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Economic Commission for Latin America and the Caribbean

A REGIONAL APPROACH TO THE CONSULTATIONS HELD BY THE
SECRETARY-GENERAL OF THE UNITED NATIONS ON PART XI
OF THE UNITED NATIONS CONVENTION ON THE LAW
OF THE SEA */

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SUMMARY

This study refers to the implementation of an output of the 1992-1993 subprogramme of work on natural resources and energy, originally conceived as a technical study for the Latin American and Caribbean Group before the Preparatory Commission for the International Sea-bed Authority and the International Tribunal on the Law of the Sea.

The product was initially oriented towards the analysis of the compensation fund for land-based producers and of the subjects of transfer of technology and environmental protection in the draft mining code for the Area.

The course of events determined the need for this product to be modified and, along this line, to represent an evaluation of the trend regarding modifications of Part XI of the United Nations Convention on the Law of the Sea and its consequent implications for developing countries concerning real benefits from the common heritage of mankind.

This document tries therefore to analyze the consultations carried out by the United Nations Secretary-General concerning possible alternatives for future management of this common heritage and envisages some options for the countries of the region.

Since the consultations will continue after the issuance of this paper, and considering that the next political negotiations - regarding both this subject and the drafting of the General Assembly Resolution on the Law of the Sea - will certainly introduce new elements in the analysis, the document should be considered as a preliminary approach, subject to adjustments during 1994, and specially after 16 November 1994, when the Convention on the Law of the Sea will enter into force.

I. CURRENT STATUS OF DEVELOPMENTS ON THE SECRETARY-GENERAL'S
INFORMAL CONSULTATIONS

Consideration of proposals for procedural approaches
on the establishment of the Authority

a) Consultations held in April 1993.^{1/}

The principal areas of consultations mainly address a period in time when the Convention will have entered into force and deep seabed mining will have become economically, financially and technologically possible. These two stages in the life of the Convention --the entry into force and the viability of deep seabed mining-- will, however not coincide. A dramatic and fundamental change in circumstances has occurred in the expectations on which Part XI was based. Part XI presupposed that the entry into force would coincide with the present commencement of commercial deep seabed mining.

However, ten years after the opening for signature of the Convention, and after the ratification of or accession to the Convention by 57 states,^{2/} the situation is that there is no economic need for, no technological feasibility and less interest in deep seabed mining. This state of affairs will remain so in the foreseeable future. There will, therefore be a prolonged period after the entry into force of the Convention in which there will be no deep seabed mining. This "interim" period will be followed by a period when the Convention will be in force and commercial production of deep seabed minerals will have actually started as envisaged in Part XI.

However, Part XI is of relevance not only for the second phase, but also for the first one, that is, the interim period before the commencement of commercial production of deep seabed minerals, and so are the results of the consultations. Part XI foresees that the institutions established by it shall be set up immediately following the entry into force of the Convention. Therefore the question arises as to what is to become of the Authority and the Enterprise in the first phase, the interim period. In the consultations, it was repeatedly emphasized that all institutions to be established under the Convention should be cost

effective and that no institution should be established which was not required and that the establishment and the operation of the various institutions should be based on an evolutionary approach, taking into account the need for the institutions concerned. Consequently, the institutions to be established under the Convention in the interim period have to be set up in minimal form in accordance with the present need for them.

The next key issue is the way in which the results of the consultations would influence the definitive deep seabed mining regime in the future, during the second phase. Although it is not known when and under what economic, financial and technological circumstances the commercial production of deep seabed minerals will take place, States want to know, to the extent possible, what they consent to be bound by, with respect to deep seabed mining.

At present there are four procedural approaches on the table, which are designed to deal with dilemma. Four of these are outlined below. Of these four, it seems that the Secretary-General is pushing for option "c"; Canada has also stated officially its support for option "c".

A: With the above mentioned approach to the results of the consultations, these results can be included in a contractual instrument (e.g. Protocol) which formally amends Part XI of the Convention, both with respect to the interim period and with respect to the future deep seabed mining regime.

Points to consider

- The contractual instrument would have to be open to all states and entities entitled to become parties to the Convention under article 305;

- The amendment of the Convention would have to be brought about in a procedure different from the amendment procedure provided for in Part XI, articles 155 and 314 of the Convention. However, multilateral treaties can be amended by agreements between the states concerned as is in fact provided for in Article 39 and 40 of the 1969 Convention on the Law of Treaties.

This approach has the advantage of producing a clearly legally binding instrument. However, there are disadvantages. This approach would amount to a partial renegotiation of Part XI. The Secretary-General stated at the opening statement at the consultation round of 16-17 June 1992 that there is no mandate for a renegotiation of Part XI. This approach would compel those states which have ratified or acceded to go back on their ratifications. Their position should be protected to the extent possible. The risk of further delays in the achievement of universality of the United Nations Convention on the Law of the Sea is therefore considerable under this approach.

B: Many of the results reached so far in the consultations, be they formulated as general principles or in a more precise form, constitute less changes in the actual text of the Convention than an understanding of the interpretations or application of particular provisions of the Conventions on the Law of the Sea. These results, therefore could be treated in a simple and yet legally binding-form as an agreement containing authoritative interpretations of the provisions concerned. The text of the agreement would still be adopted by a competent multilateral body, but thereafter it would be dealt with in a simplified procedure analogous to Article 313 of the Convention.

Thus, states which have ratified the Convention would be considered as having accepted the interpretation agreement and being bound by it unless they formally object within a certain period of time.

The drawback of that approach is that there are certain results of the consultations which amount to full-fledged amendments and go beyond the area of mere interpretation. While it seems that agreement on the establishment, during the interim period, of an Authority with a limited structure (initial authority) and an Enterprise (initial enterprise) with a limited structure, could take the form of an interpretative agreement, other results, in particular those relating to decision-making and the Review Conference could not. The interpretative agreement approach would therefore give only partial satisfaction.

C: The third approach would consist of an interpretative agreement on the establishment of an initial authority and an initial enterprise for the duration of the interim period accompanied by a procedural arrangement providing for the convening of a conference to establish the definitive regime for the commercial production of deep seabed minerals to be held when such production becomes feasible. The conference would be triggered by a decision of the initial authority made in the light of a recommendation by a group of technical experts that commercial exploitation of deep seabed minerals will become feasible within (x) years.

The group of technical experts would be convened upon a request made by the initial authority, either on its own initiative or upon receipt of a notification from an operator that he intends to commence commercial exploitation within (x) year. The conference would be attended by all States Parties and other States and entities which are entitled to become parties to the Convention. The conference shall ensure the maintenance of the principle of the COMMON HERITAGE OF MANKIND as well as the implementation of the results of the consultations. It would have before it Part XI and the related annexes, as well as the results of the work of the Preparatory Commission and any other proposals which member states

might wish to make. The decision-making procedure applicable at the conference shall be similar to that applicable at the Third United Nations Conference on the Law of the Sea.

This approach would have the advantage of leaving ratifications or accessions already completed formally intact; the states which have already ratified or acceded, would have to accept the interpretative agreement relating to the initial establishment of the authority and enterprise in a considerably reduced form and to agree to the holding of and participation in the conference to be convened. For the states which have not yet ratified or acceded, the agreement to participate in the conference would obviate the necessity --and that could be specifically indicated in the arrangement-- to include Part XI and the related annexes in their consent to be bound by the Convention (be it ratification or accession) beyond their agreement to participate in the initial authority and the initial enterprise as well as in the conference.

This third approach would essentially mean postponing the answering of questions which can hardly be answered beyond the results reached to date, while, at the same time giving clear and binding directions on essential facets of a future deep seabed mining regime. It would come close to a reservation to Part XI, and if seen as such would run counter to Article 309 of the Convention. It would also deviate from the procedures provided for in Articles 155 and 314 of the Convention. However, the deviation from a multilateral treaty is legally possible, as mentioned under option A, by way of an agreement between the states concerned and can be politically justified in the light of the fundamental change of circumstances which has occurred in respect of Part XI. As this approach does not immediately change or amend substantive provisions of the Convention, once it is the object of general agreement in the consultations it could be adopted in a document of a competent multilateral body to which the agreement on the initial form of the institutions, the arrangements for the conference and the results stemming from the consultations would be annexed as integral parts.

D. A fourth approach was suggested by one delegation in the consultations on 16 and 17 June 1992 and 28 and 29 January 1993, and supported by two other delegations. That approach foresees the conclusion of an additional agreement to the Convention, which would have become an integral part of, and enter into force together with the latter. That agreement would set forth the results of the consultations; they would, in particular, constitute the guiding framework for the action of the Authority, the structure, functions and composition which would also be provided for in the agreement. The Authority would initially be established in a very streamlined form and would evolve over time as needed. The major functions of the Authority would be to put in place the regulations regarding the activities relating to deep seabed mining and to control their application; to take such measures as are

required for the exercise of its functions, including the possibility of entering into contracts with investors and other entities and the setting up of subsidiary organs as well as the employment of outside experts as necessary. Finally, the Authority would be mandated to develop solutions for issues still outstanding at the time the Convention enters into force. The Authority would perform its functions through the Assembly. However, a general committee with executive functions would also be established. The Assembly would take decisions in general by consensus.

This approach would make the transition from the initial phase --in which there is no deep sea bed mining-- to the second phase --in which there is deep sea mining-- fleeting. There would be no necessity for a "trigger" mechanism and since the Authority would have all the necessary requirements, there would be no stringent necessity for a conference at the time of transition from the interim phase to actual deep sea bed mining. Nevertheless, this approach would leave the possibility open for the establishment of a reconsideration mechanism procedure, in particular with a view to the adoption of detailed provisions at such time when the commercial production of the deep seabed minerals has become feasible.

This fourth approach would undoubtedly have the advantage of considerable flexibility and relative simplicity. Its difficulty lies in the necessity of bringing about a formal agreement which will enter into force together with the Convention.

As mentioned earlier, of these four approaches, option "c" seems to be the one of choice. As pointed out by Glen Bailey of the Canadian Embassy, Santiago de Chile, that is Canada's official position. As for the United States, in the discussions with Maureen Walker, lawyer of the Department of State, Oceans and Fishery Affairs, Office of Oceans, she said that at the next Secretary-General's meeting scheduled for August 2-6 1993 in New York, the American government will pursue this "window of opportunity". They will seek to ratify the Convention and to make it universally acceptable.^{3/}

b) Consultations held in August 1993 ^{4/}

The second stage of consultations was held between 2 and 6 August, 1993.

The main result of the consultations was a document prepared by the representatives of several developed and developing states as a contribution to the process of negotiations. This document is known as "boat paper".

The "boat paper" includes a draft resolution for adoption by the General Assembly whose main contents are:

i) the reaffirmation that the area and its resources are the common heritage of mankind;

ii) the recognition that political and economic changes, including in particular a growing reliance on market principles, show the need to re-evaluate some aspects of the regime.

iii) the adoption of an agreement regarding the implementation of Part XI and related provisions of the Convention;

iv) the fact that future ratifications of or accessions to the Convention should be taken, to relate the Convention together with the Agreement;

The Agreement attached to the draft resolution expresses the undertaking of states parties to apply and implement Part XI of the United Nations Conference on the Law of the Sea on the basis of the agreed conclusions of the Secretary-General's consultations together with the consequential adjustments to Part XI and the provisions on the finance Committee, as set out in its Annex.

It also notes that the provisions of Part XI and of the Agreement shall be read and interpreted together as one single instrument, adding that articles 309 and 319 of the United Nations Convention on the Law of the Sea, referring to Reservations and Exceptions and Depositary shall apply to the Agreement as they apply to the Convention.

Also, after the adoption of the Agreement, any instrument of ratification, formal confirmation or accession in respect of the Convention, shall represent also an accession to the Agreement.

The agreement shall be open for accession by States and entities referred to in article 305 of the Convention which have ratified, formally confirmed or acceded to the Convention and this Agreement and instruments of accession shall be deposited with the Secretary-General of the United Nations.

Concerning the Annex, which in fact is the proposed content of the report of the Secretary-General to the UN General Assembly, establishes that the Authority is the organization through which states parties to the Convention shall, in accordance with the regime for the international seabed area established in Part XI and as modified by the Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area.

The powers and functions of the Authority shall be those expressly conferred upon it by the Convention.

According to the text, the establishment and operation of the various institutions shall be based on an evolutionary approach,

considering the functional needs of the institutions concerned so that they may discharge effectively their corresponding responsibilities at the different states of the development of activities in the Area. Similarly, the meetings of the various institutions shall be streamlined, so as to abate costs and this will apply to the size, structure and functions of the institutions.

Along the same line, the early functions of the Authority, upon entry into force of the Convention, shall be carried out by the Assembly, the Council, the Legal and Technical Commission and the finance Committee.

The early functions of the Authority shall consist of the following, among others,

a) the processing of applications for approval of a plan of work for exploration in accordance with Part XI and the Agreement;

b) the monitoring of compliance with the terms of contracts incorporating approved plans of work;

c) the implementation of decisions of the Preparatory Commission relating to the registered pioneer investors including their rights and obligations, in accordance with the provisions of article 308 (5) of the Convention and Resolution II, paragraph 13;

d) the study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

e) the promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area, and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of the activities in the Area.

Concerning the application for approval of a plan of work, it shall be considered by the Council upon the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for the approval of a work plan shall be in accordance with the provisions of the Convention, including its Annex II and the Agreement, provided that:

i) a work plan for exploration submitted by a pioneer investor, duly registered as such by the Preparatory Commission in accordance with resolution II of the Third United Nations Conference on the Law of the Sea, shall be approved by the Council,

notwithstanding the provisions of Part C, paragraphs 10 and 11 of the Annex, and the provisions of resolution II, paragraph 8, if such work plan includes the terms and conditions set out in the decisions of the Preparatory Commission relating to such pioneer investor. For the purpose of work plan submitted by a registered pioneer investor, it shall be sufficient if the work plan refers to documents, reports and decisions of the Preparatory Commission containing the relevant data and information already submitted to the Commission, with additional information regarding the pioneer activities since the date of registration up to the date of submission of a plan of work, together with an indication of plans for future activities, if any.

The fees to be paid by a pioneer investor upon the submission of a work plan, in accordance with the provisions of resolution II, paragraph 7 (a), and Annex III, Article 13 (2) of the Convention, shall be deferred until the pioneer investor submits a work plan for exploitation. The period following entry into force of the Convention, within which a registered pioneer investor is required to submit a work plan pursuant to resolution II, paragraph 8 (a), shall be extended from six months to twelve months; and (b) a work plan submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, subparagraphs 1 (a) and (ii) other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to entry into force of the Convention or their successors in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a work plan, if the sponsoring state certifies that the applicant has expended an amount equivalent to at least US\$ 30 million in research and exploration activities and has expended no less than ten (10) per cent of that amount in the location, survey and evaluation of the area referred to in the work plan. If the work plan otherwise satisfies the requirements of the Convention and any rules regulations and procedures adopted pursuant thereto, it shall be approved by the Council, notwithstanding the provision of Section C, paragraphs 10 and 11 thereof.

Concerning **the enterprise**, the Annex establishes that it shall conduct its initial operations through joint ventures and that the Council shall decide upon the commencement of its functioning.

The obligation of the States Parties to fund one mine site of the Enterprise as provided for in Annex IV, Article 11 (3) to the Convention, shall not apply and States Parties to the Convention shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint venture arrangements.

The Secretariat of the Authority shall perform the preparatory functions necessary for the commencement of the functioning of the Enterprise. These shall include the monitoring of developments in

the deep seabed mining sector, in particular the prevailing conditions in the world metal market, developments in deep seabed mining technology, and data and information on the environmental impact of activities in the area.

In relation with **decision-making**, the general rule is consensus, and there should be no voting until all efforts to reach a decision by consensus have been exhausted.

The general policies of the Authority shall be established by the Assembly in collaboration with the Council. In this connection, decisions of the Assembly on any matter for the Council also has competence or on any administrative, budgetary or financial matter, shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return to the Council which shall reconsider the matter in the light of the views expressed by the Assembly.

The major categories of interests identified in article 161, paragraph (1) (a)-(c) of the Convention, as modified by the Agreement, should be treated as chambers for the purpose of decision-making in the Council.

Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for the membership in the interest groups identified in the article. If a country fulfils the criteria for membership in more than one interest group, it may only be proposed by one interest group for election to the Council, and it shall represent only that interest group in voting the Council.

Each interest group identified shall be represented in the Council by those members which are nominated by that interest group. Each interest group shall only nominate as many candidates as the number of seats that are required to be filled by that Group.

Decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decision by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred above.

Concerning the composition of the Council, article 161, subparagraphs 1 (a) to (e) of the Convention would be modified as follows:

1. The Council shall be composed of 36 members as follows:

a) four members from State Parties, each of which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value of the total world consumption, or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region and one State from the Group of Western European and other States, having the largest economy in the respective region in terms of gross domestic product;

b) four members from States Parties which have made investments in preparation for, and in the conduct of activities in the Area, either directly or through their nationals;

c) four members from State Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies.

d) twenty-four members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided:

- i) that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and Western Europe and others;
- ii) that this includes six members from developing states, including states with large populations, states which are landlocked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, states which are potential producers of such minerals and least-developed states.

The article 161, paragraph 8 (b) and (c) shall be modified as follows:

- b) Decision on questions of substance, except decisions governed by paragraph (d) shall be taken by a two-thirds majority of members present and voting provided that such decisions are not opposed by a majority of the members in any one of the categories (a), (b) or (c).

The main modifications concerning original drafting of the article refer to:

Composition: a) the deletion of the world "socialist" concerning the Eastern European Region and the replacement of the "largest

consumer" for one state of the Group of Western European and other States having the largest economy in the respective region in terms of gross domestic product;

b) the deletion of the need for the members to be among the eight State Parties which have the largest investment in preparation for and in the conduct of activities in the Area, and the fact that these four members will be from state parties having made investments in the Area, without further requirement for the presence of any particular region;

c) no change;

d) results of the merging of former letters (d) and (e), with a clear flexibilization of the number of seats for each category.

The most drastic amendment is the one referring to the decision-making procedure, since the proposal introduces technically a right to "veto" on the part of the three first categories of states.

Concerning the Review Conference contained in Article 155 of the Convention, the project Agreement establishes that those provisions shall no longer apply, and that notwithstanding the provisions of Article 314 (2) (Amendments to the provisions of the convention relating exclusively to activities in the Area) which state that before approving any amendment the Council and the Assembly shall ensure that it does not prejudice the system of exploration for and exploitation of the resources of the Area, pending the Review Conference, the Authority, on the recommendation of the Council, may undertake a review of the matters referred to in article 155 and that amendments relating to Part XI shall be subject to the procedures contained in Articles 314, 315 and 316 of the Convention.

Letter E of the Agreement, on Transfer of Technology presents one of the strongest modifications to the original regime established by the Convention.

Besides ratifying the contents of Article 144 of the Convention on Transfer of Technology, it replaces the provisions of article 5 of Annex III which was the essential tool of the original regime established by the Convention, which implied a potential obligation for the operator to transfer the technology employed to the Enterprise.

This was a revolutionary approach of the United Nations Convention on the Law of the Sea, aimed at really securing the common heritage of mankind.

Now, the agreement mentions the possibility of the Authority to invite any of the contractors and their respective sponsoring

states to **co-operate** with it in the acquisition of technology by the Enterprise or its joint venture, or a developing state seeking to acquire such technology, on fair and reasonable commercial terms and conditions if the technology in question is not available on the open market.

The other substantial modifications introduced by the proposed agreement refer to the production policy. The agreement practically deletes except for two paragraphs, article 151 of the Convention on Production Policies, eliminating references to the production ceiling and arranging other articles consequently.

Basically the new chapter on production policy establishes that the rights and obligations relating to unfair economic practices under the General Agreement on Tariffs and Trade shall apply to activities in the Area.

The text establishes that there shall be no subsidization of activities in the Area, except as may be permitted under the agreements adopted in the GATT framework. Additionally there shall be no discrimination between minerals derived from the Area and from other sources, and there shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals.

The work plan approved by the Authority in respect of each mining area, shall indicate a production schedule including the estimated amounts of minerals that would be produced per year.

There is also a special new chapter on Economic Assistance definitely eliminating compensation.

According to it, the policy of the Authority to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following:

a) developing land-based producer states whose economies have been determined to be seriously affected by production of minerals from the deep seabed **should be assisted from the economic assistance fund of the Authority;**

b) the Authority shall establish an economic assistance fund from a portion of funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendations of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;

c) the Authority shall provide assistance from the fund to affected developing land-based producer states, where appropriate, in cooperation with existing global or regional development institutions which have infrastructure and expertise to carry out such assistance programmes;

d) the extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer states.

The chapter devoted to Financial Terms of Contract deletes paragraph 4 to 10, Article 13 of Annex III of the Convention and introduces more favourable conditions for contractors in respect of those originally stated in the Convention.

Finally, a Finance Committee is established. It will be composed of 15 members and until the Authority is self-financing, its membership shall include the five largest financial contributors. The members shall be elected by the Council.

Therefore, the establishment of a subsidiary organ by the Council according to letter "y", paragraph 2 of article 162, shall not apply.

c) Consultations held in November 1993.^{5/}

The paper resulting from consultations convened by the Secretary-General in November 1993 does not really present great essential differences with the previous one.

Nevertheless it contains some modifications that should be taken into account.

Concerning the composition of the Council former letter (a) of the components of the Council, is slightly amended, indicating that the four members shall include **one state from the Eastern European region having the largest economy in that region in terms of gross domestic product, and the State, at the time of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this category.**

Former letter d) referring to members elected according to the principle of equitable geographical distribution is split in two new letters (d and e) referring respectively to six members from developing States, representing special interests such as large populations, land-locked or geographically disadvantaged island States, states which are major importers of the categories of minerals to be derived from the Area, states which are potential producers of such minerals and least developed states.

Letter e) refers to eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. Geographical regions are Africa, Asia, Eastern European, Latin America and Western European and others.

This formulation returns to the original drafting of the Convention.

The contents of the section devoted to the Review Conference also suffer some changes in the November 1993 version. The modification refers to the mention of paragraphs 1, 3 and 4 of article 155 of the Convention as non applicable, instead of the whole article according to the August version. The new version also mentions that notwithstanding the provisions of article 314 paragraph 2 of the Convention (relating to the need for the Council and the Assembly to ensure that amendments to the provisions of the Convention relating to activities in the area, do not prejudice the system of exploration and exploitation of the resources of the Area), the Authority may undertake at any time a review of the matters referred to in Article 155 paragraph 1 (that is whether the provisions of Part XI which govern the system of exploration and exploitation of the resources of the Area, have achieved their aims in all respects, including whether they have benefited mankind as a whole; the reserved areas have been exploited in an effective and balanced manner in comparison with non-reserved areas; the development and use of the Area and its resources have been undertaken in such a manner as to foster health development of the world economy and balanced growth of international trade; monopolization of activities in the Area has been prevented; the policies set forth in articles 150 and 151 have been fulfilled and the system has resulted in the equitable sharing of benefits derived from activities in the area, taking into particular consideration the interests and needs of the developing countries.

The section reiterates that amendments relating to Part XI of the Convention shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, adding the following conditions:

a) provided that the principles, regime and other terms of Article 155, paragraph 2 of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

Those conditions refer to the principle of the common heritage of mankind, the international regime designed to ensure equitable exploitation of the resources of the Area for the benefit of all countries, especially the developing States, and an Authority to organize, conduct and control activities in the Area.

They also secure that rights acquired under existing contracts shall not be affected.

b) Provided that amendments shall enter into force on a date determined by the Council by a three-fourths majority of the members present and voting, including a majority of members of each chamber of the Council at that time.

The other section which has suffered some modifications is the issue of Transfer of Technology.

According to the new drafting, transfer of technology for the purposes of Part XI shall be governed by the provisions of Article 144 of the Convention and for the following principles:

a) the Enterprise shall take measures to obtain the technology required for its operations on the open market or through its joint venture arrangements;

b) if the technology in question is not available on the open market, the Authority may invite all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating acquisition of technology by the Enterprise or its joint venture, or a developing State or States seeking to acquire such technology on fair and reasonable terms and conditions, **including effective protection of intellectual property rights;**

c) States parties shall promote international technical and scientific cooperation with regard to activities in the Area, either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes.

The Section ratifies the provisions of the August 1993 version in the sense that provisions of Annex III, article 5 of the Convention shall not apply.

The soundest modification refers then to the express inclusion of the protection of intellectual property rights, which defines even more clearly the deletion of the prior regime established by the Convention.

II. POSSIBLE EVOLUTION OF NEGOTIATIONS

At the moment this document is being concluded at the beginning of 1994, new consultations are taking place.

Similarly, the Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea will be holding, its probably last session before 16 November 1994 when the Convention enters into force.6/

This context determines the need for a new analysis in the future gathering the information produced by the most recent developments concerning the future of the common heritage of mankind.

The strong appeal of this concept poses a very special challenge on the negotiators of Part XI and on the Latin American and Caribbean region to produce a contribution similar to the one conveyed during the Third United Nations Conference on the Law of the Sea.

Similar documents to appear in the future will try to technically support this fundamental political approach to a core issue concerning ocean governance.

Notes

1/ Information note concerning the Secretary-General's Informal Consultation on outstanding issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea (submitted as an informal background document for the next round of consultations of the Secretary-General to take place 2-6 August 1993), 4 June 1993.

2/ After the preparation of this document, the necessary ratifications for the entry into force of the Convention were obtained. It will come into force by 16 November 1994.

3/ United States Mission to the United Nations, Statement by Ambassador Madeleine K. Albright, United States Permanent Representative to the United Nations, at the Secretary-General's Consultations on the Deep Seabed Mining Provisions on the United Nations Convention on the Law of the Sea, April 27, 1993, (USUN Press Release #55-(93)), 27 April 1993.

4/ "Boat paper 2", Revised version of the August 1993 original boat paper, as of October 1993, with the three annexes of the original paper merged into one, August 1993.

5/ "Boat paper 3", prepared by Satya Nandan after the 8-12 November informal consultations held by the United Nations Secretary General, November 1993.

6/ United Nations, Law of the Sea: Report of the Secretary General, Addendum, (A/48/527/Add.1), 30 November 1993.