

Third United Nations Conference on the Law of the Sea

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A/CONF.62/L.93

Memorandum issued by the Collegium on changes incorporated in the draft convention

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)

and uniformity of the text throughout the convention. In this connection, it should be pointed out that while in some parts of the draft convention within the terms of reference of the Second Committee, the term "ship" in English is used, in Parts XII and XIII, for instance, the term "vessel" is used. This question has been considered at an early stage of the Conference, and after consultations with some experts, including the Inter-Governmental Maritime Consultative Organization (IMCO), it was the understanding of the Third Committee that the broader term "vessel" was more appropriate, for it would cover not only ships but also other floating structures whose use or operation might cause pollution of the marine environment. For this reason, in all international multilateral treaties, in the field of the protection and preservation of the marine environment and especially those adopted under the auspices of IMCO, the broader term "vessel" has been used.

6. There might be some other questions of a drafting nature which should be considered with the Chairmen of the other Committees and the Chairman of the Drafting Committee at an appropriate time.

7. I wish to take this opportunity to reiterate my appreciation of the excellent work done by the Drafting Committee under the Chairmanship of Mr. Beesley. The recommendations put forward by the Drafting Committee constitute a distinct improvement of the text and their later examination gave us the opportunity to clarify some matters with a view to achieving the necessary harmony and uniformity of the text.

8. Finally, I should like to express my gratitude to the secretariat for their exemplary diligence and most valuable assistance extended to me in the discharge of my duties.

DOCUMENT A/CONF.62/L.93*

Memorandum issued by the Collegium on changes incorporated in the draft convention

[Original: English]
[2 April 1982]

1. The programme of work for the eleventh session was adopted by the Conference at its 154th plenary meeting on 28 August 1981 (A/CONF.62/116).²⁴ The programme provides that during the second stage, after the conclusion of the plenary consideration of the results of the consultations and negotiations, in the light of the plenary debate and taking into account the criteria established in A/CONF.62/62,²⁶ the Collegium would decide on the incorporation of the results into the draft convention. To enable delegations to prepare themselves for the third stage of the programme, the Collegium would issue a memorandum containing all the changes to be so incorporated.

2. The plenary debate commenced on 30 March and concluded on 1 April 1982. The Collegium met thereafter, on 2 April, for the purpose of making the relevant determination.

3. The plenary had before it the following reports:

(a) Report of the President on the question of participation in the Convention (A/CONF.62/L.86 and Corr.1);

(b) Report by the Chairman of the First Committee (A/CONF.62/L.91), incorporating the report of the President and the Chairman of the First Committee, as Co-Chairmen of the working group of 21 (A/CONF.62/C.1/L.30);

(c) Report by the Chairman of the Second Committee (A/CONF.62/L.87);

(d) Report by the Chairman of the Third Committee (A/CONF.62/L.92);

(e) Report on the recommendations of the Drafting Committee presented by the Chairman of the Drafting Committee on behalf of the President and the Chairman of the First Committee (A/CONF.62/L.90) together with the addenda to A/CONF.62/L.85.

4. In considering the reports and the views expressed in the general debate the Collegium had to determine whether, in accordance with the decision in document A/CONF.62/62, the proposals received widespread and substantial support and therefore offered a substantially improved prospect of consensus.

5. In accordance with the criteria referred to in the preceding paragraph, the Collegium decided the following:

(a) The proposed draft articles and draft annex IX in A/CONF.62/L.86 are incorporated in the draft convention (annex I to this memorandum). The proposed draft resolution and draft decision in that document will form part of the draft final act;

(b) The proposed draft resolution contained in annex I of A/CONF.62/C.1/L.30 will form part of the draft final act;

(c) The proposed draft resolution contained in annex II of A/CONF.62/C.1/L.30 will form part of the draft final act with the following changes:

(i) At the end of operative paragraph 2 replace "allocate to it the pioneer area applied for if the application" by "allocate to it the pioneer area if the application".

(ii) In operative paragraph 13 replace the existing text by the following: "13. The Authority and its organs shall act in accordance with the provisions of this resolution and the decisions of the Preparatory Commission taken pursuant to it."

(iii) In operative paragraph 14 replace the existing text by the following: "14. This resolution shall have effect until the entry into force of the Convention."

(iv) Add a new paragraph 5 to article 308 of the draft convention to read as follows: "5. The Authority and its organs shall act in accordance with the resolution governing preparatory investment in pioneer activities relating to polymetallic nodules, and decisions of the Preparatory Commission, taken pursuant to it."

(d) The proposal contained in paragraph 16 of A/CONF.62/L.91 as redrafted below is incorporated in the draft convention as a change to article 164, paragraph 1:

Add a new sentence to article 164, paragraph 1 to read as follows:

"The membership of the Commission shall include at least two members from developing countries whose exports of the categories of minerals to be derived from the Area have a substantial bearing upon their economies."

(e) The proposal contained in C.2/Informal Meeting/66 and referred to in paragraphs 6 and 8 of A/CONF.62/L.87 is incorporated in the draft convention (annex II to this memorandum).

6. The draft resolutions referred to in paragraph 5, subparagraphs (a), (b) and (c) above, and the draft decision referred to in subparagraph (a) of the same paragraph are

*Incorporating document A/CONF.62/L.93/Corr.1 of 5 April 1982.

²⁶ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

now formally before the Conference in document A/CONF.62/L.94. Since the draft resolutions, the draft decision and the draft convention form an integral whole, they will be adopted at the same time.

7. With respect to the drafting changes suggested by the Chairman of the Third Committee and contained in A/CONF.62/L.88 and A/CONF.62/L.92, the Collegium referred them to the Drafting Committee with the exception of those relating to:

- (a) Part XI;
- (b) article 196, paragraph 1;
- (c) article 210, paragraph 4;
- (d) article 216, paragraph 2;
- (e) article 222; and
- (f) article 226, subparagraph 1 (a).

8. Regarding the report of the Chairman of the Drafting Committee, on behalf of the President and Chairman of the First Committee (A/CONF.62/L.90), the recommendations referred to therein, which have been processed by the informal plenary meetings, are incorporated in the draft convention.

9. In accordance with the programme of work (A/CONF.62/116), the changes incorporated in the draft convention and the texts of the draft resolutions and decision, referred to in paragraph 5 above, will be referred to the Drafting Committee for its consideration and recommendations. The Drafting Committee's report will then be processed by the plenary meeting by 12 April 1982. Any other outstanding recommendations of the Drafting Committee will also be processed and ready for incorporation in the draft convention or for inclusion in the final act, as appropriate.

10. The Collegium considers that the proposals referred to in this memorandum will move the Conference closer towards the achievement of consensus. Efforts directed towards improving further the prospects of achieving consensus should be made within the programme of work of the Conference.

ANNEX I

PART I. USE OF TERMS

Article 1 bis. Scope

This Convention shall apply *mutatis mutandis* to entities referred to in article 305, paragraph 1 (b), (c), (d) and (e), which become Parties to this Convention in accordance with the conditions relevant to each, and to that extent "States Parties" means and includes such entities.

PART XI. THE AREA

Article 156. Establishment of the Authority

1. There is hereby established the International Sea-Bed Authority which shall function in accordance with the provisions of this Part.
2. All States parties are *ipso facto* members of the Authority.
3. Observers at the Third United Nations Conference on the Law of the Sea who have signed the Final Act and who are not entitled to become Parties to the Convention shall have the right to participate in the Authority as observers, in accordance with its rules, regulations and procedures.
4. The seat of the Authority shall be at Jamaica.
5. The Authority may establish such regional centres or offices as it deems necessary for the performance of its functions.

PART XVII. FINAL CLAUSES

Article 305. Signature

1. This Convention shall be open for signature by:
 - (a) All States;
 - (b) All self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with resolution 1514 (XV) of the General Assembly of the United Nations and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters;
 - (c) All self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters;
 - (d) All Territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters;
 - (e) International organizations, in accordance with annex IX.
2. This Convention shall remain open for signature until . . . (last day of the twenty-fourth month after the opening date for signature) at the Ministry of Foreign Affairs of the Republic of Venezuela and also, as from . . . (first day of the seventh month after the opening date for signature) until . . . (last day of the twenty-fourth month after the opening date for signature), at United Nations Headquarters in New York.

Article 306. Ratification and act of formal confirmation

This Convention is subject to ratification by States and the other entities referred to in article 305, paragraph 1 (b), (c) and (d), and act of formal confirmation, in accordance with annex IX, by the entities referred to in article 305, paragraph 1 (e). Instruments of ratification and of formal confirmation shall be deposited with the Secretary-General of the United Nations.

Article 307. Accession

This Convention shall remain open for accession by States and the other entities referred to in article 305. Accession by entities referred to in article 305, paragraph 1 (e), shall be in accordance with annex IX. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 319. Depositary

1. The Secretary-General of the United Nations shall be the depositary of this Convention and amendments thereto.
2. In addition to his functions as depositary, the Secretary-General of the United Nations shall:
 - (a) Report to all States Parties, the Authority and competent international organizations on issues of a general nature that have arisen with respect to this Convention;
 - (b) Notify the authority of ratifications of and accessions to this Convention and amendments thereto, as well as of denunciations of this Convention;
 - (c) Notify States Parties of agreements in accordance with article 311, paragraph 4;
 - (d) Circulate amendments adopted in accordance with this Convention to States Parties for ratification or accession;
 - (e) Convene necessary meetings of States Parties in accordance with this Convention.
3. (a) The Secretary-General shall also transmit to the observers referred to in article 156:
 - (i) all reports, as referred to in paragraph 2 (a);
 - (ii) notifications referred to in paragraph 2 (b) and (c); and
 - (iii) for their information, texts of amendments, referred to in paragraph 2 (d).
- (b) the Secretary-General shall also invite such observers to participate as observers at meetings of States Parties, referred to in paragraph 2 (e).

Annex IX

PARTICIPATION BY INTERNATIONAL ORGANIZATIONS

Article 1

For the purposes of article 305 and of this annex, international organizations shall mean international intergovernmental organizations constituted by States to which States members of such organizations have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of such matters.

Article 2. Signature

An international organization may sign this Convention if a majority of its States members are signatories to this Convention. At the time of signature an international organization shall make a declaration specifying the matters governed by the Convention in respect of which competence has been transferred to the organization by its States members which are signatories, as well as the nature and extent of such competence.

Article 3. Act of formal confirmation and accession

1. An international organization may deposit its instrument of formal confirmation or of accession if a majority of its States members deposit or have deposited their instruments of ratification or accession.

2. Such instruments of the organization shall contain the undertakings and declarations required by articles 4 and 5.

Article 4. Extent of participation and rights and obligations

1. The instrument of formal confirmation or of accession deposited by an international organization shall contain an undertaking to accept the rights and obligations provided for States in this Convention in respect of matters relating to which competence has been transferred to it by its States members which are Parties to this Convention.

2. An international organization shall be a Party to this Convention to the extent that it has competence in accordance with the declarations, communications of information or notifications referred to in Article 5.

3. Such an international organization shall exercise the rights and fulfil the obligations which would otherwise fall upon its members which are States Parties in accordance with this Convention, on matters relating to which competence has been transferred to it by such States members. The States members of such an international organization shall not exercise the competences they have transferred to it.

4. The participation by such international organizations shall in no case entail an increase of the representation that their States members, which are States Parties, would otherwise be entitled to, including rights in decision-making.

5. The participation of such international organizations shall in no case give any rights provided under the Convention to member States of the organization which are not Parties to the Convention.

6. Only to the extent that it would be in strict conformity with the provisions of this Convention, in particular paragraph 5, the international organization may implement in accordance with the rules governing it, provisions relating to the mutual granting to the nationals of its States members of national treatment or any other special treatment with regard to matters relating to which competence has been transferred to it by its States members which are States Parties.

7. In the event of a conflict between the obligations of an international organization under this Convention and its obligations arising under the terms of the agreement establishing the organization or any acts relating to it, the obligations under the present Convention shall prevail.

Article 5. Declarations and notifications

1. The instrument of formal confirmation or accession of an international organization shall contain a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to the organization by its States members which have ratified or acceded to the Convention.

2. A State member of an international organization shall, at the time it ratifies or accedes to the Convention or at the time when the organization deposits its instrument of formal confirmation or accession, whichever is later, make a declaration specifying the matters governed by this Convention in respect of which it has transferred competence to the organization.

3. States Parties which are members of an organization which is a Party to the Convention shall be presumed to have competence over all matters governed by this Convention in respect of which transfers of competence to the organization have not been specifically declared, notified or communicated by such States under this article.

4. The international organization and its States members, which are Parties to the Convention, shall promptly notify the depositary of any changes to the distribution of competences, including new transfers of competence, specified in the declarations under paragraphs 1 and 2.

5. Any State Party may request an international organization and its States members, which are States Parties, to provide information as to who has competence in respect of any specific question which has arisen. The organization and the States members concerned shall furnish such information within a reasonable time. The international organization and the States members may also, on their initiative, provide such information.

6. Declarations, notifications and communications of information under this article shall specify the nature and extent of the competences transferred.

Article 6. Responsibility

1. Parties which have competence under article 5 shall bear responsibility for failure to comply with obligations or any other violation of the Convention.

2. Any State Party may request an international organization or its States members which are States Parties for information as to who has responsibility in respect of any specific matter. The organization and the States members concerned shall provide such information. Failure to provide such information within a reasonable time or the provision of contradictory information shall result in joint and several responsibility.

Article 7. Settlement of disputes

1. At the time of deposit of its instrument of formal confirmation or accession, or at anytime thereafter, an international organization shall be free to choose, by means of written declaration, one or more of the means for the settlement of disputes concerning the interpretation or application of this Convention, referred to in article 287, paragraph 1 (a), (c) or (d).

2. The provisions of Part XV shall apply *mutatis mutandis* to any dispute between parties to this Convention, one or more of which are international organizations.

3. Where an international organization and one or more of its States members are joint parties to a dispute, or parties in the same interest, the organization shall be deemed to have accepted the same procedures for the settlement of disputes as the States members; provided that where a State member has only chosen the International Court of Justice under article 287, the organization and the State member concerned shall be deemed to have accepted arbitration in accordance with annex VII unless the parties to the dispute otherwise agree.

Article 8. Applicability of Part XVII

Part XVII shall apply *mutatis mutandis* to an international organization, except in respect of the following:

(a) The instrument of formal confirmation or accession of an international organization shall not be taken into account when applying article 308, paragraph 1:

(b)(i) An international organization shall have exclusive capacity with respect to the application of articles 312 to 315, to the extent that it has competence under article 5 over the entire subject-matter of the amendment;

(ii) The instrument of formal confirmation or accession of an international organization to an amendment, the entire subject-matter over which the international organization has competence under article 5, shall be considered to be the instrument of ratification or accession of each of the

- member States Party to the Convention, for the purposes of applying article 316, paragraphs 1, 2 and 3;
- (iii) With regard to all other amendments, the instrument of formal confirmation or accession of the international organization shall not be taken into account when applying article 316, paragraphs 1 and 2;
- (c)(i) In respect of article 317, an international organization may not denounce this Convention if any of its member States is a Party to the Convention and if it continues to fulfil the qualifications specified in article 1;
- (ii) The international organization shall denounce the Convention when none of its member States is a Party to the Convention or if the international organization no longer fulfils the qualifications specified in article 1. Such denunciation shall take effect immediately.

ANNEX II

Article 60, paragraph 3

Replace the second sentence by the following:

Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking account of any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.

DOCUMENT A/CONF.62/L.94

Proposals made by the President of the Conference, the Chairmen of the Committees, the Chairman of the Drafting Committee and the Rapporteur General, in accordance with the decision of the Collegium in document A/CONF.62/L.93

[Original: English]
[2 April 1982]

DRAFT RESOLUTION I ESTABLISHING THE PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

The Third United Nations Conference on the Law of the Sea in the City of Caracas,

Having this day adopted the Convention on the Law of the Sea which provides for the establishment of the International Sea-Bed Authority, and the International Tribunal for the Law of the Sea,

Having decided to take all possible measures to ensure the entry into effective operation without undue delay of the Authority and the Tribunal and to make the necessary arrangements for the commencement of their functions,

Having decided that a Preparatory Commission should be established for the fulfilment of these purposes,

Decides as follows:

1. There is hereby established the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea. The Commission shall be convened upon signature of or accession to the Convention by 50 States by the Secretary-General of the United Nations to meet no sooner than 60 days and no later than 90 days thereafter;

2. The Commission shall consist of the representatives of States which have signed the Convention or acceded to it. The representatives of signatories to the Final Act may participate fully in the deliberations of the Commission as observers but shall not be entitled to participate in the taking of decisions;

3. The Commission shall elect its Chairman and other officers;

4. The rules of procedure of the Third United Nations Conference on the Law of the Sea shall apply *mutatis mutandis* with respect to the adoption of the rules of procedure of the Commission;

5. The Commission shall:

(a) prepare the provisional agenda for the first session of the Assembly and of the Council, and, as appropriate, recommendations relating to items thereon;

(b) prepare draft rules of procedure for the Assembly and the Council;

(c) make recommendations concerning the budget for the first financial period of the Authority;

(d) make recommendations concerning relationships between the Authority and the United Nations and other international organizations;

(e) make recommendations concerning the Secretariat of the Authority in accordance with the relevant provisions of the Convention;

(f) make studies as necessary, concerning the establishment of the headquarters of the Authority, and prepare recommendations relating thereto;

(g) prepare such draft rules, regulations and procedures as it deems necessary to enable the Authority to commence its functions, including draft regulations concerning the financial management and internal administration of the Authority;

(h) exercise the powers and functions assigned to it with regard to the treatment of preparatory investments under resolution II of this date;

(i) undertake studies on the problems which would be encountered by developing land-based producers likely to be most seriously affected by the production of the Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including the establishment of a compensation fund and submit recommendations to the Authority thereon;

6. The Commission shall have such legal capacity as is necessary for the performance of its functions and fulfilment of its purposes as set forth in this resolution;

7. The Commission may establish such subsidiary bodies as it deems necessary for the performance of its functions and shall determine their functions and rules of procedure. It may also make use of, as appropriate, outside sources of expertise in accordance with United Nations practices to facilitate the work of any technical or specialized bodies so established;

8. The Commission shall establish a special commission for the Enterprise and entrust to it the functions referred to in paragraph 11 of resolution II. The special commission shall take all necessary measures for the early entry into effective operation of the Enterprise;

9. The Commission shall prepare a report containing recommendations for submission to the meeting of the States Parties to be convened in accordance with annex VI, article 4 regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea;