

Third United Nations Conference on the Law of the Sea

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Document:-
A/CONF.62/L.132 and Add.1

Report of the President to the Conference in accordance with rule 37 of the rules of procedure

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XVI (Summary Records, Plenary, First and Second Committees, as well as Documents of the Conference, Eleventh Session)*

1. The provisions of Part XI do not represent the basic position of the developing countries. Rather, they are compromise solutions at which it was possible to arrive, at the end of the resumed ninth session at Geneva in 1980, after rigorous efforts and lengthy and complex negotiations. Those delegations which are now trying to demolish the foundations of these provisions took part in the drafting of those compromise solutions.

2. It was possible to arrive at those compromise solutions after a lengthy series of concessions which we, together with the group of developing countries, offered. It is not possible for those States to agree to any more concessions, or the convention would become useless with regard to us. This is a matter which must be taken into account, just as the interests of other States are taken into account.

3. Any substantive amendment to the provisions of Part XI will, in fact, disturb the components of the overall package.

The successive rapid events which have taken place at this session underscore the fact, without any doubt, that a number of States have been greedy to obtain more concessions from the developing countries, to an extent which knows no limits. Indeed, some of these States, in order to obtain more concessions, have gone so far as to exert various kinds of pressure on the delegations participating in the Conference, sometimes threatening non-participation in the convention, sometimes

submitting proposals which would take us back to the early days of the Conference and sometimes threatening to lay the responsibility for the failure of the Conference on the developing countries unless their wishes are met. They have forgotten that they are responsible for the obstacles which they have placed before the Conference. They have started to give the delicate balance between the provisions of the draft convention and the components of the package a meaning which conflicts with the proper logic of things. While they call for radical changes to Part XI, they see in the amendments which establish harmony and balance among the provisions of the convention a disturbance of the delicate balance and the overall package.

For all these reasons, the Socialist People's Libyan Arab Jamahiriya strongly opposes any substantive amendment to the provisions of Part XI of the draft convention, and in particular articles 137, 138, 140, 150, 151, 152, 153, 155, 158, 160, 161, 162, 163, 165, 178, 188 and 189, annex III and annex IV.

It strongly opposes also any preparatory investment regime which would discriminate between States and affect the substantive provisions of Part XI.

(Signed) A. S. MUNTASSER
Representative of the Libyan Arab Jamahiriya
to the Third United Nations Conference
on the Law of the Sea

DOCUMENTS A/CONF.62/L.132 AND ADD.1*

Report of the President to the Conference in accordance with rule 37 of the rules of procedure

[Original: English]
[22 April 1982]

1. In accordance with the programme of work contained in document A/CONF.62/116, the door was closed to the submission of amendments on Tuesday, 13 April at 6.00 p.m. By the deadline 30 amendments, viz. A/CONF.62/L.96 to A/CONF.62/L.126, were duly received.

2. In accordance with rule 37, paragraph 2 (a) of the rules of procedure, the President informed the Conference of his decision to defer the taking of a vote on the amendments for a period of eight calendar days, commencing 14 April and terminating on 21 April 1982.

3. In accordance with the programme of work, the plenary Conference met from 15 to 17 April 1982 in order to enable delegations to make statements on the amendments. Altogether, 87 delegations took part in the debate. In addition, a number of delegations submitted written statements.

4. Both the programme of work and rule 37, paragraph 2 (c), require the President, during the period of deferment, to make every effort with the assistance, as appropriate, of the General Committee to facilitate the achievement of general agreement.

5. In view of the large number of amendments submitted and the limited time available, the President addressed a letter to the sponsors of the amendments. In his letter the President emphasized that, as a general rule, the delegations submitting the amendments should take the initiative to carry out consultations with other interested and concerned delegations in an attempt to resolve the issues raised in the amendments. The initiative lies, in the first place, with the sponsors of the amendments. Some delegations have been kind enough

to respond to the President on the results of their own consultations.

6. In carrying out his responsibilities the President was able to rely upon the assistance of the Chairmen of the Main Committees and other members of the General Committee.

7. Under rule 37, paragraph 2 (c), the President has a duty to report to the Conference prior to the end of the period of deferment on the results of his efforts to facilitate the achievement of general agreement.

8. This report is being submitted in compliance with this provision of rule 37 of the rules of procedure.

9. As a result of the consultations undertaken by the President on the amendment submitted by Iraq in document A/CONF.62/L.101 and the amendment submitted by Belgium in A/CONF.62/L.119, the President has found widespread and substantial support for these amendments concerning questions relating to participation in the convention. The President believes that the two amendments offer a better prospect to achieve general agreement.

10. The amendment by Iraq in A/CONF.62/L.101 is contained in annex I to this report.

11. The amendment by Belgium in A/CONF.62/L.119 is contained in annex II to this report.

12. The President, assisted by the Chairman of the First Committee, Mr. Engo, conducted consultations on paragraphs 1 and 2 of A/CONF.62/L.116.

13. As a result of those consultations, the President is satisfied that there is widespread and substantial support for those two amendments, thereby offering better prospects for the achievement of general agreement.

14. The President, therefore, recommends that these two amendments be incorporated in the draft convention in

*Incorporating documents A/CONF.62/L.132/Corr.1 and A/CONF.62/L.132/Add.1/Corr.1 of 23 April 1982; document A/CONF.62/L.132/Add.1 contained the annexes to the report.

A/CONF.62/L.78 and in draft resolution I of A/CONF.62/L.94 respectively.

15. The amendments are contained in annex III to this report.

16. A number of delegations submitted amendments to draft resolution II concerning preparatory investment contained in document A/CONF.62/L.94.

17. The sponsors of these amendments collectively requested the President and the Chairman of the First Committee to undertake consultations on the amendments with a view to enhancing the prospects of achieving general agreement on the draft resolution.

18. The President, with the able assistance of his fraternal colleague, Mr. Engo, held a series of intensive consultations involving representatives of all the sponsors of the amendments and representatives of the different regional and interest groups.

19. As a result of these intensive consultations, the President and Mr. Engo have proposed a new text.

20. In the view of the President and of Mr. Engo, the new text of the draft resolution enjoys widespread and substantial support and offers a substantially improved prospect of achieving general agreement. The text of the draft resolution is contained in annex IV to this report.

21. A number of amendments were submitted to the provision of Part XI of the draft convention and to draft resolution I in A/CONF.62/L.94.

22. At the request of the sponsors of these amendments and with the concurrence of other delegations, the President and Mr. Engo conducted intensive consultations on these amendments.

23. In assessing the results of these consultations, the President has borne in mind that the basic texts of the Conference are contained in A/CONF.62/L.78, A/CONF.62/L.93 and A/CONF.62/L.94 and any modifications thereon must offer a substantially improved prospect of achieving general agreement.

24. Guided by this criterion, the President felt able to recommend only three modifications to the provisions of Part XI in A/CONF.62/L.78.

25. The modifications to Articles 150, 155 and 161 are contained in annex V to this report.

26. The President requested the Chairman of the Second Committee, Mr. Aguilar, to assess the extent of support for the amendments submitted to Parts I to X of the draft convention.

27. Mr. Aguilar held many consultations in accordance with the President's request.

28. With respect to the amendments to article 21 contained in A/CONF.62/L.97 and A/CONF.62/L.117, Mr. Aguilar convened a meeting of a representative group of concerned delegations. However, in spite of Mr. Aguilar's exertions and in spite of the goodwill of all those who participated in the consultations, it was not possible to find a generally acceptable solution to these amendments.

29. At the request of the President, the Chairman of the Third Committee, Mr. Yankov, also undertook consultations on the amendments submitted to articles 221, 230 and 233 of the draft convention.

30. Mr. Yankov informed the President that in spite of his best efforts it was not possible to find generally acceptable solutions to these amendments.

31. With respect to final clauses, the President undertook consultations on the amendments submitted to articles 309 and 310.

32. As a result of these consultations, the President has come to the conclusion that there are no prospects of achieving a generally acceptable solution to these amendments.

ANNEX I

Proposed modifications

Article 156 (as contained in the amended text of document A/CONF.62/L.93), paragraph 3: replace "entitled to become Parties to the Convention" by "referred to in Article 305 (b), (c), (d) or (e)."

Draft Decision of the Conference in document A/CONF.62/L.94: replace the title by the following:

"DRAFT RESOLUTION IV

"The Third United Nations Conference on the Law of the Sea,".

Add a preambular paragraph reading as follows:

"Bearing in mind that national liberation movements have been invited to participate in the Conference as observers in accordance with rule 62 of its rules of procedure.",

The text of the draft decision becomes the operative paragraph of the draft resolution.

At the beginning of the text of the draft decision, replace "The Conference decides" by "Decides". The text of the draft resolution will now read as follows:

"DRAFT RESOLUTION IV

"The Third United Nations Conference on the Law of the Sea,

"Bearing in mind that national liberation movements have been invited to participate in the Conference as observers in accordance with rule 62 of its rules of procedure,

"Decides that the national liberation movements, which have been participating in the Third United Nations Conference on the Law of the Sea, shall be entitled to sign the Final Act of the Conference, in their capacity as observers.".

ANNEX II

Proposed modifications

Annex IX (as contained in the amended text of document A/CONF.62/L.93), article 4: delete paragraph 6 and renumber paragraph 7 accordingly.

ANNEX III

Proposed modifications

Article 171 (as contained in document A/CONF.62/L.78): add a new subparagraph (f) as follows:

"(f) payments to a compensation fund, in accordance with article 151, paragraph 4, whose sources are to be recommended by the Economic Planning Commission.".

Draft resolution I (as contained in document A/CONF.62/L.94): add a new paragraph 8 (bis) reading as follows:

"8 (bis). The Commission shall establish a special commission on the problems which would be encountered by developing land-based producers likely to be most seriously affected by the production of the Area and entrust to it the functions referred to in paragraph 5 (i)."

ANNEX IV

Proposed new text to draft resolution II to replace the text contained in document A/CONF.62/L.94:

"DRAFT RESOLUTION II GOVERNING PREPARATORY INVESTMENT IN PIONEER ACTIVITIES RELATING TO POLYMETALLIC NODULES

"The Third United Nations Conference on the Law of the Sea,

"Having this day adopted the Convention on the Law of the Sea (the "Convention"),

"Having this day also established by resolution the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea (the 'Commission') and directed it to prepare such draft rules, regulations and procedures as it deems necessary to enable the Authority to commence its functions, as well as to make recommendations for the early entry into effective operation of the Enterprise,

"Desirous of making provision for investments by States and other entities made in a manner compatible with the international régime set forth in Part XI of the Convention and the annexes relating thereto, prior to the entry into force of the Convention,

"Recognizing the need to ensure that the Enterprise will be provided with the funds, technology and expertise necessary to enable it to keep pace with the States and other entities referred to in the preceding paragraph, with respect to activities in the Area,

"Decides as follows:

"1. For the purposes of this resolution:

"(a) 'pioneer investor' refers to:

- "(i) France, Japan, India and the Union of Soviet Socialist Republics, or a State enterprise of each of those States or one natural or juridical person which possesses the nationality of or is effectively controlled by each of those States, or their nationals, provided that the States concerned sign the Convention and the States or State enterprises or natural or juridical persons have expended, prior to 1 January 1983, an amount equivalent to at least \$US 30 million (United States dollars calculated in constant dollars relative to 1982) in pioneer activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in paragraph 3 (a);
- "(ii) four entities, whose components being natural or juridical persons^a possess the nationality of, or are effectively controlled by, one or more of the following States: Belgium, Canada, the Federal Republic of Germany, Italy, Japan, Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America or their nationals, provided that the certifying State or States sign the Convention and the entity concerned has expended, prior to 1 January 1983, the levels of expenditure and for the purpose stated in subparagraph (a) (i);
- "(iii) any developing State signatory of the Convention or any State entity or natural or juridical person which possesses the nationality of such State or is effectively controlled by it or its nationals, or any group of the foregoing which, prior to 1 January 1985, has expended the levels of expenditure and for the purpose stated in subparagraph (a) (i);

"The rights of the pioneer investor may devolve upon its successor in interest;

"(b) 'pioneer activities' means undertakings, commitments of resources, investigations, findings, research, engineering development and other activities relevant to the identification, discovery and systematic analysis and evaluation of polymetallic nodules and to the determination of the technical and economic feasibility of exploitation. Pioneer activities include:

- "(i) any at-sea observation and evaluation activity which has as its objective the establishment and documentation of:
 - a. the nature, shape, concentration, location and grade of polymetallic nodules;
 - b. the environmental, technical, and other appropriate factors which must be taken into account prior to exploitation;
- "(ii) the taking from the deep sea-bed of polymetallic nodules with a view to the designing, fabricating and testing of equipment which is intended to be used in the exploitation of polymetallic nodules;
- "(c) 'certifying State' means a signatory of the Convention standing in the same relation to a pioneer investor as would a sponsoring State pursuant to annex III, article 4 of the Convention and which certifies the level of investment specified in subparagraph (a);
- "(d) 'polymetallic nodules' means one of the resources of the Area, consisting of any deposit or accretion on or just below the sur-

^a For their identity and composition see *Sea-Bed Mineral Resource Development: Recent Activities of the International Consortia* (United Nations publication, Sales No. E.80.II.A.9) and addendum.

face of the deep sea-bed consisting of nodules which contain manganese, nickel, cobalt and copper;

"(e) 'pioneer area' means an area allocated by the Commission to a pioneer investor for pioneer activities pursuant to this resolution. A pioneer area shall not exceed 150,000 square kilometres. The pioneer investor shall relinquish portions of the pioneer area to revert to the international Area, in accordance with the following schedule:

- "(i) 20 per cent of the area allocated by the end of the third year from the date of the allocation;
- "(ii) an additional 10 per cent of the area allocated by the end of the fifth year from the date of the allocation;
- "(iii) an additional 20 per cent of the area allocated or such larger amount as would exceed the exploitation area decided upon by the Authority in its rules, regulations and procedures, after eight years from the date of the allocation of the area or the date of the award of a production authorization, whichever is earlier;

"(f) 'Area', 'Authority', 'activities in the Area' and 'resources' shall have the meanings assigned to those terms under the Convention;

"2. As soon as the Preparatory Commission begins to function, any State signatory of the Convention may apply to the Commission on its own behalf or on behalf of any State enterprise or entity or natural or juridical person specified in paragraph 1 (a), for registration as a pioneer investor. The Commission shall register the applicant as a pioneer investor if the application:

"(a) in the case of a State signatory, is accompanied by a statement certifying the level of expenditure made in accordance with paragraph 1 (a), and, in all other cases, a certificate concerning such level of expenditure issued by a certifying State or States; and

"(b) is in conformity with the other provisions of this resolution, including paragraph 5;

"3. (a) Every application shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The application shall indicate the co-ordinates of the area, defining the total area and dividing it into two parts of equal estimated commercial value, and contain all the data available to the applicant with respect to both parts of the area. Such data shall include, *inter alia*, information relating to mapping, sampling, the density of nodules and the composition of metals in them. In dealing with such data, the Commission and its staff shall act in accordance with the relevant provisions of the Convention and its annexes concerning the confidentiality of data;

"(b) Within 45 days of receiving the data required by subparagraph (a) above, the Commission shall designate the part of the area to be reserved in accordance with the Convention for the conduct of activities by the Authority through the Enterprise or in association with developing States. The other part of the area shall be allocated to the pioneer investor as a pioneer area;

"4. No pioneer investor may be registered in respect of more than one pioneer area. In the case of a pioneer investor which is made up of two or more components, none of such components may apply to be registered as a pioneer investor in its own right or under paragraph 1 (a) (iii);

"5. (a) Any State signatory which is a prospective certifying State shall ensure, before making applications to the Preparatory Commission under paragraph 2, that areas in respect of which applications are made do not overlap with one another or with areas previously allocated as pioneer areas. The States concerned shall keep the Commission currently and fully informed of any efforts to resolve conflicts with respect to overlapping claims and the results thereof;

"(b) Certifying States shall, prior to the entry into force of the Convention, ensure that pioneer activities are conducted in a manner compatible with it;

"(c) In carrying out the conflict resolution procedure required under subparagraph (a) above, the prospective certifying States, including all potential claimants, shall resolve their conflicts by negotiations within a reasonable period. If such conflicts have not been resolved by 1 March 1983, the prospective certifying States shall arrange for the submission of all such claims to binding arbitration in accordance with United Nations Commission on International Trade Law arbitration rules to commence not later than 1

May 1983 and to be completed by 1 December 1984. If one of the States concerned does not wish to participate in the arbitration, it shall arrange for a juridical person of its nationality to represent it in the arbitration. The arbitration tribunal may, for good cause, extend the deadline for the making of the award for one or more 30-day periods;

"(d) In determining the issue as to which applicant involved in a conflict shall be awarded all or part of each area in conflict, the arbitral tribunal shall find a solution which is fair and equitable, having regard, with respect to each applicant involved in the conflict, to the following factors:

- "(i) deposit of the relevant co-ordinates with the prospective certifying State or States not later than the date of adoption of the Final Act or 1 January 1983, whichever is earlier;
- "(ii) the continuity and extent of past activities relevant to each area in conflict and the application area of which it is a part;
- "(iii) the date on which each pioneer investor concerned or predecessor in interest or component organization thereof commenced activities at sea in the application area;
- "(iv) the financial cost of activities measured in constant dollars relevant to each area in conflict and to the application area of which it is a part; and
- "(v) the time when activities were carried out and the quality of activities;

"6. A pioneer investor registered pursuant to this resolution shall, as from the date of such registration, have the exclusive right to carry out pioneer activities in the pioneer area allocated to him;

"7. (a) Every applicant for registration as a pioneer investor shall pay to the Commission a fee of \$US 250,000. When the pioneer investor applies to the Authority for a plan of work for exploration and exploitation the fee referred to in annex III, article 13, paragraph 2 shall be \$US 250,000;

"(b) Every registered pioneer investor shall pay an annual fixed fee of \$US 1 million commencing from the date of the allocation of the pioneer area. The payments shall be made by the pioneer investor to the Authority upon the approval of its plan of work for exploration and exploitation. The financial arrangements undertaken pursuant to such plan of work shall be adjusted to take account of the payments made pursuant to this paragraph;

"(c) Every registered pioneer investor shall agree to incur periodic expenditures, with respect to the pioneer area allocated to it, until approval of its plan of work pursuant to paragraph 8, of an amount to be determined by the Commission. The amount should be reasonably related to the size of the pioneer area and the expenditures which would be expected of a *bona fide* operator who intends to bring the area into commercial production within a reasonable time;

"8. (a) Within six months of the entry into force of the Convention and certification by the Commission in accordance with paragraph 11 hereof of compliance with the provisions of this resolution, the pioneer investor so registered shall apply to the Authority for a plan of work for exploration and exploitation, in accordance with the Convention. The plan of work in respect of such application shall comply with and be governed by the relevant provisions of the Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial requirements and the undertakings concerning the transfer of technology. Accordingly, the Authority shall approve such application;

"(b) When an application is made by an entity other than a State, pursuant to subparagraph (a), the certifying State or States shall be deemed to be the sponsoring State for the purposes of annex III, article 4 of the Convention, and shall thereupon assume such obligations;

"(c) No plan of work for exploration and exploitation shall be approved unless the certifying State is a party to the Convention. In the case of the entities referred to in paragraph 1 (a) (ii), the plan of work for exploration and exploitation shall not be approved unless all the States whose natural or juridical persons comprise those entities are parties to the Convention. If any such State fails to ratify the Convention within six months after it has received a notification from the Authority that an application by it, or sponsored by it, is pending, its status as a pioneer investor or certifying State, as the case may be, shall terminate, unless the Council, by a majority of

three fourths of its members present and voting, decides to postpone the terminal date by a period not exceeding six months;

"9. (a) In the allocation of production authorization, in accordance with article 151 of the Convention and annex III, article 7, the pioneer investors who have obtained approval of plans of work for exploration and exploitation shall have priority over all applicants other than the Enterprise as contained in paragraph 2 (c) of article 151. After each of the pioneer investors has obtained production authorization for its first mine site, the priority for the Enterprise contained in annex III, article 7, paragraph 6 shall apply;

"(b) Production authorizations shall be issued to each pioneer investor within 30 days of the date on which the pioneer investor notifies the Authority that it will commence commercial production within five years. If a pioneer investor is unable to begin production within the period of five years for reasons beyond its control, it shall apply to the Legal and Technical Commission for an extension of time. The said Commission shall grant such extension of time, for a period not exceeding five years and not subject to further extension, if it is satisfied that the pioneer investor cannot begin on an economically viable basis at the time originally planned. Nothing in this subparagraph shall prevent the Enterprise or any other pioneer applicant, who has notified the Authority that it will commence commercial production within five years, from being given a priority over any applicant who has obtained an extension of time under this subparagraph;

"(c) If, upon being given notice, pursuant to subparagraph (b), that the Authority determines that the commencement of commercial production within five years would exceed the production ceiling in Article 151, paragraph 2, the applicant shall hold a priority over any other applicant for the award of the next production authorization allowed by the production ceiling;

"(d) In the event that two or more pioneer investors apply for production authorizations to begin commercial production at the same time and Article 151, paragraph 2 (a) would not permit all such production to commence simultaneously, the Authority shall notify the pioneer investors concerned. Within three months of such notification, they shall decide whether and, if so, to what extent they wish to apportion the allowable tonnage among themselves;

"(e) If, pursuant to subparagraph (d) above, they decide not to apportion the available production among themselves, they shall agree on an order of priority for production authorizations, and all subsequent applications for production authorizations will be granted after those referred to in this subparagraph have been approved;

"(f) If, pursuant to subparagraph (d), they decide to apportion the available production among themselves, the Authority shall award each of them a production authorization for such lesser quantity as they have agreed. In each such case the stated production requirements of the applicant will be approved and their full production will be allowed as soon as the production ceiling admits of additional capacity sufficient for the applicants involved in the competition. All subsequent applications for production authorizations will be granted only after the requirements of this subparagraph have been met and the applicant is no longer subject to the reduction of production provided for in this subparagraph;

"(g) If the parties fail to reach agreement within the stated time period, the matter shall be decided immediately by the in accordance with the criteria set forth in article 7, paragraph 3 and 5 of annex III;

"10. (a) Any rights acquired by entities, or natural or juridical persons which possess the nationality of or are effectively controlled by a State or States whose status as certifying State has been terminated, shall lapse unless the pioneer investor alters its nationality and sponsorship within six months of the date of such termination, as provided for in subparagraph (c);

"(b) A pioneer investor may alter its nationality and sponsorship from that prevailing at the time of its registration as a pioneer investor to that of any State party to the Convention which has effective control over the pioneer investor in terms of paragraph 1 (a);

"(c) Alterations of nationality and sponsorship pursuant to this paragraph shall not affect any right or priority conferred on a pioneer investor pursuant to paragraphs 6 and 8 of this resolution;

"11. The Commission shall:

"(a) provide pioneer investors with the certificates of compliance with the provisions of this resolution referred to in paragraph 8 hereof; and

"(b) incorporate in its final report, provided for in paragraph 10 of resolution I of the Conference, details of all registrations of pioneer investors and allocation of pioneer areas pursuant to this resolution;

"12. In order to ensure that the Enterprise is able to carry out activities in the area in such a manner as to remain in step with States and other entities:

"(a) Every registered pioneer investor shall:

"(i) carry out exploration at the request of the Commission in the area reserved pursuant to paragraph 3 of this resolution in connection with its application for activities by the Authority through the Enterprise or in association with developing States, on the basis that the costs so incurred plus interest thereon at the rate of 10 per cent per annum shall be reimbursed;

"(ii) provide training at all levels for personnel designated by the Commission;

"(iii) undertake, prior to the entry into force of the Convention, to perform the obligations prescribed in the provisions of the Convention relating to transfer of technology;

"(b) Every certifying State shall:

"(i) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the provisions of the Convention, upon its entry into force; and

"(ii) report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons;

"13. The Authority and its organs shall recognize and honour the rights and obligations arising from this resolution and the decisions of the Preparatory Commission taken pursuant to it;

"14. Without prejudice to paragraph 13, this resolution shall have effect until the entry into force of the Convention;

"15. Nothing in this resolution shall derogate from the provisions of annex III, article 6, paragraph 3 (c) of the Convention."

ANNEX V

Proposed modifications

Article 150 (as contained in document A/CONF.62/L.78), subparagraph (a): delete the word "development" and add a new subparagraph reading as follows: "the development of the resources of the Area." renumber the subparagraphs accordingly.

Article 155 (as contained in document A/CONF.62/L.78), paragraph 3: redraft to read as follows:

"3. The decision-making procedure applicable at the Conference shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea. The Conference shall make every effort to reach agreement on any amendments by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted."

Article 161 (as contained in document A/CONF.62/L.78), paragraph 1 (a) and (b): reverse the order of the subparagraphs and add the following to the end of the new paragraph 1 (a): "as well as the largest consumer".

DOCUMENT A/CONF.62/L.133

Letter dated 22 April 1982 from the representative of the Union of Soviet Socialist Republics to the President of the Conference

[Original: English/Russian]
[23 April 1982]

We have studied the reply of the United Nations Legal Counsel annexed to this letter contained in the memorandum dated 21 April 1982 addressed to the Special Representative of the Secretary-General, Mr. Zuleta, with regard to the request relating to the inclusion in a resolution of the Conference of provisions designating companies which possess the nationality of certain Western countries in order to grant them status of "pioneer investor".

The Soviet delegation does not agree with the conclusion of the Legal Counsel and considers that the inclusion of these provisions in the resolution has no legal basis.

It should first of all be borne in mind that the provisions do not define or explain any particular articles of the convention, but determine a highly substantive question about its application. It is well known, however, that the application of an international convention is a matter which concerns primarily the States parties to the convention. Yet at the present time we have neither States parties nor even a convention.

Of course, many urgent questions relating to its application need to be decided now, since a decision on such questions would be taken at the same time as the convention was adopted. Draft resolution II covers a whole range of such questions. However, it is hardly possible to include among them the question of provisions which designate certain companies and grant them the status of pioneer investors or developers of sea-bed resources in the area of "common heritage". The granting of such a status is an act or decision having legal consequences, which are in fact substantial. The granting of such a status to private companies through a decision of an international conference goes even further, since in essence it places those companies in respect of such a status, on the same footing as States, and in particular those referred to in subparagraph 1 (a) (i) of the draft resolution (see

A/CONF.62/L.132, annex IV). By taking such a decision the Conference would clearly be going too far.

Furthermore, there are serious doubts that the Conference is at all authorized to place them on the same footing and that its decision in this regard would have proper legal effect. In the absence of a convention, that decision would of course not be subject to ratification. Moreover, a question is bound to arise concerning the legal effect and authority of such a decision, if during its adoption opposing votes were cast, as would the question of the legal status of any of the four private companies in question, as soon as it is known that explicit objections were raised at the Conference against the granting of such a status. Yet the possibility of such objections can in no way be ruled out.

From subparagraph 1 (a) (ii) it is also obvious that the question concerns companies of a number of States of which it is only necessary that one or several should have signed the convention. But what happens later if one of these States does not ratify the convention or is very dilatory in ratifying it? What would be the status of its companies in such a case? A situation is conceivable in which, in the absence of ratification, the company in question would continue to enjoy all the rights of a "pioneer investor", and the State whose nationality it possesses would have no obligations under the convention, since it has not ratified it. That would be at the very least a serious legal anomaly. Indeed, is not the whole purpose of the task of enumerating the companies in a decision of the Conference to make it possible for the relevant States to refuse to ratify the convention as soon as the companies receive the benefits deriving from it without any ratification at all?

Lastly, why must a decision of the Conference establish an inequitable system for the granting of the status of "pioneer