



## UNITED NATIONS NON-GOVERNMENTAL LIAISON SERVICE/NGLS

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# *The United Nations Convention on the Law of the Sea*

**INTRODUCTION**

According to the traditional principle of freedom of the sea—*Mare Liberum*—which has prevailed since the 17th century, national rights and jurisdiction over the oceans are limited to a narrow belt of sea surrounding a nation's coastline. The remainder of the seas is proclaimed free to all and belonging to no one.

By the mid-20th century, however, political and economic concerns triggered national extensions of sovereignty claims over offshore areas and resources. Coastal fish stocks needed protection from distant-water fishing fleets; control was required over pollution and wastes from transport ships and oil tankers carrying cargoes which threatened usual sea routes, coastal resorts, and ocean fauna and flora.

In 1945, the United States unilaterally extended its jurisdiction over all natural resources on its continental shelf, including oil, gas and minerals; the following year Argentina claimed rights over its shelf and the sea above it; Peru followed in 1947 and Ecuador in 1950, claiming sovereignty over a 200-nautical mile zone. During that time, a number of coastal countries extended their territorial sea from the traditional three-mile limit to a 12-mile zone. Later, the archipelagoes of Indonesia and the Philippines extended their jurisdiction over the waters surrounding their many islands. This led to a number of conflicts. Coastal nations, distant-water fishermen, and other ships attracted by the prospect of lucrative harvest of fish competed for coastal stocks. The problem was compounded by the growing and increasingly competitive presence of maritime powers.

Technological advances increased the possibility of exploiting the sea's natural wealth. In the late 1960s, oil exploration was moving away from land and deeper into the offshore bedrock: its exploitation increased from less than a million tons in the early 1950s to almost 400 million tons a decade later. Offshore oil exploration sparked the North Sea dispute between the Netherlands, Denmark and Germany; supertankers carrying oil from the Middle East to Europe were jamming and polluting straits; metal mining was developing off coasts around the world; unrestrained fleets of ever larger fishing vessels with months of autonomy roamed the oceans, depleting fish stocks. In addition to sovereignty issues, the oceans and

deep seabed were becoming new strategic grounds for the superpowers' nuclear submarines, submarine-launched ballistic missiles, and anti-ballistic missile systems. New activities were placing unprecedented pressure on oceans and their subsoil and while promising in terms of development and wealth, they were disrupting international stability.

By the early 1970s, there was clearly a need for a more stable order promoting better use and management of the seas and their resources and the international community began negotiating a comprehensive treaty on the law of the sea.

**BACKGROUND**

Attempts to codify international rules governing the seas date back to the late 19th century. The efforts of non-governmental learned societies such as the International Law Association or the International Law Institute, were very influential in developing an international law of the sea.

Early official attempts to codify modern international law were uneven, however. The 1930 Hague Conference convened by the League of Nations failed to adopt a convention on territorial waters as states could not agree on the breadth of these waters. The first United Nations Conference on the Law of the Sea (UNCLOS I) was attended by 86 states in Geneva in 1958. It adopted four conventions: territorial sea and contiguous zone, the high seas, the continental shelf, and fishing and conservation of living resources of the high seas. The first three conventions entered into force, forming the core of the law of the sea. The fourth never became legally binding. In 1960, UNCLOS II was convened to discuss the problem of the breadth of the territorial sea, but failed.

The origins of UNCLOS III can be traced back to the setting up of a 35-member ad hoc committee in 1967 with a mandate to examine the question of the deep seabed beyond national jurisdiction, in light of questions raised by new rivalries spreading across the oceans, the implications of technological advances on man's activities on and under the seas, and conflicting claims over the seabed. The ad hoc committee called for an alternative international regime

covering the seabed beyond clearly defined national jurisdiction.

Some states were reluctant to review the existing regime of the seas; the vast majority of UN members, however, were newly independent states who had not been involved in the original design of the international law of the sea. They were soon in favour of a vast diplomatic effort to regulate and rewrite the rules not only for the seabed, but for all ocean areas, uses and resources. It was becoming obvious that the various elements making up the law of the sea were closely linked and had to be addressed in a global and consistent manner; furthermore, new problems threatening coastal areas—such as overfishing and marine pollution beyond the traditional jurisdictional limits—had not yet been addressed.

In 1968, the ad hoc committee grew to 41 members and was renamed Committee on the Peaceful Uses of the Deep Seabed and the Ocean Floor beyond the Limits of National Jurisdiction (known as the seabed committee). As a result of the committee's work, in 1970 the UN General Assembly adopted resolution 2570 which convened a global conference to prepare a comprehensive convention on all aspects of the law of the sea. The General Assembly (GA) launched a protracted negotiating effort which would end in 1982 with the adoption of UNCLOS. The GA also adopted the Declaration of Principles Governing Seabed and Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction. These areas were for the first time declared the "common heritage of mankind." The seabed committee was enlarged to 91 members and given the task of preparing the conference.

During the negotiating process, the conference split into three main committees. Committee I dealt with the legal regime of the deep seabed; Committee II dealt with the territorial sea and contiguous zone, the continental shelf and exclusive economic zone, the high seas, and fishing and conservation of the living resources of the high seas, as well as with specific questions of straits and archipelagic states; Committee III dealt with preservation of the marine environment and scientific research. Smaller ad hoc groups considered other specific matters on behalf of the conference.

The conference was conceived as a broad political rather than strictly legal codification exercise. As a result, it was assigned to the First General Assembly Committee, the Political and Security Committee, rather than to the Sixth, or Legal Committee. States which had similar maritime interests formed groups but these could change depending on the issues being discussed. The most important and influential were the Group of 77 developing countries (G77), the group of western market economy countries, and the group of European socialist states. The G77 remained sufficiently coherent throughout the negotiations to impose its views on certain general questions, but many other special interest groups emerged along North/South and East/West lines, notably landlocked and geographically disadvantaged states opposing the coastal and maritime states, and archipelagic states and straits states.

Since views diverged considerably, the conference used consensus to resolve issues; it was felt that votes on specific questions would have prevented the conference from achieving a consistent and widely acceptable text. Moreover, proceeding without formal votes would ensure the few major maritime powers whose participation in the convention was vital would not be outvoted.

## PREPARATORY PROCESS

### *The Early Days*

The first session of UNCLOS III was held in 1973 in New York and was mainly organizational. It elected officers, worked on rules of procedure, and elected Hamilton Shirley Amerasinghe of Sri Lanka as President of the conference. The second session, held in 1974 in Caracas, adopted the rules of procedure and for the first time considered alternate texts prepared by the seabed committee. The third session, in 1975 in Geneva, yielded a "single negotiating text." This text set out in treaty language the provisions to be included in the convention on the law of the sea. The fourth session in 1976 in New York produced a "revised single negotiating text." The fifth session, held in New York in 1976, made progress in some areas but stalled on the issue of how deep seabed mining should be organized and regulated.

The sixth session, in New York in 1977, continued deliberations; the seventh session in Geneva and New York in 1978 created seven negotiating groups to tackle "hard core" differences; the eighth session, in 1979, also in Geneva and New York, produced the first revision of the 1977 negotiating text and decided to complete the work toward a convention by 1980.

An informal text for a draft convention was produced at the ninth session in 1980 in New York and Geneva, and plans were made to hold the final session of the conference in 1981.

The tenth session was a landmark meeting: it issued the first official text of the draft convention. Jamaica and the Federal Republic of Germany were chosen as seats for the International Seabed Authority and the International Tribunal for the Law of the Sea respectively. The "final decision making session" was set for 1982.

The issues facing the conference were so numerous, complex and interrelated that some were only painstakingly resolved. Navigation was one of the thorniest, as countries have generally claimed some part of their offshore seas as a buffer zone to protect them against smugglers, warships and other intruders. The 18th century "cannon-shot" rule—whereby coastal states have jurisdiction over coastal seas within canon-shot range—was the basis of a three-mile territorial sea limit until the 1960s, when a trend towards a 12-mile limit emerged. These two limits began coming into conflict, especially where there was danger the broader limit would close off straits open to international navigation, such as the strategic eight-mile Strait of Gibraltar to the Mediterranean; the 20-mile Strait of Malacca, the main sea route between the Pacific and the Indian Oceans; the 21-mile Strait of Hormuz, the only passage to the oil-producing areas of the Gulf; and the 14-mile Strait of Bab-el-Mandeb, connecting the Indian Ocean and the Red Sea.

The issue of passage through the straits pitted the major naval powers against coastal states controlling narrow straits. While maritime powers demanded free passage through straits, coastal countries objected, saying warships so close to shore would be a threat to their national security. They insisted straits narrower than 24 miles should be designated territorial seas through which warships would be granted right of "innocent passage." The naval powers rejected this, as an unacceptable security risk, and conflict continued until compromise was reached with the concept of "transit passage."

Another key but controversial issue was deep seabed mining, both an enormous technical challenge and economically unaffordable. In 1970, the General Assembly declared seabed resources located beyond the limits of national jurisdiction “the common heritage of mankind.” Throughout the conference process, nothing so sorely tested the ability of diplomats than the goal of conserving that common heritage while profiting from it.

Industrialized countries felt resources should be commercially exploited by mining companies licensed by an international authority; developing countries objected, arguing resources were unique and belonged to the whole of mankind, and that they should be mined by an international public enterprise. The compromise, a “parallel system” embodied in Part XI of the convention, allows mining by both public and private sectors on the one hand and collective mining on the other.

During the 1970s, commercial seabed mining appeared imminent. But the large technological investments required, mineral market conditions and economic circumstances have pushed back this prospect. For now, experts do not foresee commercial seabed mining until well after the year 2000.

The eleventh and final negotiating session was held in two parts, the first from 8 March-30 April and the second from 22-24 September 1982, both in New York. The session's voluminous outcome was the convention, with its 320 articles and nine annexes, and the Final Act, containing nine annexes and six resolutions. Jamaica was chosen as site of the convention's signature, and from 6-10 December 1982, 119 delegations signed. Several industrialized states refrained from signing, due to the convention's exceptionally precise regulations and revolutionary international regime applying to the deep seabed.

In the interim period between the convention's signing and its entry into force, a Preparatory Commission, or PrepCom, was set up. It consisted of representatives of the signatory states and was to pave the way for the two major institutions set up by the convention: the International Seabed Authority (the authority), with headquarters in Jamaica, and the International Tribunal for the Law of the Sea (the tribunal) in Hamburg (Germany).

The PrepCom dealt with developing land-based producer states who might be adversely affected by the exploitation of seabed minerals; making the enterprise competitive; interim rules governing seabed mining; and the tribunal. The PrepCom also implemented an interim regime adopted by the conference to protect those who had already invested extensively in seabed mining.

The PrepCom ceased to exist when the first, ceremonial meeting of the authority's assembly took place. As a result of the convention's entry into force, the first session of the assembly of the International Seabed Authority was held in Jamaica from 16-18 November 1994. The first substantive session of the assembly was held in 1995.

The 1982 convention is exclusively concerned with the international law of the sea in peacetime. While the conventions on the law of the sea adopted in 1958 considered specific areas, the new convention provides a global framework encompassing the oceans, their uses and resources both along zonal and functional lines. Accordingly, it has been described by the UN Secretary-General as “possibly the most significant legal instrument of this century.”

## KEY PROVISIONS

### *Coastal Zones*

One of the convention's primary aims is to set agreed limits to settle conflicting claims and to strengthen peace, security, cooperation and friendly relations among nations; all legal maritime regimes—or functional regulation—depend on clearly defined lines between national and international waters, or zonal delimitation.

One of the main contentious points throughout the negotiations was the width of the territorial sea. The 12-mile limit was finally endorsed by the convention's article 3. Within the 12-mile limit, states are free to enforce any law, regulate any use and exploit any resource. A state's territorial sea extends from its baseline, the low-water line along its coast; waters inside the baseline are known as “internal waters.”

The convention balances a coastal state's sovereign rights with a ship's right of innocent passage, provided such passage does not harm the coastal state and does not violate its laws or threaten its security. Innocent passage basically means passage without causing any trouble, such as military exercises, smuggling, fishing or research activities.

Coastal states also have certain rights to prevent certain violations and enforce police powers beyond their territorial seas to 24 nautical miles from shore. This area, which the convention calls the “contiguous zone,” may be used by the coast guard or its naval equivalent to pursue and if necessary arrest and detain suspected drug smugglers, illegal immigrants and customs or tax evaders violating the laws of the coastal state within the territorial sea.

Likewise, ships and aircraft enjoy the right of “transit passage,” as defined in section 2, through straits used for international navigation, unless another convenient route exists. This represents a compromise between the major maritime powers' request for continuing guarantees of passage through straits of international importance—such as Gibraltar, Hormuz and Malacca—and the will of strait states whose security, economic and environmental interests may be harmed by foreign ships passing through their waters. Transit passage allows unimpeded navigation and overflight, with less coastal state control over passing ships or aircraft than innocent passage. With the exception of such transit passage, straits narrower than 24 miles may be claimed by the coastal states as part of their territorial sea.

Another innovative feature of the convention is the regime governing archipelagic states (Part IV), that is, states made up of one or more groups of islands, such as the Philippines or Indonesia. For these states, the territorial sea may be a 12-mile zone extending from a line joining the outermost points of the outermost islands. The waters between the islands and inside this line are archipelagic waters over which the state is sovereign. Ships of all states enjoy the same right of innocent passage through the waters, the air space above them and their bed and subsoil as they do through territorial seas. In addition, in archipelagic waters, states may establish archipelagic sea lanes and air routes through which foreign ships and aircraft enjoy more extensive passage rights. Like transit passage, the right of sea lanes passage is a new concept and a compromise between the accepted but more restrictive right of innocent passage and the freedom of navigation recognized on the high seas. Moreover, if an archipelagic state does not designate sea lanes or air routes,

the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

### ***Exclusive Economic Zones (EEZs)***

One of the convention's most revolutionary features is the exclusive economic zone (EEZ, Part V of the convention), which has already had a profound impact on the management and conservation of ocean resources, especially fish. The interest of coastal states in these resources grew with expansion of the fishing industry, fueled by technology: the world fish catch stock rose from 15 million tons in 1938 to 86 million tons in 1989.

In 1958, the Convention on Fishing and Conservation of the Living Resources of the High Seas recognized that coastal states have a special interest in the resources of the high sea areas adjacent to the territorial sea. The idea of sovereignty over coastal resources gained ground as Peru, Chile and Ecuador claimed 200-mile offshore limits, to limit fishing in the rich waters of the Humboldt Current, only to be joined later by other Latin American countries. With the development of fishing industries came depletion of long and heavily harvested waters, competition, and international disputes (more than 20 between 1974 and 1979 over fisheries stocks and grounds). UNCLOS III also coincided with the upsurge in oil prices of the 1970s, which spurred exploration and exploitation of oil along continental shelves.

Under the convention, coastal states may claim an EEZ extending 200 miles from their baseline and exploit, develop, manage and conserve all living and non-living resources—fish, oil, gas, gravel, nodules or whatever else—found in the waters, on the ocean floor, or in its subsoil. All told, this encompasses an area of 38 million square nautical miles of ocean space, including 87 percent of all known undersea hydrocarbon reserves and almost all known and potential offshore mineral resources. EEZs also cover most lucrative fishing grounds, since the richest phytoplankton pastures, the basic food for fish, are near land.

Over 100 states have extended their jurisdiction to 200 miles in accordance with the convention. As a result, 99 percent of the world's fisheries and a good deal of oil, gas and other resources fall under national jurisdiction.

Under the EEZ regime, the general and special duties of coastal states balance their rights to exploit living and non-living resources in their EEZs. Coastal states are to promote optimum utilization of living resources in the EEZ and ensure they are not overexploited. States also have an obligation to cooperate in conserving straddling and highly migratory fish stocks. Other rights or obligations under the EEZ regime include determination of total allowable catch for each fish species; conservation of marine mammals; the duty to give neighbouring landlocked states access to its surplus catch; and measures to prevent pollution and facilitate research.

### ***Continental Shelves***

Activities on continental shelves are governed by Part VI of the convention. Recent technological developments have opened wide access to resources and uses found underwater and beneath the ocean floor. As defined by the 1958 United Nations Conference on the Law of the Sea, a continental shelf is "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the

exploitation of the natural resources of the said areas." At the conference, there was a strong desire to extend control over ocean resources to 200 miles from shore. The outer limit of the legal continental shelf would then coincide with that of the EEZ, except for states whose geographical shelf extended beyond 200 miles.

Under the 1982 convention, the continental shelf is the seabed and subsoil of the submarine area that extends beyond states' territorial seas to the outer edge of the continental margin, a distance of 200 nautical miles from the baseline, as long as the outer edge of the continental shelf is short of this limit. If the natural shelf extends beyond 200 miles, nations may claim jurisdiction up to 350 miles from the baseline or 100 miles from the 2500-meter depth line. The exact limit depends on certain criteria such as the thickness of sedimentary rock. These rights do not affect the legal status of waters or airspace above the continental shelf. To counterbalance the continental shelf extensions, coastal states must contribute to a revenue sharing system based on exploitation of mineral resources beyond 200 miles. These contributions—from which developing countries that are net importers of the mineral in question are exempt—must be equitably distributed among parties to the convention through the International Seabed Authority.

### ***The High Seas***

According to article 86, the high seas are made up of all parts of the sea that are not included in the EEZ, territorial sea, internal waters or archipelagic waters. High seas are governed by the fundamental principle of freedom and openness to all states subject to the convention's provisions. Freedom includes freedom of navigation, overflight, laying of submarine cables and pipelines, construction of artificial islands and other installations permitted under international law, fishing, and scientific research. Accordingly, no part of the high seas may be subject to a state's jurisdiction. High seas may only be used for peaceful purposes. However, every state shall exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. The convention gives details about the nationality of ships and the duties of a flag state, including the duty to assist persons in danger at sea and to repress piracy, illegal drug traffic, and unauthorized broadcasting from the high seas; the prohibition of transport of slaves; and penal jurisdiction in cases of collision. Seizure and liability rules exist for certain specific cases.

Under article 111, coastal states may exercise a right of "hot pursuit," the right to pursue a foreign ship onto the high seas and EEZs when it is suspected of violating a coastal state's laws. Pursuit, however, must have been initiated while the ship was still within the state's territorial limits or the contiguous zone. States must also cooperate in conserving and managing living resources on high seas, in protecting the marine environment, and in scientific research.

### ***The Seabed***

All seabed activities outside national jurisdiction must be carried out for the benefit of mankind as a whole. Under Part XI of the convention, industrialized countries must provide the funding and technology required by the enterprise, the international public company governed by the International Seabed Authority. In return for their commitment, they would have access to seabed resources on an equal footing with the enterprise. Developing countries could participate through joint ventures. A so-called "banking system" governs these arrangements. The mining consortium or state enterprise wanting to mine the seabed would have to apply for an area large and valuable enough

to allow two mining operations. A line would have to be drawn between the two parts, with the Seabed Authority deciding which part it would reserve for the enterprise and which part it would hand over to the applicant for development. The Seabed Authority would then benefit from continued revenue. The financial mechanism satisfies both developing and industrialized countries. The developing countries were pleased with the early prospect of sizeable revenue, while industrialized countries were somewhat placated with a sliding scale of royalties that would allow contractors to cover their development costs with cash surplus within about 10 years.

The complex system is administered by the International Seabed Authority. Directing and guiding the authority is an Assembly, the supreme authority's body, made up of all members of the authority—states that have ratified or acceded to the convention—and a 36-member council, the executive body responsible for supervising the implementation of Part XI, approving work plans for mining and developing rules for equitable sharing of financial benefits derived from the seabed, and issuing emergency orders to prevent serious harm to the marine environment. The council is assisted by an Economic Planning Commission and a Legal and Technical Commission to assess the environmental implications of seabed activities. The convention also has a secretariat with a Secretary-General elected for four years. The Secretary-General reports annually to the assembly on the work of the authority. The secretariat makes arrangements, with the council's approval, for cooperation with NGOs in consultative status with ECOSOC. The enterprise, the "operating arm," carries out mining, transport, processing and marketing activities in the seabed directly. The authority is financed by contributions made by members, funds received in connection with its activities and from the enterprise in accordance with the convention, and borrowed funds.

### ***Environmental Conservation***

Part XII balances the sovereign rights of states over their natural resources by a general obligation to protect and preserve the marine environment. It does not apply to warships, which enjoy sovereign immunity, although the convention requires warships to comply with its provisions "as far as possible."

The convention addresses six main sources of ocean pollution: land-based and coastal activities; continental shelf drilling; potential seabed mining; ocean dumping; vessel-source pollution; and pollution from or through the atmosphere, all of which are to be the object of measures taken by states. Furthermore, article 194 specifies that anti-pollution measures must protect and preserve rare or fragile ecosystems and the habitat of depleted, threatened or endangered species and other forms of marine life. States are urged to cooperate on a global and regional basis and with competent international organizations in formulating rules and standards to combat pollution. States must notify other states and relevant international organizations in cases of pollution threat and work together to develop contingency plans to respond to pollution incidents. States should also work together to develop international law on liability and compensation for pollution damage.

While all states must take the necessary measures to ensure that activities under their jurisdiction do not pollute other states and their environment, the duties of a flag state are particularly relevant to implementing this part of the convention. The flag state must enforce rules combatting pollution from vessels wherever a violation may occur,

including the high seas. This ensures no vessel circumvents international law while at sea beyond national jurisdiction. Safeguards such as the non-discrimination rule exist so that enforcement powers are not misused. As for foreign vessels, coastal states can exercise jurisdiction only to enforce laws and regulations adopted in accordance with the convention or for "generally accepted international rules and standards," many of which are adopted by the International Maritime Organization. States can enforce their national standards and anti-pollution measures within their territorial sea and EEZ.

The port state is also given the right to enforce international rules and standards. So when a vessel is voluntarily within a port or at an off-shore terminal of a state, that state may start proceedings against it even if a violation of such rules and standards is committed outside the state's jurisdiction.

With regard to the seabed, the authority's role is to assess the potential environmental impact of proposed deep seabed mining operations; recommend changes; formulate rules and regulations; establish a monitoring programme; and recommend the issuance of emergency orders by the council to prevent serious environmental damage.

States are held liable for any damage caused by either their own enterprise or by contractors under their jurisdiction. The convention requires states in general terms to provide scientific and technical assistance to developing countries in the field of marine environment protection.

### ***Research and Technology***

Part XIII of the convention accommodates the concerns of major research nations, mostly developed states, by extending their research activities over larger ocean areas so as not to hamper marine and related science advancement and its benefits to all nations. Under the convention, states and international organizations have a general right to conduct marine scientific research, subject to its provisions, and a general obligation to promote scientific research and cooperate in the conduct of research. Coastal states whose EEZ or continental shelf is to be researched now boast the power of "prior consent," meaning developed states wishing to undertake research on their continental shelf or in their EEZ must first get the consent of the coastal state. The absence of a reply from a coastal state to a marine research request within six months implies consent. The coastal state, however, must grant such consent in normal circumstances. Moreover, coastal states retain absolute sovereignty over their territorial seas.

Part XIV of the convention promotes the acquisition, evaluation, dissemination and development of marine technological knowledge, including measures to help transfer this technology to developing countries. Transfer mechanisms include the development of technical cooperation programmes, the promotion of favourable conditions for the conclusion of agreements, and the holding of conferences and exchange of scientists.

### ***Settlement of Disputes***

The convention provides for a unique dispute settlement mechanism, which is binding. The mechanism is a compromise between two approaches to peaceful conflict settlement: direct negotiation among states or binding decisions of a judicial body. If negotiations fail, the dispute is referred to the International Tribunal on the Law of the Sea, to be set up in accordance with the convention, to the International Court of Justice in The Hague, to binding international arbitration, or to specialized arbitration procedures. Whatever the body agreed by the parties, the

outcome shall be a third-party legal decision, final and binding upon the parties.

There are two exceptions. The first is for cases involving national sovereignty, for which a conciliation commission whose findings are non-binding is competent. The second concerns "optional exceptions" to be chosen by parties upon signature or ratification of the convention in order to escape mandatory procedures on existing maritime boundary disputes, military activities, or issues under discussion in the UN Security Council.

Disputes over seabed activities involving states or the authority, or companies or individuals having seabed mining contracts must be arbitrated by an 11-member Seabed Disputes Chamber, set up within the International Tribunal for the Law of the Sea.

No reservations may be accepted to the convention. This echoes the preamble, which recognizes the need to consider all problems of ocean space as a whole. Still, a number of states have made declarations upon signing or ratifying the convention which explain their understanding and interpretation of specific provisions. This is permitted as long as they are not designed to modify these provisions. Declarations may be found in the Law of the Sea Bulletin, No. 25, June 1994 published by the UN Division for Ocean Affairs and the Law of the Sea.

#### ENTRY INTO FORCE

To deal with a number of problems concerning deep sea mining provisions of the convention, the UN Secretary-General launched a series of informal consultations in July 1990.

The first phase of consultations identified nine problem issues; most related to the international deep seabed regime and the costs associated with it, the enterprise, decision making, the Review Conference, transfer of technology, production limitation, compensation funds, financial terms of contract and environmental considerations. Participants considered these issues during six informal consultations between 1990 and 1991. Initial results were set out in a summary by the Secretary-General on 31 January 1992 and fell into two categories. First, agreement seemed to have been reached on relatively detailed solutions to costs to state parties, the enterprise, decision making, the Review Conference, and transfer of technology. Second, it was decided not to formulate new rules on production limitation, the compensation fund, and financial terms of contract. Rather, general principles were set out in the event of commercial production of deep seabed minerals.

During the second phase, which started in 1992, the Secretary-General continued informal consultations. Earlier results were fine-tuned, and environmental considerations, no longer seen as controversial in the context of deep seabed mining, were removed.

It was decided that solutions must be legally binding, and that a duality of regime must be avoided. In November 1993,

the 60th ratification was deposited, triggering the countdown to the convention's entry into force one year later. At that point, the UN General Assembly invited all states to take part in the consultations.

Consultations in early 1994 focused on decision making in the convention's institutions, budgetary questions, and the issue of provisional application of the agreement. By April 1994, a draft resolution and draft agreement relating to the implementation of Part XI of the 1982 convention was presented. Two key issues remained, decision making and the enterprise. Discussions on decision making centered on a system of chambered voting. The debate on the enterprise concerned the type of mechanism which would trigger its operations and functions.

The final round of consultations was held from 31 May-3 June 1994, with the revision of the draft resolution and the draft agreement annexed thereto. The Secretary-General felt the outcome of the consultations would allow for broader participation in the convention and that he had accordingly fulfilled his mandate. The draft resolution, to which the draft agreement was annexed, was adopted by 121 votes (none against, with seven abstentions) on 28 July 1994 at the resumed 48th session of the General Assembly and the agreement was opened for signature the following day.

In accordance with article 308, the convention entered into force on 16 November 1994. The adoption of the agreement relating to the implementation of Part XI of the convention has particularly assisted industrialized states in accepting the convention, which now must be applied and interpreted as a single instrument together with the agreement. As of 1 June 1995, 75 states had ratified the convention, including Australia, Germany and Italy.

The convention has already had significant influence on national practices and on the international law of the sea. Most of its elements have found their way into national legislation and other policy instruments. In extending their national jurisdiction over adjacent oceans, exercising their rights over the resources of neighbouring waters and continental shelves, delimiting maritime zones, carrying out activities such as navigation, fishing, exploitation of the riches underneath the high seas, and undertaking scientific research, most governments are complying with relevant convention provisions.

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