



Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982
Overview

Last updated 21 July 2010

THE AGREEMENT - INTRODUCTION

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To address certain difficulties with the seabed mining provisions contained in Part XI of the Convention, which had been raised, primarily by the industrialized countries, the Secretary-General convened in July 1990 a series of informal consultations which culminated in the adoption, on 28 July 1994, of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The Agreement entered into force on 28 July 1996.

The Agreement was adopted on 28 July 1994 and entered into force on 28 July 1996. It consists of 10 articles dealing mainly with procedural aspects such as signature, entry into force and provisional application. Its article 2 deals with the relationship between the Agreement and Part XI of the Convention and it provides that the two shall be interpreted and applied together as a single instrument. In the event of an inconsistency between the Agreement and Part XI, however, the provisions of the Agreement shall prevail.

The Agreement has an annex, divided into nine sections, dealing with the various issues that were identified as problem areas during the informal consultations. These include costs to States Parties and institutional arrangements; decision-making mechanisms for the Authority; and future amendments of the Convention.

Informal Consultations (see also document A/48/950)

In July 1990, the Secretary-General, Mr. Javier Pérez de Cuéllar, took the initiative to convene informal consultations aimed at achieving universal participation in the United Nations Convention on the Law of the Sea. The Secretary-General stressed the importance of securing general acceptance of the United Nations Convention on the Law of the Sea, an instrument which represented many years of negotiations and which had already made a significant contribution to the international legal maritime order. He pointed out that though he would continue to encourage all States which had not done so to ratify or accede to the Convention, it had to be acknowledged that there were problems with some aspects of the deep seabed mining provisions of the Convention which had prevented some States from ratifying or acceding to the Convention.

He noted that in the eight years that had elapsed since the Convention was adopted certain significant political and economic changes had occurred which had had a marked effect on the regime for deep seabed mining contained in the Convention. Prospects for commercial mining of deep seabed minerals had receded into the next century, which was not what was envisaged during the negotiations at the Third United Nations Conference on the Law of the Sea. The general economic climate had been transformed as a result of the changing perception with respect to the roles of the public and private sectors. There was a discernible shift towards a more market-oriented economy. In addition, the Secretary-General made mention of the emergence of a new spirit of international cooperation in resolving outstanding problems of regional and global concern. These factors were to be taken into account in considering the problems with respect to deep seabed mining. ^{1/}

Thus began a series of informal consultations under the aegis of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea.

These informal consultations took place in the years 1990 to 1994, during which 15 meetings were convened. ^{2/} They can be conveniently divided into two phases. The first phase was devoted to the identification of issues of concern to some States, the approach to be taken in examining them and the search for solutions. During the second phase more precision was given to the results reached so far; additional points were raised for consideration and participants directed their attention to an examination of consolidated texts embodying these solutions and on the procedure whereby they might be adopted.

The first phase

During the initial part of this phase the consultations identified nine issues as representing areas of difficulty: costs to States parties; the Enterprise; decision-making; the Review Conference; transfer of technology; production limitation; compensation fund; financial terms of contract; and environmental considerations. After examining the various approaches that might be taken in the examination of these issues, there was general agreement on an approach which enabled participants to examine all the outstanding issues with a view to resolving them and to decide how to deal with those that might remain unresolved.

Participants then began to review all of these issues seriatim. This review was based on information notes compiled by the Secretariat containing background information, questions that needed to be addressed and possible approaches for the resolution of these issues.

In the course of six informal consultations held during the years 1990 and 1991, participants completed the consideration of all the outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea. It can fairly be said that a certain measure of general agreement was emerging on these issues.

The results of the Secretary-General's informal consultations held in 1990 and 1991 were set out in the summary of informal consultations conducted by the Secretary-General on the law of the sea during 1990 and 1991, dated 31 January 1992, and in an information note dated 26 May 1992. These results fell under two categories. First, general agreement seemed to have been reached on relatively detailed solutions on: costs to States parties, the Enterprise, decision-making, Review Conference and transfer of technology. Secondly, with respect to production limitation, the compensation fund and financial terms of contract it was generally agreed that it was neither necessary nor prudent to formulate a new set of detailed rules for these items. Accordingly, for those items the information note set out general principles to be applied when commercial production of deep seabed minerals was imminent.

The second phase

In 1992, the Secretary-General, Mr. Boutros Boutros-Ghali, continued the informal consultations initiated by his predecessor. During this phase the consultations were open to all delegations. Some 75 to 90 delegations attended these meetings. In the first three rounds of this phase, consideration was given to the nine issues in order to give more precision to the results reached so far in the consultations. Additional points were submitted for consideration on the following issues: costs to States parties; the Enterprise; decision-making; Review Conference; and transfer of technology. During these consultations it was decided to remove the issue of environmental considerations from the list of issues, since it was no longer considered to be a controversial issue in the context of deep seabed mining.

At the informal consultations held on 28 and 29 January 1993, it was generally felt among participants that the stage had been reached when a text based on a more operational approach should be prepared in a form which could be the basis of an agreement.

In accordance with this request, an information note dated 8 April 1993 was prepared. This information note contained two parts:

(a) Part A dealt with various procedural approaches with respect to the use to be made of the results of the consultations. The four approaches could be summarized as follows:

- (i) A contractual instrument such as a protocol amending the Convention;
- (ii) An interpretative agreement consisting of understandings on the interpretation and application of the Convention;
- (iii) An interpretative agreement on the establishment of an initial Authority and an initial Enterprise during an interim regime accompanied by a procedural arrangement for the convening of a conference to establish the definitive regime for the commercial production of deep seabed minerals when such production became feasible;
- (iv) An agreement additional to the Convention providing for the transition between the initial phase and the definitive regime, in particular, the Authority would be mandated to develop solutions for issues still outstanding on the entry into force of the Convention;

(b) Part B set out an operationally directed formulation of the results reached so far in the consultations. It was divided into two sections:

- (i) Arrangements following the entry into force of the Convention;
- (ii) Draft texts concerning the definitive deep seabed mining regime.

The procedural approaches were reviewed during consultations held on 27 and 28 April 1993. Certain basic elements emerged from the review of these approaches. It was generally agreed that, whatever approach might be adopted, it must be of a legally binding nature. It was also pointed out that a duality of regimes must be avoided. Finally, as the position of States which have ratified or acceded to the Convention must be respected, it was considered useful to examine the role that the notion of implied or tacit consent might play in protecting their positions.

For the next round of consultations, held from 2 to 6 August 1993, an information note dated 4 June 1993 was circulated which updated parts A and B (i) of the information note of 8 April 1993 to reflect the observations made during the previous round of consultations. During the course of this round of consultations a paper dated 3 August 1993 prepared by representatives of several developed and developing States was circulated among delegations as a contribution to the process of the consultations. It was understood that the paper, which was commonly known as the "boat paper", did not necessarily reflect the position of any of the delegations involved, but that it was considered to provide a useful basis for negotiation.

Thereafter, while addressing the substantive issues contained in the information note dated 4 June 1993, delegations also made cross-references to the relevant portions of the "boat paper". That paper was divided into three parts: (i) a draft resolution for adoption by the General Assembly; (ii) a draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea; and (iii) two annexes. Annex I contained the agreed conclusions of the Secretary-General's consultations and annex II was entitled "Consequential adjustments".

At the last round of consultations held in 1993 (8-12 November), participants had before them three documents: the information note dated 4 June 1993; a new version of the "boat paper" consolidating the two annexes to the original paper into one; and a paper entitled "Agreement on the Implementation of Part XI and Annexes III and IV of the United Nations Convention on the Law of the Sea", submitted by the delegation of Sierra Leone. At this November meeting participants completed the review of all the items contained in the information note dated 4 June 1993. After having completed consideration of those issues, delegations embarked upon a renewed examination of the issue of "Costs to States parties and institutional arrangements", but this time based essentially on the "boat paper".

On 16 November 1993, the Convention on the Law of the Sea received its sixtieth instrument of ratification or accession, which means that, in accordance with its terms (article 308), it will enter into force on 16 November 1994. The General Assembly itself invited all States to participate in the consultations and to increase efforts to achieve universal participation in the Convention as early as possible. ^{3/} The imminent entry into force of the Convention introduced a sense of urgency to the informal consultations.

During the first round held in 1994 (31 January-4 February), the consultations examined a revised version of the "boat paper", dated November 1993. This revision took into account the discussions which had taken place during the Secretary-General's informal consultations held in November 1993. The work of the current round of consultations focused on some crucial issues:

- (a) Decision-making, in particular the question of the relationship between the Authority and the Council, and the question as to which group of States in the Council should be considered chambers for the purposes of decision-making in the Council;
- (b) Whether the administrative expenses of the Authority should be met by assessed contributions of its members, including the provisional members of the Authority, or through the budget of the United Nations;
- (c) The issue of provisional application of the Agreement and of provisional membership in the Authority.

During this round of consultations progress was made on the latter two issues. A revised version of the document submitted by the delegation of Sierra Leone was submitted to this round of consultations.

The second round of the Secretary-General's informal consultations in 1994 was held from 4 to 8 April. The meeting had before it a further updated version of the "boat paper" entitled "Draft resolution and draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea", dated 14 February 1994.

Participants undertook an article-by-article review of the draft Agreement. Attention was then focused on the two most important issues facing the consultations: decision-making in the Council, and the Enterprise. These issues, which lay at the heart of the consultations, proved most difficult to resolve. From the outset of the consultations it was evident that these issues could only be resolved in the final stages of this process, when a clearer picture of the results of the consultations had emerged. With respect to decision-making the debate was directed at the system of chambered voting, in particular whether the categories or groups of States, mainly developing States, should be treated as chambers for the purposes of decision-making in the Council. The discussion on the Enterprise centred on the type of mechanism which would trigger the commencement of its operations as well as its functions.

Revisions were made to the draft Agreement in the light of the debates on the various issues. This in fact was a unique feature of this round of consultations, reflecting the urgency of the situation. The revisions related to provisional application of the Agreement; provisional membership in the Authority; the treatment of the registered pioneer investors; and production policy.

Based on these revisions, the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea were revised in their entirety and a revised text was issued on 8 April 1994, the last day of the meeting.

During this round of consultations, according to many delegations, significant progress was achieved. It appeared that solutions were found to several important issues, including decision-making, the Enterprise and the treatment of the registered pioneer investors. However, not all the issues were resolved in this round of consultations.

The last meeting of the Secretary-General's consultations was held from 31 May to 3 June 1994. The primary purpose of this final round of consultations was the harmonization of the text in the various language versions of the draft resolution and draft Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea. The meeting had before it the draft resolution and draft Agreement dated 15 April 1994 which was revised on the basis of discussions in the previous round of consultations and a corrigendum to the document dated 23 May 1994. Two documents (SG/LOS/CRP.1 and SG/LOS/CRP.2), containing suggested amendments of a drafting nature prepared by the Secretariat, were also submitted to the meeting in order to facilitate the process of harmonizing the language versions of the text.

The first part of the meeting addressed the substantive issues that were still pending, and solutions were found for some of those issues. Delegations, however, continued their search for solutions on matters relating, inter alia, to the treatment of the registered pioneer investors and the issue of representation in the Council. The second part of the meeting was devoted to the task of harmonizing the language versions of the draft resolution and draft Agreement. The final part dealt with the decisions to be taken with regard to the convening of a resumed forty-eighth session of the General Assembly to adopt the draft resolution and draft Agreement.

At the close of the meeting, delegations were presented with a revised text (SG/LOS/CRP.1/Rev.1), dated 3 June 1994. That document elicited a few drafting comments which are reflected in the text of the draft resolution and draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, contained in annex I to the present report. A proposed solution to the question of the issue of representation in the Council is to be found in the informal understanding contained in annex II.

At the conclusion of the informal consultations the delegation of the Russian Federation made a statement reserving its position in view of the fact that a number of proposals it had made had not been reflected in the draft Agreement. In reply, it was pointed out that all proposals made by delegations or groups had been thoroughly examined without exception but that it had not been possible to accept every one of them.

The consultations then indicated that Member States wished to convene a resumed forty-eighth session of the General Assembly of the United Nations from 27 to 29 July 1994, for adoption of the resolution. They further wished that, after the adoption of the resolution, the Agreement would be immediately opened for signature.

The objective of the consultations was to achieve wider participation in the Convention from the major industrialized States in order to reach the goal of universality. The consultations led to a result which formed the basis of a general agreement on the issues that were the subject of the consultations.

Notes

1/ See A/45/721 and A/46/724.

2/ Informal consultations were held on the following dates: 19 July 1990; 30 October 1990; 25 March 1991; 23 July 1991; 14 and 15 October 1991; 10 and 11 December 1991; 16 and 17 June 1992; 6 and 7 August 1992; 28 and 29 January 1993; 27 and 28 April 1993; 2-6 August 1993; 8-12 November 1993; 31 January-4 February 1994; 4-8 April 1994; and 31 May-3 June 1994.

3/ General Assembly resolution 48/28.

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