pollution from or through the atmosphere would be dealt with by national legislation applying to a State's airspace and to vessels or aircraft registered with that State, taking international rules into account (article 212).

The Convention next specified the authorities responsible for enforcing anti-pollution measures.

In the case of land-based sources, enforcement of national laws and regulations and international rules would be in the hands of States (article 213). The same was true with respect to pollution from sea-bed activities and offshore structures under their jurisdiction (article 214). Enforcement of international rules for the international sea-bed area (article 215) would be governed by the sea-bed part of the Convention (which made the International Sea-Bed Authority responsible for drawing up such rules and made the Authority and States jointly responsible for securing compliance). Regulations on pollution from dumping would be enforced by the coastal State, the flag State, or any State in whose territory waste or other matter was loaded by a vessel (article 216).

With regard to pollution from vessels, the flag State would be responsible for enforcement of both national and international regulations with respect to vessels flying its flag, wherever a violation occurred; it would be required to inspect and certify such vessels, prohibit them from sailing if they did not comply, investigate alleged violations and institute proceedings where necessary, and provide for penalties severe enough to discourage violations (article 217).

A port State (one at whose port or offshore terminal a vessel was berthed) could investigate a discharge from any vessel which occurred outside its waters; it could institute proceedings if requested to do so by the flag State, a State in whose waters an alleged violation occurred or a State affected by the discharge violation (article 218). A port State would also be required to take steps to prevent a vessel from leaving its port, except to proceed to the nearest repair yard, if it ascertained that the vessel was in violation of international seaworthiness standards and thereby threatened environmental damage (article 219).

While a vessel was within a coastal State's port or at an offshore terminal, that State could institute proceedings in respect of a violation which had occurred within its territorial sea or exclusive economic zone; it could inspect and detain a vessel located in its territorial sea for a violation occurring there; it could inspect a vessel in its exclusive economic zone under similar circumstances but could bring proceedings against and detain it only if there was clear objective evidence that the vessel was responsible for a substantial discharge causing or threatening major damage to the coastline or resources (article 220). States would retain the right to take measures beyond their territorial sea in the event of a collision or other maritime casualty that could reasonably be expected to result in major harmful consequences, but the action would have to be proportionate to the actual or threatened damage to the coastline or fishing interests (article 221).

With respect to pollution from or through the atmosphere, States would be responsible for enforcement within their airspace and with regard to vessels or aircraft of their registry, in conformity with international rules on the safety of air navigation (article 222).

The Convention contained various kinds of safeguards. Thus, in proceedings against accused violators, States would be obliged to facilitate the hearing of witnesses and the admission of evidence submitted by another State, as well as the attendance of representatives of the competent international organization, the flag State and any State affected by the pollution arising from the violation (article 223).

Enforcement powers against foreign vessels could be exercised only by authorized officials or by warships, military aircraft, or other ships or aircraft clearly marked as being on government service (article 224). In exercising those powers, a State could not endanger the safety of navigation or otherwise create a hazard to a vessel, or expose the marine environment to an unreasonable risk (article 225). The Convention laid down specific rules relating to the investigation of foreign vessels, requiring in particular that States must not

delay them longer than was essential for an investigation, must not conduct a physical investigation unless an inspection of documents proved unsatisfactory and must release a detained vessel subject to the posting of a bond or other financial security (article 226). Discrimination against vessels of another State was prohibited (article 227).

Legal proceedings to impose penalties for a violation occurring beyond the territorial sea of the State instituting those proceedings would have to be suspended if the flag State brought corresponding charges against the alleged offender within six months, except in the case of major damage to the coastal State or if the flag State had repeatedly disregarded its obligation to enforce international rules against its vessels; no State could institute proceedings against a foreign vessel if another State had already done so, and any proceedings would have to be instituted within three years of the violation (article 228). The Convention would not affect civil proceedings in respect of any claim for loss or damage (article 229).

The Convention provided for the imposition of monetary penalties with respect to violations of national laws and international rules committed by foreign vessels, and required the observance in such cases of recognized rights of the accused (article 230). It also required that the flag State and any other State concerned be promptly notilied of any enforcement measures against foreign vessels (article 231). States would be liable for damage or loss attributable to them arising from enforcement measures that were unlawful or exceeded those reasonably required in the light of available information (article 232).

According to the Convention (article 233), nothing in the sections on regulations against marine environmental pollution, enforcement measures and safeguards would affect the legal regime of straits used for international navigation, except that the safeguards would have to be respected whenever States bordering such straits took enforcement measures permitted by the rules of transit passage.

Coastal States would have the right to adopt and enforce laws and regulations to prevent or control pollution in ice-covered areas within their exclusive economic zone where the ice obstructed navigation for most of the year and pollution could cause major harm to or irreversible disturbance of the ecological balance (article 234).

The Convention made States responsible and liable for fulfilling their obligations to protect and preserve the marine environment, and required them to ensure that recourse was available for prompt and adequate compensation or other relief in respect of damage caused by persons or corporations under their jurisdiction (article 235).

Warships and other State vessels or aircraft used for non-commercial service would not be bound by the environmental protection provisions of the Convention, but the State concerned would have to ensure, by taking measures that did not impair the operations or operational capabilities of such craft, that they acted in a manner consistent with the Convention so far as reasonable and practical (article 236). The environmental protection measures of the Convention were without prejudice to States' obligations under previous and future conventions on the subject (article 237).

Conference consideration. The only alterations in the environmental protection provisions made during 1982 by the Conference on the Law of the Sea were drafting changes proposed in a letter of 26 March by the Chairman of the Third Committee,[6] which prepared this part of the Convention, and in his report to the Conference dated 30 March.[8] He noted in his report that this part of the Convention used the term "vessel" to apply to ships and other floating structures..

In April, France and Spain each proposed amendments to this part of the Convention but did not press for a vote on them. France proposed that the penalties provision (article 230) be strengthened by permitting penalties going beyond fines in cases of a wilful or serious act of pollution committed by foreign vessels beyond the territorial sea.[1]

Spain proposed two amendments:[2] first, to delete the phrase "beyond the territorial sea" from the provision on marine casualties (article 221) permitting States to take measures beyond the territorial sea to protect themselves against major pollution from such incidents; and second, to replace the phrase "legal regime of straits" by the phrase "regime of passage through straits" in the clause (in article 233) stating that nothing in the sections dealing with regulations against marine environmental pollution, enforcement and safeguards affected the legal regime of straits used for international navigation.

On 22 April, the President reported to the Conference that, during consultations undertaken by the Third Committee Chairman, it had been impossible to find a generally acceptable solution in regard to these amendments.[7]

By a letter to the Conference President dated 28 April, Malaysia transmitted a statement of understanding regarding the provision on environmental safeguards in straits used for international navigation (article 233) and its application to the Straits of Malacca and Singapore.[5] By letters of 29 April, the two other States bordering those Straits, Indonesia and Singapore, and States which were the major users of them-Australia, France, the Federal Republic of Germany, Japan, the United Kingdom and the United States—confirmed that understanding.[4]

Speaking after the Conference adopted the Convention on 30 April, Canada described the handling of the problem of ice-covered areas as an example of great-Power agreement with the small countries in the interest of mankind.

During the Conference's final meetings in December, several States remarked that the environmental protection provisions of the Convention struck a balance between the various interests involved, especially coastal and maritime States. Finland voiced this conclusion, adding that the true value of the environmental provisions could be realized only through further national and international regulation. Ireland expressed the view that the powers given to the coastal State to protect the marine environment were adequate while avoiding unreasonable interference with navigation and other rights of other States. France and Trinidad and Tobago also believed that the provisions on the marine environment reflected a just balance of differing interests.

Barbados stressed the importance of the marine pollution provisions for a country like itself, located in the major sea lane of the Caribbean where supertankers plied their trade, posing a constant threat to marine life and the environment. Sweden, on the other hand, regretted that the environment provisions were not as far-reaching as it would have liked; coastal States should have been given the right to take more effective measures to protect their marine environment.

UNEP action. On 31 May, the Governing Council of the United Nations Environment Programme (UNEP) recorded its satisfaction with the results of the Conference specifically in respect of the protection and preservation of the marine environment, as an essential contribution to the progressive development and codification of international law in the field of the environment.[3] This decision was adopted by a roll-call vote of 45 to 1 (United States), with 5 abstentions.

UNEP was also involved in other activities relating to protection of the marine environment.

Amendments not pressed. [1]France, A/CONF.62/L.106: [2]Spain, A/CONF.62/L.109.
Decision (1982). [3]UNEP Council (report, A/37/25): 10/23, 31 May.
Letters. [4]Australia, France, Germany, Federal Republic of, Indonesia. Japan, Singapore, United Kingdom. United States, 29 Apr., A/CONF.62/L.145/Add.l-8; [5]Malaysia, 28 Apr. A/CONF.62/L.145; [6]3rd Committee Chairman. 26 Mar., A/CONF.62/L.88 & Corr.1.
Reports. [7]Conference President, A/CONF.62/L.132; [8]3rd Committee Chairman, A/CONF.62/L.92.

Marine scientific research

Convention provisions. Part XIII of the Convention on the Law of the Sea was concerned with the conduct and promotion of marine scientific research. Following several general provisions, it dealt with international co-operation in this field and went on to lay down rules to be followed by research and coastal States, particularly with regard to research in the exclusive economic zone and on the continental shelf. Other provisions dealt with scientific research installations and equipment, responsibility and liability, and dispute settlement and interim measures.

According to this part of the Convention, all States and competent international organizations had the right to conduct marine scientific research subject to the rights and duties of other States (article 238). States and organizations were to promote and facilitate the development and conduct of such research (article 239). Four general principles were established: research must be exclusively for peaceful purposes, it must be conducted with scientific methods and means compatible with the Convention, it could not unjustifiably interfere with other legitimate uses of the sea and must be duly respected in the course of such uses, and it must abide by all relevant regulations including those for protection and preservation of the marine environment (article 240). Research activities could not constitute the legal basis for any claim to any part of the marine environment or its resources (article 241).

States and organizations were obligated to promote international co-operation in marine scientific research for peaceful purposes and to enable other States to obtain information necessary to prevent and control damage to the health and safety of persons and to the marine environment (article 242). They were to co-operate, through bilateral and multilateral agreements, in creating favourable conditions for the conduct of research and in integrating the efforts of scientists (article 243). They were to publish and disseminate information on proposed major programmes and their results (article 244).

The Convention established specific régimes for marine scientific research in different parts of the sea. In the territorial sea, coastal States had the exclusive right to regulate, authorize and conduct research, which could be carried out only with their consent (article 245).

In the exclusive economic zone and on the continental shelf (article 246), research was subject to the consent of the coastal State, but that State was obliged under normal circumstances to grant consent to a foreign State or international organization—even in the absence of diplomatic relations between two States-when the research was for peaceful purposes and was intended to increase scientific knowledge for the benefit of all. A coastal State could withhold consent for research that was directly concerned with natural resources and their exploitation, or involved drilling into the continen-

tal shelf, the use of explosives, the introduction of harmful substances, or the construction or use of offshore structures, but consent could not be denied for research on the continental shelf beyond 200 nautical miles from shore, except in areas reserved by the coastal State for exploitation.

A marine scientific research project undertaken by or under the auspices of an international organization would be deemed to have been authorized by the coastal State if that State approved the project when the organization decided to go ahead with it, or was willing to participate in it, and had not objected within four months of receiving notice about the project from the organization (article 247).

Those intending to undertake a project would be required to provide the coastal State with a full description at least six months before commencing it (article 248). They would have to comply with certain other conditions: ensuring the coastal State's right to participate or have representatives aboard the research vessel or installation, providing it with preliminary reports and final results, giving it access to data and samples, providing it on request with an assessment of the data and research results or helping it to interpret them, ensuring that the results were made available internationally, informing it of any major change in the programme, and removing installations and equipment upon completion of the research (article 249).

A research project could proceed six months after the detailed description was provided to the coastal State unless consent was withheld, the information did not conform to evident facts or had to be supplemented, or the researcher had outstanding obligations with regard to a previous project (article 252). A coastal State could require suspension of research activities if they were not conducted in accordance with the information provided to it and on which its consent was based, or if the researcher failed to observe the coastal State's rights; it could require cessation if such a situation was not corrected within a reasonable time or in the event of a major change in the project or activities (article 253).

Neighbouring land-locked and geographically disadvantaged States would receive notice of all such research projects and, at their request and when appropriate, would be given the detailed prospectus; they would be entitled to send experts not objected to by the coastal State to participate in the project whenever feasible, and at their request they would be given an assessment of the data or results (article 254).

In addition to these provisions on research in the exclusive economic zone or on the continental shelf, the Convention included provisions pertaining to marine scientific research in general. Communications about research projects would be made through official channels unless otherwise agreed (article 250). States would seek to promote through international organizations the establishment of general criteria and guidelines to assist States in ascertaining the nature and implications of such research (article 251). States would endeavour to adopt reasonable rules, regulations and procedures to facilitate marine scientific research beyond their territorial sea, and to facilitate access to their harbours and promote assistance for research vessels (article 255).

All States and international organizations would have the right to conduct marine scientific research in the international sea-bed area (article 256) and in the water beyond the exclusive economic zone (article 257).

With regard to scientific research installations and equipment in the marine environment, the Convention would subject their deployment and use to the same conditions as were prescribed for marine scientific research (article 258). It specified that they did not possess the status of islands, had no territorial sea of their own and did not affect maritime boundary delimitation (article 259). They could be surrounded by safety zones extending up to 500 metres (article 260). They were to be deployed and used without obstructing international shipping routes (article 261). They were to bear identifying markings indicating their State of registry or the international organization to which they belonged, and must have internationally agreed warning signals to ensure safety at sea and the safety of air navigation (article 262).

States and organizations would be responsible for ensuring that marine scientific research undertaken by them or on their behalf was conducted in accordance with the Convention; they would be responsible for damage resulting from measures that contravened the Convention and damage caused by marine pollution arising from their research activities (article 263).

Disputes over the application of the Convention's provisions on marine scientific research would be settled in accordance with its clauses on compulsory dispute settlement procedures involving binding decisions (article 264), except that certain types of disputes would be exempt from such procedures and certain others would be dealt with through conciliation. Pending a settlement, the research State or organization would not allow research activities to commence or continue without the coastal State's consent (article 265).

Conference consideration. No changes were made or amendments proposed during 1982 to the provisions on marine scientific research.

During the final meetings of the Conference on the Law of the Sea in December, Ireland remarked that the Convention safeguarded the coastal State's

rights to control marine scientific research in its jurisdictional area while ensuring that research would not be unreasonably prevented or hampered there. France and Trinidad and Tobago said the provisions on marine scientific research reflected a just balance of conflicting interests. Sweden, however, thought coastal States had been given too extensive rights to control research; it would have wished the Convention to put stronger emphasis on freedom of research.

Marine technology development and transfer

Convention provisions. Part XIV of the Convention on the Law of the Sea was concerned with the development and transfer of marine technology. It contained general provisions followed by sections on international co-operation, national and regional marine scientific and technological centres, and co-operation among international organizations.

In its general provisions on this topic, the Convention obliged States to co-operate in promoting the development and transfer of marine science and technology on fair and reasonable terms and conditions, to promote the development of the marine scientific and technological capacity of States which needed and requested technical assistance, and to foster conditions for the transfer of marine technology on an equitable basis (article 266). In promoting such co-operation, States were to have due regard for all legitimate interests, including the rights and duties of holders, suppliers and recipients of marine technology (article 267).

The basic objectives to be promoted were: acquisition, evaluation and dissemination of marine technological knowledge, and access to it; development of appropriate marine technology, of a technological infrastructure to facilitate marine technology transfer and of human resources through training and education; and international co-operation at all levels (article 268). To achieve those objectives, States committed themselves to endeavour to establish technical co-operation programmes, promote conditions for the conclusion of agreements and other arrangements under equitable and reasonable conditions, hold meetings on policies and methods for marine technology transfer and on other scientific and technological subjects, promote the exchange of scientists and other experts, and undertake projects and promote joint ventures and other forms of bilateral and multilateral co-operation (article 269).

International co-operation for the development and transfer of marine technology was to be carried out through existing, expanded and new programmes, including international funding for ocean research and development (article 270). Guidelines, criteria and standards for marine technology transfer were to be established bilaterally or through international organizations (article 271). International programmes were to be co-ordinated, taking account of the interests and needs of developing States, particularly the land-locked and geographically disadvantaged (article 272).

In addition to the more specific technology transfer provisions contained in the sea-bed part of the Convention, the marine technology part obliged States to co-operate with international organizations and the International Sea-Bed Authority to encourage and facilitate the transfer to developing States and the Enterprise of skills and marine technology relating to sea-bed activities (article 273). The Authority was to ensure that nationals of developing States were taken on for training as members of its managerial, research and technical staff; that technical documentation on equipment, machinery, devices and processes was made available to all States, particularly developing ones; that adequate provision was made to facilitate the acquisition of technical assistance by States needing and requesting it, and of skills, know-how and professional training by their nationals; and that requesting States were helped to acquire equipment, processes, plant and know-how through financial arrangements provided for in the Convention (article 274).

States were to promote the establishment, particularly in developing coastal States, of national marine scientific and technological research centres and the strengthening of existing ones, with the aim of stimulating research, enhancing national capabilities to utilize and preserve marine resources for their economic benefit, and providing advanced training facilities, equipment, skills and know-how (article 275). The establishment of similar centres on a regional basis was also to be promoted (article 276). The functions of regional centres were to include training and education, management studies, environmental protection study programmes, organization of meetings, acquisition and processing of information, prompt dissemination of research results in readily available publications, publicizing and comparative study of national marine technology transfer policies, compilation and systematization of information on the marketing of technology and on patent arrangements, and technical co-operation with States of the region (article 277).

International organizations were to take measures to ensure, either directly or in close co-operation among themselves, the effective discharge of their functions and responsibilities in regard to marine technology transfer and development (article 278).

Conference consideration. The Conference on the Law of the Sea received no amendments and made no changes in 1982 to part XIV of the

Convention, on marine technology transfer and development. However, it adopted on 30 April a resolution on the subject, urging industrialized countries to assist developing countries with their marine science, technology and ocean service development programmes, and recommending that United Nations organizations expand their assistance to developing countries in this field (see ECONOMIC AND SOCIAL QUESTIONS, Chapter XII). The resolution was transmitted by the Secretary-General to the General Assembly.[1]

Israel, speaking to the Conference in December, said it wished to take advantage of the new arrangements for the diffusion of marine technology and scientific research, and would be happy to make its expertise available to others. Liberia called on the international community to help the developing countries, particularly those in Africa, through training of personnel and technology transfer. Sri Lanka mentioned that it had set up a National Aquatic Resources Agency to carry out, co-ordinate and promote research and development activities concerning marine and freshwater resources, and through which Sri Lanka intended to receive and eventually extend assistance and co-operation in marine science and technology.

Resolution (1982). [1]Conference: 30 Apr., transmitted by S-G note, A/37/566 & Corr.1.

Dispute settlement

Convention provisions. Part XV of the Convention on the Law of the Sea contained a set of procedures for the settlement of disputes concerning the interpretation or application of the Convention. Under this scheme, if the parties could not agree on a means of settlement, they would have to submit most types of disputes to a compulsory procedure entailing decisions binding on all parties. They would have four options: an International Tribunal for the Law of the Sea, established under the Convention; the existing International Court of Justice; and arbitration or special arbitration procedures (annexes VII and VIII). Certain disputes would be submitted to conciliation (annex V), a procedure whose outcome would not bind the parties.

States parties would commit themselves to settle their disputes by peaceful means (article 279). The Convention would not impair their right to agree at any time to settle a dispute by any peaceful means of their choice (article 280). In that event, the Convention's dispute settlement procedures would apply only where no settlement had been reached through such means (article 281). If the parties to a dispute had agreed, through a general, regional or bilateral agreement, to submit such disputes to a procedure entailing a binding decision, that procedure would apply in lieu of the Convention's procedures unless the parties agreed otherwise (article 282). States would be obliged to exchange views on the means of settlement of any dispute arising between them in relation to the Convention, and on the manner of implementing a settlement once it was reached (article 283).

Conciliation. One of the procedures to which the parties could agree was conciliation (article 284): The details of a voluntary conciliation procedure were supplied in annex V (section 1) to the Convention.

This specified that the procedure was to be initiated by written notification from one party to the other (article 1). The United Nations Secretary-General was to maintain a list of conciliators nominated by the States parties to the Convention (article 2). The conciliation commission was to have live members: two chosen by each party, preferably from the list, and the fifth chosen from the list by the other four; the Secretary-General could appoint any conciliators required to make up the five if this procedure failed (article 3). Decisions on procedural matters, the report and recommendations were to be made by majority vote (article 4).

The commission could draw the parties' attention to any measures which might facilitate an amicable settlement (article 5). It would hear the parties, examine their claims and objections, and make proposals with a view to reaching an amicable settlement (article 6). It would submit within 12 months a report whose conclusions or recommendations would not be binding on the parties (article 7). Conciliation would terminate when a settlement had been reached, when the parties had accepted or one party had rejected the recommendations, or when three months had elapsed after transmission of the report to the parties (article 8).

The fees and expenses of the commission would be borne by the parties to the dispute (article 9). The parties could, by agreement applicable solely to their dispute, modify any provision of annex V (article 10).

Compulsory settlement. Where no settlement had been reached by recourse to procedures agreed to by the parties, any party could take the dispute to a court or tribunal whose decision would be binding on the parties, unless the dispute concerned a topic exempted by the Convention from compulsory settlement (article 286). Each State, when signing or adhering to the Convention or at any other time, could opt for one or more of four dispute settlement bodies-the Tribunal, the International Court, an arbitral tribunal or a special arbitral tribunal; then, when a dispute arose, the procedure employed would be one of those accepted by both sides or, in the absence of a common procedure, arbitration (article 287).

The court or tribunal would have jurisdiction over any dispute submitted to it under this procedure (article 288). It would apply the Convention

and other rules of international law not incompatible with it (article 293). It could select two or more scientific or technical experts to sit with it without the right to vote (article 289). In preliminary proceedings, it could determine whether a claim represented an abuse of legal process or whether prima facie it was well founded (article 294). It could prescribe provisional measures to preserve the rights of the parties or to prevent serious harm to the marine environment; in urgent cases and before the constitution of an arbitral tribunal to which a case was being submitted, provisional measures could be prescribed by another tribunal agreed to by the parties or, failing agreement, by the Tribunal for the Law of the Sea (article 290).

A flag State of a detained vessel could apply for its release to an agreed court or tribunal or, failing agreement, to the Tribunal for the Law of the Sea; the question of release would have to be dealt with without delay and without prejudice to the merits of the case against the vessel, and the detaining State would have to comply promptly with any decision upon the posting of the bond or other financial security determined by the court or tribunal (article 292).

All dispute settlement procedures specified in this part of the Convention would be open to States parties; other entities would have access to such procedures only as specifically provided for in the Convention (article 291). Disputes could be submitted to settlement under the Convention only after local remedies had been exhausted where that was required by international law (article 295).

Any decision by a court or tribunal would be final and binding, and all parties would have to comply with it; it would have no binding force except between the parties and in respect of that particular dispute (article 296).

Arbitration. Annexes-VII and VIII to the Convention spelt out the details of two arbitration procedures.

Arbitration under annex VII, instituted by the submission of a written notification by one party to the other stating the claim and its grounds (article l), would rely by preference on selection from a list of arbitrators nominated by States parties to the Convention (article 2). The arbitral tribunal for each case would have five members, one chosen by each of the parties to the dispute and the other three, who would be nationals of third States unless otherwise agreed, selected by agreement between the parties; the President or a senior member of the Tribunal for the Law of the Sea would make any appointments on which the parties could not agree (article 3). The arbitral tribunal would determine its own procedure unless the parties agreed otherwise (article 5).

The parties would be required to facilitate the tribunal's work by providing documents, facilities and information, and by enabling it to call witnesses or experts and visit relevant localities (article 6). Unless the tribunal decided otherwise because of particular circumstances, the expenses of the tribunal would be shared equally by the parties (article 7). Decisions would be taken by majority vote, with the President having a casting vote in the event of a tie (article 8). Absence of a party or failure of a party to defend its case would not constitute a bar to the proceedings (article 9).

The tribunal's award would be confined to the subject of the case and state the reasons on which it was based (article 10). The award would be final and without appeal, unless the parties had agreed in advance to an appellate procedure (article 11). Any controversy over interpretation or implementation of the award could be submitted by either party to the same tribunal or, by agreement of the parties, to another court or tribunal (article 12).

These arbitration provisions would also apply to a dispute involving entities other than States (article 13).

Special arbitration, detailed in annex VIII, would apply to disputes relating to fisheries, protection and preservation of the marine environment, marine scientific research or navigation (article 1). Lists of experts in each of these fields would be drawn up on the basis of nominations by States parties to the Convention (article 2). A special arbitral tribunal would consist of five members, of whom two would be chosen by each party, preferably from the appropriate list of experts, while the fifth, normally a national of a third State, who would be the President, would be chosen by the parties or, failing agreement, by the United Nations Secretary-General (article 3).

The procedures established for regular arbitration would apply to special arbitral proceedings (article 4). The parties could request a special arbitral tribunal to carry out an inquiry and establish the facts giving rise to their dispute, and its findings would be conclusive unless the parties agreed otherwise;. at their request, it could also make recommendations which, without having the force of a decision, would constitute the basis for a review by the parties of the questions giving rise to the dispute (article 5).

Limitations and exceptions. The Convention exempted certain categories of disputes from compulsory settlement procedures and gave States the option of excluding others.

Excluded outright were the following (article 297):

-Disputes over the exercise by a coastal State of its sovereign rights or jurisdiction, except that compulsory settlement would apply in regard to three types of alleged contraventions: by a coastal State, contravention of the freedoms and rights of

navigation, overflight, or the laying of submarine cables or pipelines, or in regard to certain other lawful uses of the sea in the exclusive economic zone (article 58); by a State exercising those freedoms and rights, contravention of a coastal State's laws and regulations; and by a coastal State, contravention of international rules and standards for the protection and preservation of the marine environment.

-Disputes over a coastal State's exercise of a right or discretion to withhold consent for marine scientific research in its exclusive economic zone or on its continental shelf (article 246) or its decision to order suspension or cessation of a research project (article 253), except that allegations that a coastal State had not acted in a manner compatible with the Convention in respect to a specific project would be subject to compulsory conciliation (see below).

-Disputes over a coastal State's sovereign rights over the living resources of its exclusive economic zone, including its discretionary power to determine the allowable catch, its harvesting capacity, the allocation of surpluses to other States, and terms and conditions in its conservation and management laws and regulations, except that compulsory conciliation would apply to disputes over the coastal State's alleged failure to comply with its obligation to prevent serious harm to the living resources in its zone, over its alleged arbitrary refusal to determine the allowable catch of a stock which another State was interested in fishing, and over its alleged arbitrary refusal to allocate the surplus to any State.

A State party could at any time declare in writing its non-acceptance of compulsory settlement in regard to any or all of the following types of disputes (article 298): disputes over sea boundary delimitation or those involving historic bays or titles, which would be subject to compulsory conciliation in the event that no agreement was reached within a reasonable time; disputes over military activities, and over law enforcement activities in regard to the exercise of sovereign rights or jurisdiction over marine scientific research and fisheries; and disputes before the Security Council, unless the Council called on the parties to settle the dispute by means provided for in the Convention.

Any of these excluded or excepted types of disputes could be submitted to compulsory settlement only by agreement of the parties, but they would retain the right to agree to some other procedure or to reach an amicable settlement (article 299).

Compulsory conciliation. Annex V (section 2) obliged States to submit to conciliation proceedings in regard to the three specific types of disputes (see above) identified in the clauses excluding and exempting certain matters from compulsory procedures entailing binding decisions (article 11). The failure of a party to submit to such proceedings would not constitute a bar to the proceedings (article 12). A disagreement as to whether a conciliation commission had competence in a given case would be decided by the commission (article 13). Otherwise, the rules applicable to conciliation in general (see above) would apply to these proceedings (article 14). Thus, only the submission to conciliation would be compulsory; the conclusions and recommendations of the commission would not be binding on the parties.

Conference consideration. No changes were proposed or made to the dispute settlement provisions of the Convention by the Conference on the Law of the Sea in 1982.

Chile, explaining on 30 April its vote for the Convention, described these provisions as a milestone of international law which should be considered an important part of the Convention closely linked to its substantive provisions.

During the closing week of the Conference in December, several speakers welcomed the dispute settlement features, although some expressed regret that not more of them were compulsory.

Barbados said that, although it was not happy with provisions of a less binding nature, it accepted them in a spirit of compromise. Cyprus welcomed the provisions as one of the Conference's important accomplishments but observed that its support for a system of binding decisions had been met only to a certain extent under the Convention's labyrinthine formula of exceptions for disputes affecting national sovereignty; it remained to be seen whether the compulsory conciliation procedure for resolving sea boundary disputes would serve the same purpose. The Federal Republic of Germany welcomed the provisions for compulsory settlement.

Ireland described the dispute settlement procedures as adequate and, along with Austria, welcomed the assurance that the Convention would eliminate a significant area of potential conflict from the world scene. Italy thought the provisions were a step forward in comparison with other codification conventions and an important guarantee for all States.

Some States commented on the choice of procedures provided for in the Convention. Bulgaria, stressing the Convention's provisions on dispute settlement by means chosen by the parties, reserved the right to make use of the provision allowing it to declare its non-recognition of obligatory procedures and those entailing binding decisions. The Byelorussian SSR and the Ukrainian SSR chose arbitration as the main means of dispute settlement and said they would not accept binding procedures for the types of disputes listed in article 298. The USSR made a

similar statement with respect to that article. Sweden said its choice among the options for dispute settlement would be made in the light of its traditional view that strong compulsory machinery for third-party settlement was a desirable element in international agreements.

International Tribunal for the Law of the Sea

Annex VI to the Convention on the Law of the Sea contained the Statute of the International Tribunal for the Law of the Sea, with provisions on its organization, competence and procedure, and on its Sea-Bed Disputes Chamber. The Tribunal would have its seat at Hamburg, Federal Republic of Germany (article 1).

The Tribunal would be composed of 21 independent members (article 2), including at least three from each major geographical group (article 3). They would be elected by a special meeting of States parties to the Convention from among persons nominated by those States (article 4) and would serve for a nine-year, renewable term (article 5). Vacancies would be filled by the same procedure (article 6).

No member could exercise any political or administrative function, or associate with or be financially interested in any enterprise concerned with commercial use of the sea or sea-bed (article 7). No member could participate in the decision of any case in which he or she had previously taken part in any capacity (article 8). If the other members of the Tribunal unanimously found that a member had ceased to fulfil the required conditions, the President could declare the seat vacant (article 9). The members would enjoy diplomatic privileges and immunities when engaged on the Tribunal's business (article 10). Before taking up their duties, they would have to make a solemn declaration that they would exercise their powers impartially and conscientiously (article 11).

The Tribunal would elect its President and Vice-President for a renewable three-year term (article 12). The required quorum would be 11 elected members (article 13). The Tribunal would frame rules for carrying out its functions, including rules of procedure (article 16).

In addition to the Sea-Bed Disputes Chamber, the Tribunal could form special chambers of three or more elected members to deal with particular categories of disputes and, at the request of the parties, to deal with a particular dispute; a judgement by any such chamber would be considered as rendered by the Tribunal (article 15).

Each party to a dispute before the Tribunal could choose someone to participate as a Tribunal member, with the right to participate in the decision on terms of complete equality, if a person of the party's nationality was not already a member (article 17). The members would receive non-taxable remuneration in the form of an annual allowance and a special allowance for each day on which they exercised their functions (article 18). The expenses of the Tribunal would be borne by the States parties and the International Sea-Bed Authority on terms to be decided at meetings of the States parties (article 19).

With respect to the Tribunal's competence, its Statute specified that it was open to States parties and, in the case of sea-bed disputes, to other entities (article 20). Its jurisdiction would comprise all disputes and applications submitted to it in accordance with the Convention and all matters provided for in any other agreement conferring jurisdiction on it (article 21). By agreement of the parties, disputes over the interpretation or application of any other treaty on law of the sea matters could be submitted to the Tribunal (article 22). The Tribunal (article 23) would decide all disputes and applications in accordance with the applicable law specified for any court or tribunal having jurisdiction under the Convention's provisions on compulsory dispute settlement (article 293)—namely, the Convention and other rules of international law not incompatible with it.

As to the Tribunal's procedure, disputes would be submitted either by notification of a special agreement or by written application (article 24). The Tribunal could prescribe provisional measures to preserve the rights of the parties or prevent serious harm to the marine environment (article 25). Its hearing of a case would be public unless the Tribunal decided or the parties demanded otherwise (article 26). The Tribunal would make orders for the conduct of the case, decide how and when each party must conclude its arguments, and arrange for the taking of evidence (article 27). Absence of a party or its failure to defend its case would not constitute a bar to the proceedings (article 28).

All questions would be decided by a majority of the members present, with the President or other presiding officer having a casting vote in the event of a tie (article 29). The judgement would state the reasons on which it was based, and any member would be entitled to deliver a separate opinion (article 30).

The Tribunal could decide on a request by another State party to the Convention to be permitted to intervene in a case in which it had a legal interest; in such case, the Tribunal's decision would be binding on that State in regard to matters on which it had intervened (article 31). Every State party to the Convention or to an international agreement would have the right to intervene whenever the Tribunal dealt with the interpretation or application of the Convention or agreement; in such case, the Tribunal's interpretation would be binding on that State (article 32). The

Tribunal's decision would be final and all parties to the dispute would have to comply with it; however, it would bind only those parties and only in respect of that dispute (article 33). Unless the Tribunal decided otherwise, each party would bear its own costs (article 34).

Amendments to the Tribunal's Statute (article 41) could be made in accordance with the "simplified procedure" for amending the Convention (article 313) or by consensus at a review conference, except that amendments to the section on the Sea-Bed Disputes Chamber (articles 35-40). would have to follow the procedure for amending the sea-bed provisions of the Convention (article 314); the Tribunal could propose amendments.

Practical arrangements for the establishment of the Tribunal were to be submitted by the Preparatory Commission to the first meeting of States parties for the election of the Tribunal, according to Conference resolution I[1] on the Preparatory Commission.

Resolution (1982). [1]Conference (Final Act, A/CONF.62/121 & Corr.3): I, para. 10, 30 Apr.

General provisions

Part XVI of the Convention on the Law of the Sea, entitled "General provisions", contained five articles on topics going beyond the scope of individual parts of the Convention devoted to a particular area or use of the sea.

Under these provisions, States parties were to fulfil in good faith their obligations under the Convention and to exercise their rights, jurisdiction and freedoms in a manner which would not constitute an abuse of right (article 300). They were to refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the international law principles in the Charter of the United Nations (article 301). Without prejudice to the Convention's dispute settlement procedures, nothing in the Convention would require a State party, in fulfilling its Convention obligations, to supply information whose disclosure was contrary to its essential security interests (article 302).

Archaeological and historical objects found at sea were to be protected, and coastal States would be entitled to prohibit their removal from the sea-bed up to the limit of the 24-mile contiguous zone (article 303). The Convention's provisions on responsibility and liability for damage would not prejudice the application of existing rules and the development of new ones in that regard (article 304).

Final clauses

The final provisions of the Convention on the Law of the Sea, set out in part XVII, dealt with various matters concerning its entry into force and application. They defined the ways in which States and other entities could participate in the Convention, prohibited reservations and specified how the Convention could be amended after it was in force.

The United Nations Secretary-General was to serve as depositary of the Convention and amendments-recording signatures and receiving instruments of ratification and accession deposited by States-and was also authorized to report on general issues arising with respect to the Convention, convene meetings of States parties and perform certain notification functions (article 319). The authentic texts of the Convention were in Arabic, Chinese, English, French, Russian and Spanish (article 320). The nine annexes formed an integral part of the Convention (article 318).

Participation in the Convention

The Convention on the Law of the Sea was open for signature (article 305), ratification (article 306) and accession (article 307) by all States and by Namibia, represented by the United Nations Council for Namibia. It was also open to self-governing associated States and non-independent territories having legal competence over the matters governed by the Convention, and to intergovernmental organizations meeting certain criteria, except that, for organizations, the procedure of formal confirmation was to replace that of ratification. Under a resolution adopted by the Conference on 30 April 1982, national liberation movements were authorized to sign the Final Act of the Conference in their capacity as observers. Another resolution adopted on that date was aimed at protecting the rights and interests of peoples in non-self-governing and disputed territories.

The Convention was to remain open for signature until 9 December 1984, after which a State or other competent entity could adhere by accession (a procedure which does not require prior signature). The Convention provided for its entry into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession, at which time the Assembly of the International Sea-Bed Authority would meet to elect the Council (article 308).

Several issues pertaining to participation were resolved during the final negotiating phase of the Conference in March and April 1982. After three weeks of informal meetings and consultations on the subject, the President submitted on 26 March a report suggesting a series of articles on participation by intergovernmental organizations, and compromises on participation by national liberation movements, States, territories not fully independent and Namibia, and on the peoples of

non-self-governing territories.[2] These proposals were incorporated in the draft Convention and draft Final Act through the memorandum issued on 2 April by the Conference collegium (p. 182).[1]

Memorandum. [1]Conference collegium, A/CONF.62/L.93& COrr.l.
Report. [2]Conference President, A/CONF.62/L.86 & Corr.1.

Participation by intergovernmental organizations

The signature, ratification and accession articles of the Convention on the Law of the Sea permitted certain types of intergovernmental organizations to become party to the Convention. The conditions were specified in annex IX of the Convention, applying to organizations to which their member States had transferred competence over matters governed by the Convention, including the competence to enter into treaties in respect of those matters (article 1).

Such an organization could sign the Convention (article 2) or become a party (article 3) only if a majority of its members had done so. It could adhere by depositing an instrument of formal confirmation or of accession (equivalent to ratilication or accession by a State).

Where legal competence over certain matters had been transferred to such an organization by its members, it would exercise the rights and be bound by the obligations that would otherwise be required of its members in regard to those matters, but without giving those members an additional decision-making voice in the machinery established under the Convention, and without conferring rights on those of its members which were not parties to the Convention (article 4). When adhering to the Convention, and at any time thereafter if a specific question arose, the organization would have to specify the areas of its competence; its member States would be presumed to have competence over all other matters governed by the Convention (article 5). The competent party, whether the organization or its members, would bear responsibility for any violation of the Convention (article 6).

The Convention's dispute settlement provisions would apply to organizations which adhered to the Convention (article 7). An organization's adherence would not be counted among the 60 ratifications or accessions needed to bring the Convention into force but, if it adhered to an amendment over whose entire subject-matter it had competence, that would count as adherence by each of its members which were parties to the Convention (article 8).

These provisions on intergovernmental organizations were formulated by the Conference President in his memorandum of 26 March,[2] based on a series of informal meetings and consultations. They modified an informal text which he had proposed in 1981.[4] The March text was further moditied when the President, in a report of 22 April 1982,[3] accepted an amendment by Belgium[1] for which he found widespread and substantial support. This deleted a paragraph (in annex IX, article 4) that would have restricted arrangements under which the members of an intergovernmental organization could grant special treatment to one another with regard to matters governed by the Convention.

During the concluding statements at the Conference in December, Denmark, speaking for the European Economic Community (EEC), said the complex set of rules on participation of intergovernmental organizations in the Convention was acceptable, even though it fell short of what EEC had proposed.

Amendment adopted. [1]Belgium, A/CONF.62/L.119.
Reports. Conference President, [2]A/CONF.62/L.86 & Corr.1, [3]A/CONF.62/L.132.
Yearbook reference. [4]1981, p. 134.

Participation by associated States and territories

Self-governing associated States which had retained certain links with the former administering Power, and internally self-governing territories which had not attained full independence, were entitled to sign and ratify or accede to the Convention on the Law of the Sea provided that they had legal competence over the matters governed by it, including the competence to enter into treaties on such matters (articles 305-307). Namibia, represented by the United Nations Council for Namibia, was also authorized to sign and ratify or accede.

For territories not fully independent or self-governing, and those under colonial domination, Conference resolution III,[8] adopted along with the Convention on 30 April 1982, stated that provisions concerning rights and interests under the Convention were to be implemented for the benefit of the people of the territory with a view to promoting their well-being and development. Where a territory was the object of a dispute over its sovereignty, and the United Nations had recommended specific means of settlement, the parties to the dispute would consult on the exercise of rights dealt with in the Convention. In such consultations, the interests of the territory's people would be a fundamental consideration. Any exercise of those rights would take account of United Nations resolutions and be without prejudice to the parties' positions. The States concerned should try to make provisional arrangements without jeopardizing a final settlement.

The Convention's provisions on adherence to it by self-governing associated States and territories were added to the text on the proposal of the President in his 26 March report on the participation

of various entities.[6] There was no doubt, he stated, that they possessed the requisite qualifications.

The resolution, and particularly its provisions on disputed territories, aroused more controversy, however. The text was proposed by the President in his March report to replace a "transitional provision" in the 1981 draft Convention according to which rights over a non-self-governing territory's ocean resources were to have been vested in the inhabitants and exercised for their benefit and in accordance with their needs, while rights over the resources of a disputed territory were not to be exercised without the consent of the parties to the dispute. In suggesting his resolution, the President said there seemed to be no controversy over the basic principle that the peoples of the territory concerned should be the beneficiaries of the resources, but the language used to express that principle, and its placement with regard to the Convention, seemed to be a problem.

The Conference collegium, in its 2 April memorandum,[5] decided to include the draft resolution[4] in the Conference's draft Final Act.

Spain proposed, but did not press, an amendment that would have restored the pre-1982 text on disputed territories in place of the President's text.[3] In explaining its abstention in the vote on the Convention and associated resolutions, Spain said in April that it could not accept resolution III and objected particularly to the paragraph on disputed territories. Reiterating this reservation in December, it stated that the question of the part of Spanish territory under colonial domination was subject only to the relevant resolutions of the General Assembly.

Argentina, though voting for the Convention on 30 April, expressed regret that the transitional provision in the earlier negotiating texts had not been retained, as its aim had been to prevent the Powers which controlled colonial or occupied territories from exercising rights that might consolidate such unlawful situations. Argentina informed the General Assembly on 3 December that it could not sign the Convention or the Final Act because it objected to the provision on disputed territories in resolution III; it added that the provision did not affect. the Malvinas Islands question.

With respect to participation by Namibia, the Conference approved by consensus on 26 April amendments proposed by the President(') to enable that Territory, represented by the Council for Namibia, to sign the Convention and, by virtue of a change in Conference resolution I on the Preparatory Commission,[7] to become a member of that Commission.

This text replaced an amendment submitted by the Council according to which the phrase "including Namibia, represented by the United Nations Council for Namibia", would have been added to a subparagraph (of article 305) stating that the Convention could be signed by all States.[2] Under the approved text, the provision on Namibia was in a separate subparagraph.

On 10 December, the Council, on behalf of Namibia, signed the Convention and the Final Act. These actions were noted by the General Assembly on 20 December, in a resolution on the Council's work programme.[9]

Speaking at the closing meetings of the Conference in December, the Council condemned South Africa's attempts to extend in its own name Namibia's territorial sea and to proclaim an exclusive economic zone for Namibia, and declared those acts null and void.

Commenting in December on the provision permitting associated States to adhere to the Convention, New Zealand said it was particularly appropriate that the Cook Islands and Niue would have the right to participate on the same basis as their Pacific island neighbours. The Netherlands Antilles believed that resolution III safeguarded its rights to and interests in ocean resources. Vanuatu said that, unless the colonized countries in the Pacific became independent, their sea and air would continue to be exploited by the colonizing nations, using the Convention as a convenient tool.

The Trust Territory of the Pacific Islands stated that the governments of its three separate entities-the Republics of Palau and the Marshall Islands and the Federated States of Micronesia—had since 1977 declared and regulated their own 200-mile zone and had concluded international treaties relating to the law of the sea, and they expected to become party to the Convention. The USSR and other Eastern European States said that any change in the status of the Trusteeship Agreement brought about by the Trust Territory's participation in the Convention would have to be sanctioned by the Security Council.

Amendments. [1]Conference President, A/CONF.62/L.137 (adopted); [2]Council for Namibia, A/CONF.62/L.102 (superseded); [3]Spain. A/CONF.62/L.109 (not pressed).
Draft resolution. [4]Conference collegium. A/CONF.62/L.94.
Memorandum. [5]Conference collegium, A/CONF.62/L.93.
Report. [6]Conference President, A/CONF.62/L.86 & Corr.1.
Resolutions (1982). Conference (Final Act, A/CONF.62/121), 30 Apr.: [7]I, para. 2; [8]III. [9]GA: 37/233 C, para. 13, 20 Dec.

Participation by national liberation movements

Under resolution IV, adopted by the Conference on the Law of the Sea on 30 April 1982, national liberation movements which had been participating in the Conference (as observers) were authorized to sign the Final Act in their observer capacity.[6] Under the Convention, they were also entitled to attend, as observers, the Assembly of the International Sea-Bed Authority (article 156) and any meetings of States parties, and to receive

reports and notifications sent by the Secretary-General to States parties containing information about ratifications, proposed amendments and other matters relating to the Convention (article 319).

The provisions on liberation movements originated in proposals by the President in his 26 March report on various aspects of participation in the Convention.[4] The President commented that their observer status would enable them to present the views of the peoples they represented and request the adoption of measures to protect those peoples' interests until they attained autonomy or independence. These proposals were incorporated into the draft Convention by the Conference collegium in its memorandum[3] and proposals[2] of 2 April.

The arrangements for liberation movements were approved as proposed in amendments by Iraq,[1] which placed the authorization to sign the Final Act in a resolution, rather than a decision as the President had proposed, and which made other changes in the form of the President's proposals.

The Iraqi amendments were inserted into the draft Convention and associated texts as part of several changes in the drafts which the Conference agreed to on 30 April, as recommended by the President in his report of 22 April.[5] Before it did so, Israel asked for a separate vote on the draft resolution. When the President ruled that no separate vote was permissible, Israel appealed his ruling. The appeal was rejected by a recorded vote of 143 to 1, with 2 abstentions.

In explanation of its vote against the Convention and associated resolutions, Israel said, in reference to resolution IV, that it could not accept any provision that gave any standing to the Palestine Liberation Organization (PLO); it added in December that its signature of the Final Act implied no recognition of PLO or of any of the rights conferred on it by the documents attached to the Final Act.

Also speaking in December, Democratic Yemen, Iraq, Somalia and Viet Nam said they would have preferred to see the Convention confer on such movements the status of full-fledged parties. The Byelorussian SSR, the Ukrainian SSR and the USSR also said the Convention should be open to full participation by such movements; the Ukrainian SSR added that the notion of the common heritage of mankind would be deprived of some of its meaning if the peoples struggling for national liberation could not enjoy their rightful share of that heritage. Egypt welcomed the representation of national liberation movements as a major victory, making the Conference a unique example of universality.

Amendments adopted. [1]Iraq. A/CONF.62/L.101.
Draft decision. [2]Conference collegium, A/CONF.62/L.94.
Memorandum. [3]Conference collegium, A/CONF.62/-L.93/Corr.1.
Reports. Conference President, [4]A/CONF.62/L.86, [5]A/CONF.62/L.132.
Resolution (1982). [6]Conference (Final Act, A/CONF.62/121): IV, 30 Apr.
Meeting records. Conference: A/CONF.62/SR.158-166, 168-179, 182 (30 Mar.-30 Apr.), A/CONF.62/PV.85-192 (6-9 Dec.).

Reservations

The Convention on the Law of the Sea stated that no reservations or exceptions could be made to it unless expressly permitted by a provision in the text (article 309). But this would not preclude a State, when signing, ratifying or acceding, from making declarations or statements with a view to harmonizing its laws and regulations with the Convention's provisions, provided that it did not purport to modify the legal effect of those provisions in their application to that State (article 310). Two or more States parties could conclude agreements modifying or suspending the operation of Convention provisions, applicable solely to relations between them, provided that the agreements did not relate to a provision derogation from which was incompatible with the Convention's purpose, and that they did not affect the application of the Convention's basic principles or the rights and obligations of other States parties (article 311).

Three amendments to limit or delete the prohibition of reservations were presented to the Conference. The first, by Venezuela, would have permitted reservations with regard to delimitation of the territorial sea, the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts, and to the clause providing that uninhabitable rocks had no exclusive economic zone or continental shelf.[3] The second, by Romania, would have deleted the provision prohibiting declarations or statements that purported to exclude or modify the legal effect of any article in its application to a State.[1] The third amendment, by Turkey, called for deletion of the article prohibiting reservations.[2]

The President, reporting on 22 April on his consultations concerning amendments, said he had concluded that there were no prospects of achieving a generally accep table solution to those relating to reservations.[4]

The first two of these amendments were not pressed to a vote. On 26 April, the Conference rejected the Turkish amendment by a recorded vote of 100 to 18, with 26 abstentions. Those voting for the amendment were: Albania, Bolivia, China, Democratic Kampuchea, Democratic People's Republic of Korea, Ecuador, Egypt, El Salvador, Guatemala, Oman, Philippines, Romania, Saudi Arabia? Somalia, Turkey, Upper Volta, Venezuela, Yemen.

Turkey and Venezuela cited the reservations clause when explaining on 30 April why they had

voted against the Convention; Turkey added that it had proposed the deletion of that article to accommodate those countries which wanted to adhere to the Convention while at the same time safeguarding their specific vital interests.

Albania also mentioned this clause as one of the reasons why it had not participated in the vote on the Convention; it said the provision depriving States which might wish to adhere to the Convention of the right to enter reservations was unjust.

Egypt, which voted for the Convention, said it had wanted the reservations clause to be governed by the Vienna Convention on the Law of Treaties(5) (which permitted certain types of reservations to multilateral treaties); however, it noted that (under article 310) States were allowed to make statements in relation to their national legislation. Romania said a State retained the right to enter reservations when it became a party to a multilateral treaty.

During the final week of the Conference in December, Chad, Czechoslovakia and Singapore appealed to States not to take advantage of article 310 in order to make declarations that contradicted the spirit and objectives of the Convention. Similarly, the German Democratic Republic believed States should refrain from making declarations designed to alter substantive provisions of the Convention in a one-sided manner. The Byelorussian SSR said it would refrain from such declarations if others did likewise. The Ukrainian SSR and the USSR also said they would refrain, adding that such declarations would provoke responses from other States with a different viewpoint and might complicate the situation.

Speaking of the prohibition of reservations, Colombia said it existed because every part of the Convention affected every other part; reservations would be incompatible with the unity and interrelationship of its rules.

Liberia stated that it reserved the right under article 310 to review certain articles of the Convention.

Amendments. (1)Romania, A/CONF.62/L.111 (not pressed); (2)Turkey, A/CONF.62/L.120 (rejected); (3)Venezucla, A/CONF.62/L.108 & Corr.1 (not pressed).
Report. (4)Conference President. A/CONF.62/L.132.
Yearbook reference. (5)1969, p. 734.

Amendments

Three different procedures were provided for amending the Convention on the Law of the Sea once it entered into force.

Amendments on matters other than the sea-bed could not be proposed during the first 10 years after entry into force, and would be subject to approval by an amendment conference which would resort to voting only after all efforts at consensus had been exhausted; if that happened, it would follow the rules of the Conference on the Law of the Sea (requiring a two-thirds majority for substantive decisions) unless it decided otherwise (article 312). However, a simplified procedure would permit an amendment to be adopted if no State objected to it within 12 months of the date on which it was proposed (article 313). An amendment relating to the international sea-bed area would require approval by the Council and the Assembly of the International Sea-Bed Authority, which would have to ensure that it did not prejudice the resource exploitation system pending the Review Conference to be called 15 years after the start of commercial production (article 314).

Once adopted, an amendment would be open for signature for 12 months (article 315). It would enter into force 30 days after ratification or accession by 60 States parties to the Convention or, if there were more than 90 parties, by two thirds of them, and it would be in effect only for those States which accepted it; sea-bed amendments would enter into force for all States parties one year after ratification or accession by three fourths of them (article 316).

Sri Lanka, speaking during the final week of the Conference in December, noted that the Convention had built-in machinery for orderly change through amendment, review and revision procedures, and said those who had fashioned the Convention must be vigilant in detecting obsolescence and remedying it.

Signatures and ratification

As at 31 December 1982, the following had signed the Convention:

Algeria, Angola, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Bhutan, Brazil, Bulgaria, Burma, Burundi, Byelorussian SSR, Canada, Cape Verde, Chad, Chile, China, Colombia, Congo, Cook Islands, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Democratic Yemen, Denmark, 'Djibouti, Dominican Republic, Egypt, Ethiopia, Fiji, Finland, France, Gabon; Gambia, German Democratic Republic, Ghana, Greece, Grenada, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Jamaica, Kenya, Kuwait, Lao People's Democratic Republic, Lesotho, Liberia, Malaysia, Maldives, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia (United Nations Council for Namibia), Nauru, Nepal: Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Sweden, Thailand, Togo, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukrainian SSR, USSR, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Upper Volta Uruguay, Vanuatu, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe.

All 119 signatures were affixed to the Convention at Montego Bay, Jamaica, on 10 December, the day it was opened for signature. It was to remain open for two years.

Fiji was the first State to ratify it, also on 10 December, and the only one in 1982.

In its 3 December resolution on the Conference, the General Assembly called on all States to consider signing and ratifying the Convention at the earliest possible date to allow the new legal regime for the sea to enter into force.[1] This paragraph was adopted by a recorded vote of 134 to 3, with 7 abstentions.

Objections to this paragraph were voiced by Turkey and the United States, which voted against the resolution; Israel, which cast a negative vote on the paragraph while abstaining on the resolution as a whole; Albania, which did not take part in the vote; and Belgium, the Federal Republic of Germany, Italy and the United Kingdom, which abstained on the resolution. The United Kingdom added that it was inappropriate for the Assembly to call for early signature and ratification.

Resolution (1982). [1]GA: 37/66, para. 2, 3 Dec.

Preparatory Commission

Resolution I of the Conference on the Law of the Sea, adopted on 30 April 1982, provided for the establishment of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, the two major organs to be established upon the entry into force of the Convention on the Law of the Sea.[8]

According to this resolution, only States which signed or acceded to the Convention could be members of the Commission. Others could participate as observers if they signed only the Final Act of the Conference but they could not take part in decision-making. The Conference's rules of procedure would apply with respect to the adoption of the Commission's rules.

The Commission was to be convened by the United Nations Secretary-General between 60 and 90 days after 50 States signed the Convention. It was to be financed from the United Nations regular budget, subject to General Assembly approval, and serviced by the United Nations Secretariat. It would remain in existence until the conclusion of the first session of the Assembly of the Authority.

The Commission was to prepare draft rules, regulations and procedures necessary to enable the Authority to commence its functions, as well as perform the traditional preparatory functions of drafting agenda and a budget. It was also to exercise the powers and functions assigned to it in the resolution on pioneer investors and undertake studies on the problems of developing land-based mineral-producing States likely to be seriously affected by sea-bed production.

The resolution provided for the establishment of two special commissions of the Preparatory Commission: one on the Enterprise and the other on the problems of developing land-based producer States. The Commission was also empowered to establish other subsidiary bodies as required and to make use of outside experts. It was to recommend arrangements for the establishment of the Tribunal and submit them to the first meeting of States parties for the election of the Tribunal, to be convened once the Convention entered into force.

Arrangements for the Preparatory Commission were considered in March by the First Committee's Working Group of 21 during the first three weeks of the 1982 session. Discussion was based on an informal draft submitted in August 1981 by the Working Group's Co-ordinators—the Conference President and the Chairman of the First Committee.[9] In a report to the First Committee on 29 March,[7] the Co-ordinators proposed the draft resolution on this subject that was to form the basis for the Conference's final action and described some of the issues that had emerged in the informal discussions.

On the issue of participation in the Commission, the report said, some industrialized States had continued to press their idea that signature of the Final Act should qualify a State for membership. However, there had been widespread support for maintaining the existing provision (requiring signature of the Convention), on the argument that the extent of a State's commitment to the Convention should determine the level of its participation in the Commission.

As to decision-making, the Co-ordinators noted that various views had been expressed on the majorities to be required, ranging from simple majority to consensus. They had therefore proposed to let the Commission determine its own rules on this point, with the Conference's rules to govern the initial determination.

The Co-ordinators added to their 1981 draft the provisions empowering the Commission to perform functions assigned to it by the resolution on pioneer investors and requiring it to prepare studies on the problems of developing land-based producers. Regarding financing, the Co-ordinators said there was inadequate support for any change in the provision to have the Commission financed from the United Nations regular budget, although the industrialized States had linked that issue to the requirement for membership.

The Conference collegium decided to include the Co-ordinators' draft resolution in the draft Final Act[4] as reported in their memorandum of 2 April.[5]

Three documents containing amendments on the subject were proposed in April. One of these, presented by Peru on behalf of the Group of 77,[2] was accepted by the Conference after the President, in his report of 22 April,[6] concluded that it had widespread and substantial support; it added the provision for a special commission on the problems of developing land-based producers.

The other amendments were not pressed. One, by the USSR, would have applied the consensus rule to the Commission's approval of the Authority/s draft rules, regulations and procedures.[3]

The other amendments, by seven Western States (Belgium, France, Federal Republic of Germany, Italy, Japan, United Kingdom, United States),[1] concerned both membership and decision-making. They would have opened the Commission to all States that had signed the Final Act. They also proposed that the Commission's decisions on matters of substance be taken by a two-thirds majority of 36 States elected by the Conference according to the pattern laid down for the composition of the Authority's Council, as specified in other amendments by the same delegations. However, decisions on the draft rules, regulations and procedures governing sea-bed mining, and on the operation of the pioneer investor scheme, would require consensus among the 36 States or, if consensus was not reached within 18 months of the resolutian's adoption, by a majority of the Convention signatories whose nationals were involved in pioneer sea-bed activities. Such rules, regulations and procedures would extend to all sea-bed resources.

During the final week of the Conference in December, a number of States stressed the importance of the Preparatory Commission's work for inducing additional States to adhere to the Convention. Australia said the Commission's members, when working out the details of access to the sea-bed, should take account of the interests of those which might accede to the Convention in future. A similar point was made by New Zealand. Canada cited the need for a realistic and pragmatic attitude. Chile and others stressed the need to maintain a spirit of consensus in the Commission. The operation of the Commission, said Colombia, should pave the way for universality, not hamper it. Denmark said the Commission should lay the foundations for a structure large enough to hold all nations and sufficiently attractive to convince everyone that living with the Convention was worth while.

France, stating that the Commission should correct defects in the sea-bed provisions of the Convention, believed the Commission should act by consensus in order to preserve the interests of everyone involved. The Federal Republic of Germany also said the Commission might have an important role to play in respect of the adjustments and improvements needed to make the Convention effective. Whether States experiencing difficulties with the Convention would eventually become parties would depend largely on the work of the Commission, said Mauritius.

Norway saw the Commission as the only viable instrument to achieve a universal Convention and stressed the need for all States which signed the Conference's Final Act to participate in the Commission as observers. The United Kingdom believed that, starting with the Commission, States should try to build on generally agreed points in the Convention and seek co-operation between those having different views of its provisions. Uruguay believed the Commission, through the wise and balanced exercise of its discretionary powers, could play an important role in removing the difficulties experienced by some States. A similar point was made by Austria and Italy.

The United Republic of Cameroon warned, however, that it would be undesirable to attempt to make the Commission a forum for renegotiating any part of the Convention, though it could employ its expertise to remove uncertainties about the application of the Convention's broad rules. Mexico said that, in participating in the Commission, it would oppose special interests which sought to misdirect the Commission's mandate to the detriment of the will of the majority.

Amendments. [1]Belgium, France, Germany, Federal Republic of, Italy, Japan, United Kingdom, United States, A/CONF.62/L.121 (nor pressed); Peru, for Group of 77, A/CONF.62/L.116; [3]USSR, A/CONF.62/L.125 (not pressed).
Draft resolution. [4]Conference collegium, A/CONF.62/L.94.
Memorandum. [5]Conference collegium. A/CONF.62/L.93.
Reports. [6]Conference President. A/CONF.62/L.132 & Add.1; [7]Working Group Co-ordinators. A/CONF.62/- C.1/L.30.
Resolution (1982). [8] Conference (Final Act. A/CONF.62/121 & Corr.3): I: 30 Apr.
Yearbook reference. [9]1981, p. 137.
Meeting records. Conference: A/CONF.62/SR.158-166, 168-179, 182 (30 Mar-30 Apr.), A/CONF.62/PV.185-192 (6-9 Dec.).

Establishment of the Commission

The General Assembly, in its resolution of 3 December 1982 on the Conference on the Law of the Sea,[3] authorized the Secretary-General to convene the Preparatory Commission as provided in the Conference's establishing resolution and to provide it with services. It approved the financing of the Commission from the United Nations regular budget-as proposed by the Conference[2]-and the stationing of an adequate number of staff in Jamaica to service the Commission.

An amendment by Turkey and the United States to have the Commission's expenses met by the States signing the Convention[1] was rejected by a recorded vote of 134 to 3 (the sponsors and Israel), with 7 abstentions. The Assembly then

adopted paragraph 9 of the resolution, providing for meeting the expenses from the United Nations budget, by a recorded vote of 134 to 3, with 7 abstentions.

Introducing the amendment, the United States said it was wrong to ask the United Nations to pay for a preparatory body of a separate treaty organization to which United Nations Members could not belong unless they signed the treaty, and it was doubly wrong to ask it to pay for an extensive meeting away from Headquarters. Turkey, the amendment's other sponsor, reserved the right, if it was not adopted, to refuse to contribute for expenses arising from implementation of the Convention. Israel supported the amendment, stating that it saw no reason not to follow the normal practice whereby the expenses would be met by the States that had expressed their consent to be bound by the Convention.

Abstaining in the vote on the amendment and on the resolution as a whole, the United Kingdom said that, while it would play a full part in the Commission, it regarded it as normal that the costs of administering a multilateral treaty be borne by the parties; alternatively, the Commission might have been financed by a loan from the United Nations.

Opposing the amendment, Singapore said it was not consistent with the agreement reached at the Conference and embodied in resolution I, which represented a trade-off that provided for defraying the Commission's expenses from the regular budget and allowing States that signed the Final Act but not the Convention to participate as observers in the Commission.

When introducing the Assembly resolution, Singapore said it had been agreed in consultations that the Commission would meet at Kingston, Jamaica, for four weeks in February or March 1983, with the option of extending its session or holding a further two-week session. It could establish up to four working groups that could meet for a maximum of four weeks in 1983, at Kingston or in New York.

With the signature of the Convention on 10 December 1982 by more than the required number of 50 States, the Secretary-General announced at the closing meeting of the Conference that the Preparatory Commission would be convened at Kingston on 15 March 1983.

Amendment. (1)Turkey, United States, A/37/L.15/Rev.l.
Resolutions (1982). (2)Conference (Final Act, A/CONF.62/121 & Corr.3): I, para. 14, 30 Apr. (3)GA: 37/66, paras. 7-9, 3 Dec.

Functions of the Secretary-General

In its 3 December 1982 resolution on the Conference on the Law of the Sea, the General Assembly approved the assumption by the Secretary-General of the responsibilities entrusted to him under the Convention on the Law of the Sea and the related resolutions.[5]

Those responsibilities were outlined in a November note by the Secretary-General to the Assembly[1] in which he observed that, while some were the usual functions of a treaty depositary and others were not unusual for him to discharge, some were new and unprecedented. In the latter category he mentioned reporting functions under the Convention and duties with regard to charts and lists of geographical co-ordinates relating to maritime boundaries. The Convention's requirement (article 319) that he report on issues of a general nature arising with respect to the Convention made it necessary to ensure continuity in the collection and analysis of information. Moreover, Governments would also be interested in issues arising before the Convention entered into force, since they could influence the treaty's acceptance.

The Secretary-General also had a continuing duty, under past Assembly resolutions, to provide countries with information, advice and assistance under the new legal regime, the note pointed out. Future information activities included the provision of a law of the sea information service, establishment of a reference collection based on the special library set up for the Conference, and development of information exchange arrangements among those involved in dispute settlement procedures. There would also be promotion, education and training activities, and a need to harmonize activities within the Secretariat and among United Nations organizations.

Regarding the organizational framework to perform those activities within the Secretariat, the Secretary-General said the most desirable arrangement would be to establish the existing Office of the Special Representative of the Secretary-General for the Law of the Sea as the Office for Law of the Sea Affairs. In addition to the functions described above, the office would also service the Preparatory Commission.

The Secretary-General proposed to the Assembly's Fifth (Administrative and Budgetary) Committee that the suggested Office have a staff of 64 (including 28 Professionals), divided equally between substantive and administrative personnel, and that $2,724,900 be appropriated to cover its 1983 activities.[4] The Advisory Committee on Administrative and Budgetary Questions (ACABQ), after reviewing this request, recommended that the Assembly put off until 1983 a decision on whether to establish a new office and that in the mean time the staffing level should be 55 posts (including 24 Professionals), at a 1983 cost of $324,600 less than the Secretary-General had estimated; this would maintain the current level

of 30 substantive posts and provide 25 administrative posts for the Preparatory Commission's Jamaica office.[2]

The Fifth Committee, reporting to the Assembly on the financial implications of the law of the sea resolution, approved an amount of $2,728,500 for 1983.[3] This consisted of the sum recommended by ACABQ for the law of the sea secretariat plus $328,200 for costs related to the Jamaica session of the Commission in 1983, also recommended by ACABQ.

Singapore, when introducing the resolution adopted by the Assembly, described certain understandings on administrative arrangements that had been reached in consultations: that the law of the sea secretariat would be kept to the current number of 18 Professional substantive officers for 1983, in the interest of economy and in order not to create any disincentive for States to sign and ratify the Convention; that expenses would be kept within the existing level to the extent possible; that the secretariat would have duty stations at Kingston and in New York, each initially having 9 Professionals; and that the secretariat would continue to depend on other United Nations and specialized agency units for experts.

Objections to the financial arrangements for both the Preparatory Commission and the Law of the Sea secretariat were voiced in the Assembly by Israel, Turkey and the United States. Among the countries abstaining on the financial implications in the Fifth Committee, Belgium speaking in the Assembly, wondered whether sizeable expenditures were justified at a time of austerity, and regarded the division of the secretariat between Jamaica and New York as a facile and onerous solution. France said the importance of the Secretary-General's functions under the Convention clearly justified the presence of permanent secretariat services at Headquarters; France also hoped the Preparatory Commission's working groups would meet in New York. The Federal Republic of Germany, Italy and Spain urged that expenses be kept to a minimum; Italy observed that meetings of the Commission and its groups in New York would be less costly. Also urging economy, the USSR said it regretted that, in violation of an agreement reached in consultations, the Secretariat had sought an unwarranted increase for staff expenses.

A call for financial restraint and for minimizing bureaucracy in the operation of the Commission was also voiced by Australia during the closing week of the Conference in December.

Note. [1]S-G, A/37/561.
Reports. [2]ACABQ A/37/7/Add.10; [3]5th Committee, A/37/687; [4]S-G, A/C.5/37/58/Rev.l.
Resolution (1982). [5]GA: 37/66, para. 7, 3 Dec.

Organization of the Conference

Final Act

At the closing meeting of the Conference on the Law of the Sea, on 10 December 1982, representatives of 141 States, Namibia represented by the United Nations Council for Namibia, a self-governing associated State, a territory, an intergovernmental organization and 4 national liberation movements signed the Final Act of the Conference,[1] a formal record of its actions since its start in 1973.

The signatories were all those which had signed the Convention (p. 241) plus the following:

States: Belgium, Benin, Botswana, Ecuador, Equatorial Guinea, Germany, Federal Republic of, Holy See, Israel, Italy, Japan, Jordan, Libyan Arab Jamahiriya, Luxembourg, Oman, Peru, Republic of Korea, Samoa, Spain, Switzerland, United Kingdom, United States, Venezuela, Zaire.

States and territories with observer status: Netherlands Antilles, Trust Territory of the Pacific Islands.

Intergovernmental organization: European Economic Community.

National liberation movements: African National Congress of South Africa, Palestine Liberation Organization, Pan Africanist Congress of Azania, South West Africa People's Organization.

The Final Act was approved without vote on 24 September 1982 after the Conference, by a recorded vote of 102 to 1 (Israel), with 1 abstention (Argentina), upheld a ruling by the President that no vote be taken on individual paragraphs. Israel had sought a vote on a paragraph mentioning the Conference's 1974 decision[3] to permit national liberation movements to participate in the Conference as observers.

Annexed to the Final Act were the four resolutions contained in the "Convention package" (p. 182), two tributes adopted on historic anniversaries, a tribute to Venezuela as host Government of the Conference's first substantive session,[2] a statement of understanding on a specific method for establishing the outer edge of the continental margin (p. 201), and the 1982 resolution on development of national marine science, technology and ocean service infrastructures (p. 233).

Turkey, speaking in December prior to the signing of the Final Act, said it could not sign because a statement in that document to the effect that all decisions had been taken by consensus throughout the Conference (until the voting on amendments in April 1982) failed to reflect the fact that Turkey had expressly raised objections to a number of articles and had never given its consent to those which did not accommodate Turkish views.

Final Act. [1]A/CONF.62/121 & Corr.3,7,8.
Yearbook references. 1974, [2]p. 71, [3]p. 73.
Meeting records. Conference: A/CONF.62/SR.184 (24 Sep.), A/CONF.62/PV.193 & Add.1 (10 Dec.).

Plenary meetings

As the three main committees of the Conference on the Law of the Sea had completed most of their work on the Convention in previous years, the formal business of the Conference in 1982 was conducted largely in 38 plenary meetings.

Following the opening meeting of the eleventh session on 8 March, the next plenary meeting, on 29 March, heard reports by the Chairman of each committee on the results of the informal negotiations that had taken place during the first three weeks of the session, and proposing some changes in the draft Convention and associated resolutions. From 30 March to 1 April (nine meetings), representatives expressed views as to whether those changes and others should be introduced. As agreed on 7 April, the next round of discussion, 15 to 17 April (six meetings), was devoted to comments on the formal amendments which States had submitted to the Convention.

On 23 April, the Conference entered its decision-making stage by determining that all efforts at reaching general agreement had been exhausted. On 26 April (two meetings) voting took place on amendments, and on 28 and 29 April (four meetings) the Conference heard comments by delegations on new proposals by the President. The first part of the session ended on 30 April (two meetings), with the adoption of the Convention by vote.

The Conference reconvened on 22 and 24 September (two meetings) to approve a final set of changes recommended by its Drafting Committee and to approve the Final Act. It also, on 24 September, agreed that the title of the Convention would be United Nations Convention on the Law of the Sea.

By a letter of 20 September, Venezuela transmitted to the Secretary-General a note from its Minister for Foreign Affairs stating that, as Venezuela could not associate itself with the Convention for reasons of national interest, it was withdrawing its offer of several years' standing to serve as host for the signing ceremony.(1) The Conference, on 24 September, accepted an invitation from Jamaica to serve as host. On 3 December, in its resolution on the Conference,(2) the General Assembly also accepted the invitation and reiterated its gratitude to Venezuela for having hosted the first substantive session of the Conference at Caracas in 1974.(3)

Accordingly, between 6 and 10 December the Conference held eight plenary meetings at Montego Bay, Jamaica, at which it heard statements by delegations on the Convention and related resolutions. It then concluded its work at its 193rd plenary meeting with the signature of the Convention and the Final Act.

Letter. (1)Venezuela, 20 Sep., A/CONF.62/L.153.
Resolution (1982). (2)GA: 37/66, paras. 4-6, 3 Dec.
Yearbook reference. (3)1974, p. 71.

Meeting records. Conference: A/CONE62/SR.156, 157, 158 & Corr.1, 159-182 (8 Mar.-30 Apr.), A/CONF.62/SR.183, 184 (22, 24 Sep.), A/CONF.62/PV.185-192, 193 & Add.1 (6-10 Dec.).

Drafting Committee

A textual review of the Convention on the Law of the Sea in the six official languages of the Convention was completed by the Drafting Committee of the Conference at three series of meetings in 1982. They were held at United Nations Headquarters from 18 January to 26 February,(1) before the Conference began its eleventh session, and during the first part of that session, 8 to 26 March(2) and 29 March to 30 April;(4) and at Geneva from 12 July to 25 August.(6)

The New York meetings were devoted mainly to the sea-bed provisions of the Convention and related resolutions, as well as to the amended texts introduced by the Conference collegium. The Geneva meetings dealt with all the remaining parts of the Convention on which the Committee had not previously completed work. The convening of the inter-sessional meetings at Geneva was approved by the Conference on 30 April.

The work of the Drafting Committee in 1982 was carried out at 859 meetings of the language groups open to all delegations, 80 meetings of the language group co-ordinators under the direction of the Committee Chairman and 23 meetings of the Committee as a whole. Most of the meetings were informal, except for a few plenary meetings of the Committee. This marked the completion of three years of textual harmonization and review by the Committee.

The Conference held six informal plenary meetings -two in March,(3) one in April(5) and three in September(7)—to consider and approve the Committee's recommendations. The Conference formally approved the changes on 30 April, when it adopted the Convention as a whole subject to the final set of drafting changes which it approved on 24 September.

Reports. Drafting Committee Chairman: (1)A/CONF.62/L.85 & Add.1 & Add.1/Corr.1. Add.2 & Add.2/Corr.l, Add.3 & Add.3/Corr.l. Add.4 & Add.4/Corr.l. Add.5 & Add.5/Corr.l. Add.6 & Ad;.6/Corr.l, Add.7,8 & kdd.8/Corr.1 & Add.9; (2)A/CONF.62/L.89; (3)A/CONF.62/L.90; (4)A/CONF.62/-L.142/Rev.1 & Add.1; (5)A/CONF.62/L.147; (6)A/CONF.62/L.152 & Add.l-27; (7)A/CONF.62/L.160.
Meeting records. Conference: A/CONF.62/SR.182, 184 (30 Apr., 24 Sep.).

First Committee

The First Committee of the Conference on the Law of the Sea held two formal meetings, on 9 and 29 March 1982, at which it completed its work on the sea-bed and related provisions of the Convention on the Law of the Sea. At the first of these meetings, it considered the possible impact of the

Convention, with special reference to its sea-bed production control mechanism, on developing countries which produced and exported minerals of the kind to be extracted from the sea-bed. At the second meeting, it heard the report of the Co-ordinators of its Working Group of 21. An account of the Committee's work during the session was given to the Conference by its Chairman in a report of 29 March.[1] The Committee held a total of 56 formal meetings since the Conference began.

The Working Group of 21, which met informally during the first three weeks of the session, dealt with arrangements for the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea and with the pioneer investors scheme for sea-bed exploration. A report on this work was presented to the First Committee on 29 March by the Group's Co-ordinators—the Conference President and the First Committee Chairman.[2] This report contained the texts of the draft resolutions on these two topics which, with subsequent alterations, were adopted by the Conference on 30 April along with the Convention.

Reports. [1]1st Committee Chairman, A/CONF.62/L.91; [2]Working Group Co-ordinators. A/CONF.62/C.1/L.30.
Meeting records. Conference: 1st Committee, A/CONF.62/-C.1/SR.55, 56 (9, 29 Mar.); plenary, A/CONF.62/SR.157-166 (29 Mar.-l Apr.).

Second Committee

The Second Committee of the Conference on the Law of the Sea held three informal meetings in March 1982, followed by a formal meeting on 29 April at which it wound up its work. During the 59 formal and many more informal meetings it held since the start of the Conference, the Committee dealt with the parts of the Convention on the Law of the Sea concerned with particular maritime zones, other than the international sea-bed area, including the exclusive economic zone, the continental shelf and the high seas.

As stated in the Chairman's final report to the Conference,[1] presented on 29 March, the informal meetings between 18 and 24 March enabled delegations to raise any issue within the Committee's competence and make informal suggestions for amendments to the draft Convention. After hearing 105 statements and receiving 10 informal suggestions for changes in the text, the Chairman reported that only one, presented by the United Kingdom on offshore structures in the exclusive economic zone, had broad enough support for inclusion in the Convention.

The Chairman also reported that he had convened two consultation meetings on innocent passage of warships through the territorial sea, but no formula had been produced for an acceptable change in the existing text. With regard to the overall texts within the Committee's competence, he concluded that the discussions had revealed a consensus on the need to preserve their fundamental elements, without excluding the possibility of changes that could facilitate adoption of the Convention.

Report. [1]2nd Committee Chairman, A/CONF.62/L.87.
Meeting records. Conference: plenary, A/CONE62/SR.157-166 (29 Mar.-l Apr.); 2nd Committee, A/CONF.62/C.2/SR.59 (29 Apr.).

Third Committee

The Third Committee of the Conference on the Law of the Sea did not hold any formal meetings in 1982, having previously completed its substantive work on the three parts of the draft Convention with which it was concerned-protection and preservation of the marine environment, marine scientific research, and development and transfer of marine technology. The Committee had held 46 formal meetings, the last in 1980.[3]

In his final report to the Conference, dated 30 March 1982,[2] the Committee Chairman suggested a number of drafting changes for these parts of the text, some originating in the Drafting Committee and some proposed by himself after consultations. These suggestions, and others spelt out in a letter from the Chairman dated 26 March,[1] were processed by the Drafting Committee before being acted on by the Conference.

Letter. [1]3rd Committee Chairman, 26 Mar., A/-CONF.62/L.88 & Corr.1.
Report. [2]3rd Committee Chairman, A/CONF.62/L.92.
Yearbook reference. [3]1980, p, 139.