Resolution and Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea: A General Assessment

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For the international lawyer, two connected events stand out in 1994: first, the entry into force of the UN Convention on the Law of the Sea on 16 November[1] and, secondly, the adoption by the General Assembly of the Resolution and Agreement Relating to the Implementation of Part XI of the Convention on 28 July[2]. As the German instruments of accession put it, the link between Part XI and the Agreement is fundamental. This paper reviews the events leading up to the adoption of the Resolution and the Agreement, before assessing the terms of the Resolution and finally those of the Agreement.

The Secretary General's Consultations

The origins of the new Agreement can be traced back to the vote in April 1982 on the adoption of the LOS Convention when the United States voted negatively and several industrialised states abstained because of their disagreement with several aspects of Part XI[3]. The United States, Germany and the United Kingdom proceeded to withhold signature and several industrialised states which did sign expressed political reservations

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[1] Art. 308 (3) provides that the Assembly of the International Seabed Authority should meet at the Headquarters in Jamaica.

[2] GA Resolution 48/263.

[3] Official Records: Third United Nations Conference on the Law of the Sea, Vol. XVI, 154.

about the terms of Part XI[4]. Twelve years ago, the world was still polarised between the Western industrialised states and their East European rivals. There was also some ideological division between the industrial north and the developing south. Given this atmosphere, the Preparatory Commission could only mark time as far as Part XI was concerned, occupying itself instead with the implementation of Resolution II[5]. The polarisation was accentuated as States began to ratify the Convention. It became apparent that all the ratifications were from developing countries, apart from Iceland[6]. In 1989, after six years of inconclusive debate, the Group of 77 signalled that it was willing to hold discussions, without preconditions, about issues related to the Convention in order to try to ensure its universality[7]. Industrialised countries welcomed this significant offer and the following year the Secretary General of the UN, Señor Perez de Cuellar, began informal consultations on outstanding issues which were preventing universal participation in the Convention[8]. The consultations concentrated upon the agenda of specific objections, the so-called hard core issues, perceived by industrialised countries with the terms of Part XI. The Secretariat produced a series of helpful Information Notes which sought first to define precisely the objections of major industrialised countries and, subsequently, to find possible solutions. Although the consultations concentrated on questions of substance, reference was made at a fairly early stage to the possibility of having a Protocol to the Convention. On leaving office, Señor Perez de Cuellar made a valuable summary of the consultations to the end of 1991[9], which was supplemented by a paper from Under Secretary General Nandan in January 1992. Secretary General Boutros Boutros Ghali, after a review of the dossier, decided to continue the consultations. His perspective was coloured, quite naturally, by his previous experience as a Minister in a government at a time when it had ratified the Convention. In 1993, the delegates again faced the question of the best form in which to cast the outcome of the consultations. The uncertainty was partly resol-

[4] The UK's objections were set out in the House of Commons: Hansard, Vol. 69, Col. 642, 6 December 1984.

[5] Resolution II of the Third UN Conference on the Law of the Sea governing Preparatory Investment in Pioneer Activities relating to Polymetallic Nodules.

[6] Of the first fifty states to ratify, only Iceland was a developed state.

[7] Statement by Mr. M. Kapumpa (Zambia) in August 1989, in: Platzöder, Law of the Sea: Documents 1983-91, Vol. X, 472.

[8] For accounts of the consultations, see Anderson, 42 ICLQ 654 (1993) and 43 ICLQ 886 (1994).

[9] UN Press Release SG/SM/4671 (SEA 1286) of 13 December 1991.

ved by the coming together of some of the leaders of the Group of 77 and some representatives of industrialised countries who agreed to try to negotiate solutions which might be acceptable to their governments. This Group, which came to be known as the Boat Group, worked on a solution which remained faithful to the original scope and intention of the consultations, namely finding solutions to the specific problems perceived by industrialised countries. The Group drew up a draft Resolution of the General Assembly which would adopt an Agreement on the Implementation of Part XI. The first version of the Boat Paper was tabled in August 1993 and it quickly proved to be a decisive turning point in the consultations. Following intensive and longer sessions, the consultations were concluded early in June 1994, so that the Secretary General could submit his report to the General Assembly later that month[10]. The Assembly took up the issue of the law of the sea again at the end of July 1994 and adopted the draft Resolution by a vote of 121:0, with seven abstentions, as Resolution 48/263[11].

In accordance with the terms of the Resolution, the Agreement was opened for signature in the General Assembly Hall the next day when over 40 signatures were appended. The signatories included the major industrialised states, apart from Russia[12]. The Preparatory Commission took account of the Resolution and the Agreement in adopting its final report in August 1994. The Agreement has now (23 January 1995) been signed by 71 States and the European Community and twelve states have established their consent to be bound by it, including Germany and Italy.

The Resolution

At different stages, several ways of concluding the consultations were considered. There was a general reluctance to convene the Fourth UN Conference on the Law of the Sea, lest issues settled at the Third Conference were re-opened. The calling of any *ad hoc* Conference would have run the risk of it turning into such a fourth conference. The developing countries, especially the ratifiers, were opposed to a re-negotiation of Part XI. It was agreed early in the consultations that the outcome should

[10] UN Document A/48/950.

[11] 99th to 101st Plenary Meetings of the 48th Regular Session.

[12] For reasons explained largely by reference to its position as a Registered Pioneer Investor.

be new arrangements which were legally effective. There was agreement that procedures should be simple and that account should be taken of the fact that over 50 States had ratified the Convention. It was with these factors in mind that it was decided in the consultations to use the mechanism of the General Assembly, which has held an annual debate on the law of the sea for many years and which always has the item on its agenda. Each session of the Assembly remains in being until the eve of the new session in September. The Assembly included all the existing parties and allowed non-Member States such as Switzerland, as well as the European Community, to attend as observers. There are ample precedents for the adoption of new Treaties in the General Assembly: for example, there is the Protocol of 1967 to the Convention on the Status of Refugees of 1951[13]. That instance was used as a model in certain respects for the Agreement of July 1994.

GA Resolution 48/263 of 28 July 1994 was adopted by a large majority (121:0:7) in a recorded vote. Significantly, its preamble begins by noting "the desire to achieve universal participation" in the Convention. This was the primary motivation in the consultations. This opening aim is followed by a consequential objective: "to promote appropriate representation in the institutions", including the International Seabed Authority. Representation only of the developing world could hardly be considered appropriate in an Authority charged with administering an international industry.

Next, the preamble reaffirms that the Area and its resources are the Common Heritage of Mankind. It was clear from the beginning of the consultations that any solution would have to respect the approach of the Common Heritage. This principle was not for re-negotiation, and it was not seriously questioned during the consultations.

The preamble, in a key passage, recognises that political and economic changes "including in particular a growing reliance on market principles, have necessitated the re-evaluation of some aspects of the regime" in Part XI. This recital has the flavour of the *clausula rebus sic stantibus*, applied to the adjustment of a Part of the Convention. The political changes included the diminution in East-West tension since the enormous changes in Eastern Europe seen during the past six years, not least German unification. The economic changes were first observable in the 1980s when industrialised countries reduced the public sector and relied upon market

[13] 189 UNTS 150; UKTS 39 (1954) Cmd. 9171 (Convention) 606 UNTS 267; UKTS 15 (1969) Cmnd. 3906 (Protocol).

forces to an increasing extent. In the 1990s, ideas such as privatisation were adopted by States from all parts of the world.

The preamble goes on to note the initiative of the Secretary General and to welcome his report on the outcome. The General Assembly then concluded that "the objective of universal participation ... may best be achieved by the adoption of an Agreement relating to the Implementation of Part XI". "Implementation" as a concept was acceptable since it connoted positive action and avoided the idea of re-negotiation whilst at the same time allowing, on a broad interpretation, for substantive adjustments.

The operative paragraphs of the Resolution reaffirm the unified character of the Convention (para. 2), adopt the text of the new Agreement (para. 3), affirm the rule stated in the Agreement that it is to be interpreted and applied together with Part XI as a single instrument (para. 4), and then draw in para. 5 two conclusions from that paragraph. First, the General Assembly asserted that "future ratifications ... of ... the Convention shall represent also consent to be bound by the Agreement". The corollary was that "no State ... may establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention". This para. 5 in the Resolution equates to Art. 4 of the Agreement. The FYRO Macedonia, Mauritius, Singapore, Sierra Leone, Slovenia and Lebanon have become parties to the Agreement by their succession to or ratification of the Convention by virtue of Art. 4, para. 1 of the Agreement[14].

The second assertion by the General Assembly was to call upon States voting for the Resolution, and therefore for the adoption of the Agreement, to refrain "from any act which would defeat its object and purpose", a clear reference to the principle set out in Art. 18 of the Vienna Convention on the Law of Treaties.

By operative para. 8, the General Assembly decided to fund the International Seabed Authority from the regular budget of the United Nations for an interim period, the details of which are set out in Section 1 of the Annex to the Agreement as well as, subsequently, in decisions of the Fifth Committee of the General Assembly. It was noted in the consultations that, with the entry into force of the Convention, the Preparatory Commission would cease to operate, thereby resulting in a saving on the regular budget. According to Part XI, the Authority was to have its own

[14] Information taken from an informal list circulated by the UN Secretariat on 16 December 1994, with updating taken from the UN Journals down to 23 January 1995.

budget, funded by contributions by States Parties in the early years. It was also noted that the first 60 of the ratifiers of the Convention represented a relatively small portion of the UN budget and that it was necessary to ensure the sound financing of the Authority in its initial months. The solution was to provide for funding from the UN budget during an interim period[15].

Operative para. 9 requested the Secretary General to transmit immediately certified copies of the Agreement to States eligible to sign and ratify it with a view to facilitating universal participation. In accordance with para. 10, the Secretary General arranged for the Agreement to be open for signature on 29 July 1994. The General Assembly by para. 11 urged States to consent to the provisional application of the Agreement from 16 November 1994 and to ratify the Agreement as soon as possible. At the same time para. 12 urged States to ratify or accede to the Convention at the earliest possible date. Finally, operative para. 13 called upon PREPCOM to take account of the Agreement when it met during the following two weeks in order to draw up its Final Report. PREPCOM proceeded to do so[16].

The above survey demonstrates that the Resolution, which spoke from the time of its adoption, covered in an appropriate way many of the key elements to be found in the Agreement appended to the Resolution.

The Agreement Relating to the Implementation of Part XI

The Agreement consists of a preamble, 10 Articles and an Annex divided into 9 sections.

The preamble begins by recognising the important contribution which the Convention makes to the maintenance of international peace and security, as well as to justice and progress for all peoples of the world. The recital echoes the first recital to the Convention itself. Similarly, the preamble reaffirms the principle of the Common Heritage of Mankind. In response to suggestions by Chile, the preamble then refers to the importance of the Convention for the protection and preservation of the marine

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[15] The Fifth Committee of the General Assembly recommended acceptance on 17 June 1994 (A/C.5/48/80). The Fourth Report of the Advisory Committee on Administrative and Budgetary Questions found that an extra $ 93,000 would be required for 1994-95 (A/49/7 Add.3). However, in December 1994, the General Assembly decided there should be no such increase.

[16] Statement by the Chairman of PREPCOM LOS/PCN/L.115, 11 August 1994. Paras. 16, 17, 22, 37 and 39 took account of the Agreement.

environment. Concerns about the environment were voiced quite frequently during the consultations, but it was agreed that they did not represent an obstacle to ratification by industrialised states. Accordingly, environmental issues were left for consideration by the International Seabed Authority. The preamble also notes the political and economic changes since 1982 which have affected the implementation of Part XI. The aim of universal participation is then stated and the purpose of the Agreement is given as being to meet that objective.

Art. 1 of the Agreement lays down the fundamental obligation to do with the implementation of Part XI. Part XI is to be implemented in accordance with the Agreement, of which the Annex forms an integral part. Art. 2 establishes the relationship between the Agreement and Part XI. The two are to be interpreted and applied together as a single instrument and "in the event of any inconsistency ... the provisions of (the) Agreement shall prevail". These two Articles are the sole substantive or operative provisions of the Agreement. The remaining eight Articles concern signature, ratification and such matters. Art. 1, however, brings with it the whole of the Annex. Art. 2 has the effect that where Part XI says one thing and the Annex says another, it is the Annex which prevails. Part XI has not been amended in a textual sense, but its effect has been modified by the Annex.

The final clauses (Art. 3–10) contain some straightforward provisions, such as Art. 3 regarding signature, and some such as Art. 4, 5, 6 and 7 which contain novelties or break new ground.

Art. 4 concerns the establishment of consent to be bound by the Agreement. Para. 1 and 2 spell out some consequences of the rule in Art. 2 (1) that the Agreement and Part XI of the Convention are to be interpreted and applied together as a single instrument. Thus, instruments of ratification, etc. in respect of the Convention also represent consent to be bound by the Agreement. This provision was linked to the paragraph in the Resolution requesting the Secretary General to transmit immediately certified copies of the Agreement to those states and entities entitled to sign it. Para. 2 gives an assurance to those states which have ratified the Convention that other states may not ratify the Agreement unless they have previously ratified the Convention or ratify it at the same time.

Para. 3 of Art. 4 sets out a range of methods by which states may become party to the new Agreement. First, a state can become a party by signature alone. Belize and Kenya took advantage of this possibility. Secondly, signature may be made subject to ratification. This course was

followed by the United Kingdom, and also by Germany which has now also proceeded to ratify. Thirdly, signature could be subject to the procedure described in Art. 5. Art. 5 contains the "simplified procedure", according to which a state which has ratified the Convention and which signs the Agreement is to be considered to have established its consent to be bound by the latter after twelve months from the date of its adoption, that is to say by 29 July 1995, unless the state notifies the depositary that it is not availing itself of this simplified procedure. Twenty-six parties to the Convention have signed the Agreement and may avail themselves of Art. 5. We shall know in July. The technique of tacit consent is well-known in the IMO: both the SOLAS[17] and MARPOL[18] conventions provide for tacit consent to amendments.

Art. 6 provides for the entry into force of the Convention. It requires the establishment of consent by forty states, compared with sixty in the case of the Convention. However, there is a proviso: the forty have to include at least seven states which have invested in deep seabed mining within the meaning of Resolution II and at least five of the seven have to be developed states. The investor states, whose decision is of particular importance for entry into force of the Agreement, are: Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Russia, the United Kingdom, the United States of America, India, China and the Republic of Korea. These thirteen states, ten developed and three developing in a sense have the fate of the Agreement in their hands. So far, all apart from Russia have signed and all are applying it provisionally, but only Germany and Italy have ratified the Agreement. It is noteworthy that six of the thirteen are members of the European Union.

Art. 7 concerns the provisional application of the Agreement. In many ways, it was the most difficult provision to draft from the technical point of view. The intention was to allow as many different ways as possible for states to agree to apply the Agreement provisionally with effect from 16 November 1994 when the Convention entered into force. The aim was achieved: the budgetary arrangements were endorsed by the General Assembly and a sufficiently large number of States applied the Agreement provisionally for the inaugural meeting of the International Seabed Authority to proceed on that basis. The risk, which was seen during the

[17] Convention on the Safety of Life at Sea (Consolidated Edition 1992, IMO). Art. VIII provides for tacit approval of amendments.

[18] Convention on the Prevention of Pollution from Ships 1973-78. Art. 16 provides for tacit amendment (Consolidated Edition, 1991, IMO).

consultations, of having two regimes and two schools of states has been averted.

Many states had constitutional problems about provisional application: Art. 7 tries to meet as many of the problems as possible. Sub-paragraph (a) provides for provisional application by states which voted in favour of the Resolution in the General Assembly, hence the recorded vote. However, the facility of notifying the depositary to the contrary is also allowed. Six states notified the Secretary-General accordingly. Sub-paragraph (b) provides for provisional application by states which sign the Agreement, but once again the possibility of notifying the depositary to the contrary is also included and ten signatories took advantage of this possibility, including three parties to the Convention (Brazil, Uruguay and Cyprus). The third category of provisional application is by states which so notify the depositary in writing: Russia, having abstained in the vote on 28 July 1994, notified the Secretary-General of its decision to apply the Agreement provisionally on 11 January 1995. Finally, states which accede to the Agreement are to apply it provisionally. This category includes states which have not signed the Agreement, for example because they had not come to independence on 29 July 1994.

Provisional application is stated by para. 2 to be "in accordance with national or internal laws and regulations". In the spirit of Art. 25 of the Vienna Convention on the Law of Treaties, this was intended in the consultations to mean that states are expected, in good faith, to apply those existing laws and regulations which assist with the application of the Agreement, but that since provisional application is for an interim period states may not have in place each and every new law and regulation required to implement the Convention and the Agreement. According to para. 3, provisional application is to terminate upon the entry into force of the Agreement. But in any event, provisional application is to terminate on 16 November 1998 if at that time the parties do not include seven of the thirteen investor states including the five developed states. If that criterion is fulfilled, if for example the six member states of the European Union plus, say, Canada or China or India have ratified the new Agreement, then provisional application would continue until entry into force.

The remaining Articles 8, 9 and 10 are taken from the Convention and call for no special comment. Art. 8 allows the European Community to become a party once a majority of Member States (8) have done so.

The Annex to the Agreement

The Annex to the Agreement is divided into nine sections. The first eight deal with the eight "hard core" issues identified at the start of the Secretary General's consultations. Section 9 creates the Finance Committee.

Section 1

In the consultations there was a consensus that the costs to States parties should be minimised. One way to do this was to make sure that all the institutions established by the Convention were cost-effective. This decision in the consultations applied not only to the Authority but also exceptionally to the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf. It was agreed that the institutions should evolve according to functional needs. Meetings of the Authority would be streamlined and reduced in numbers. Some of the subsidiary organs were regarded as unnecessary at a time when there was no mining activity. These decisions are recorded in paras. 2 to 5 of section 1.

Paras. 6 to 11 deal with a different matter, namely the processing of applications for plans of work for exploration. Different transitional arrangements are laid down for the Registered Pioneer Investors and the potential applicants. These issues were controversial and proved to be among the last to be settled.

Para. 12 deals with another separate issue, namely the position of states which have been applying the Agreement provisionally after the Agreement has entered into force. If the Agreement enters into force within two years of the Convention, i.e. by 16 November 1996, then membership on a provisional basis ends either on that date or upon earlier ratification of the Agreement and the Convention. The Council may extend this period for a further period or periods not exceeding two years if the state concerned is making efforts to ratify the Agreement and the Convention. If, on the other hand, the Agreement enters into force only after 15 November 1996, then states applying the Agreement provisionally may request the Council to grant continued membership on a provisional basis for a further period or periods not extending beyond 16 November 1998 and the Council shall grant such membership if it is satisfied that efforts towards ratification are being made. Para. 12 (c) makes clear that provisional members shall apply Part XI and the Agreement subject to

national legislation and annual budgetary appropriations. They must contribute to the administrative budget of the Authority and have the right to sponsor an application for the approval of a plan of work for exploration.

Para. 14 deals with the Authority's budget. At present, its expenses are being met through the UN budget and this situation is to continue until the end of the year following the year in which the Agreement enters into force. For example, were the Agreement to enter into force this summer, then the budget would be met by the UN during the remainder of this year and throughout 1996. The Authority would be funded by the state parties from 1 January 1997, according to an agreed scale to be drawn up. That arrangement will last until such time as the Authority has sufficient funds from the proceeds of mining in order to meet its administrative expenses.

The Enterprise

The question of the Enterprise was one of the most controversial. Industrialised countries objected to the requirement under Part XI for state parties to fund the first mine site and objected also to the discrimination in its favour. In the consultations, the need for an Enterprise was questioned, notably by the Netherlands. The G 77 wished to have a direct involvement in realising the common heritage. After discussion, it was decided to retain the concept of the Enterprise, but to change the terms of its operation. In the initial stages, the Enterprise is to operate from within the Secretariat. There is to be an interim Director General who will oversee some introductory functions, mainly monitoring developments and assessing data. The Council is to take up the question of the independent functioning of the Enterprise when approval of a plan of work for exploitation is approved or when the Council receives an application for a joint venture with the Enterprise. The initial operations of the Enterprise are to be conducted through joint ventures, which shall operate in accordance with sound commercial principles. It follows that the obligation of the parties to fund a mine site becomes redundant, so there is no longer any need for the funding provisions in the Convention and Annex IV. Para. 3 of section 2 makes clear that states are under no obligation to finance any of the operations of the Enterprise. The Enterprise is to enter into contracts with the Authority for its plans of work. A contractor who has contributed a site to the Authority has first refusal to enter into a joint venture with the Enterprise in relation to that site.

Decision-Making

In the consultations, it was agreed that a generally acceptable procedure for the taking of decisions was required in order to ensure confidence in the Authority and its organs. The Council was seen as having a pivotal role. Accordingly, a system of voting by Chambers consisting of different categories of states was examined and ultimately incorporated into section 3. As a general rule, decisions are to be taken by way of consensus and it is only when all efforts to reach consensus have been exhausted that voting may take place. A two-thirds majority is required in both the Assembly and in the Council, subject to the proviso that in the Council decisions are not opposed by a majority in any one of three groups, namely the consumers, the investors and the producers, as well as the grouping of the developing countries elected to represent special interests or to ensure equitable geographical distribution of seats in the Council as a whole.

The Assembly is to elect the Council at the Session beginning on 27 February. At present, the Secretariat are working on papers listing countries which may fulfil the criteria for membership in the different groups, as required by para. 9 (b). Complicated tables of statistics are being examined. In addition, decisions will have to be taken as to how to count the value of investments. It is not clear, for example, which are the eight largest investors in deep seabed mining. Similarly, it is not clear which states have consumed more than 2% in value terms of the total world consumption of copper, nickel, cobalt and manganese. Interesting discussions are in prospect.

Review Conference

In the consultations, several developed countries expressed doubts on constitutional grounds about Art. 155. The United States and Germany were included in the countries which had constitutional difficulties. Several ideas were advanced for modifying the terms under which the Review Conference would be called. However, in the end the simplest solution was to drop the idea of having a Review Conference. Instead, the provisions in the Convention about its amendment would apply to the amendment of the Agreement and Part XI. However, the principles mentioned in Art. 155 (2) were maintained.

Transfer of Technology

Industrialised countries and their mining industries feared that the terms of Part XI would require the mandatory transfer of technology. This was felt to be a bad precedent. These fears were eased by the joint venture system involving the Enterprise. Section 5 provides that the Enterprise and developing states wishing to obtain technology may seek it on commercial terms on the open market or through joint ventures. If they are unable to obtain the technology, the Authority may then request the contractors and sponsoring states to cooperate in facilitating the acquisition of technology on fair and reasonable commercial terms, consistent with the protection of intellectual property rights. States undertake to cooperate effectively for this purpose. These provisions should allay the fears of all concerned.

Production Policy

Industrialised states were opposed to the idea of imposing a limit on seabed production. Moreover, in the consultations, the formula in Art. 151 was seen not to be a practical one. In the 1980s the growth in consumption of nickel fell as a result of the world recession and the formula would have become more restrictive than had been envisaged in the 1970s when it was drafted. There was a clear case of a change in economic conditions which had come about since the terms of Part XI were drawn up.

Section 6 substitutes for the production formula in Art. 151 a new system based on GATT, including the new WTO Agreements resulting from the Uruguay Round. There is to be no subsidisation of deep seabed mining beyond what may be allowed under GATT. There is to be no discrimination between minerals from the deep seabed and those from other sources, nor is there to be any preferential access to markets or for imports. This arrangement should be fair to all.

Economic Assistance

In the consultations, it was agreed that developing land based producers whose economies were affected by new deep seabed mining should be provided with some economic assistance. However, this should not be treated as "compensation" for loss of a competitive advantage. Instead, they should receive assistance from the proceeds of mining. Assistance

would be provided in cooperation with the international financial institutions which have the expertise to frame and carry out assistance programmes.

Financial Terms of Contracts

Western industrialists felt that the financial terms of contracts laid down in Part XI were too onerous. In particular, the industry complained about high initial payments and high rates of taxation, which they felt would chill investment.

In section 8, it was agreed that some "golden principles" would be established as the basis for a future negotiation when the economic circumstances could be taken into account. The system of payments is to be fair to both the contractor and the Authority. The rates are to be within the range of those applying in respect of land based mining of copper, etc. The system is not to be complicated. One possibility is a royalty system. The annual fee is to be payable only from the start of commercial production. The application fees are also reduced. These arrangements should avoid the "chill factor", whilst still allowing for normal levels of taxation in the future.

Finance Committee

Section 9 implements Art. 162 (2) (y) of the Convention by establishing a Finance Committee of fifteen members. It is modelled on the ACABQ. It will advise both the Council and the Assembly.

Overall Assessments

Two themes of this Symposium are 1) the redistribution of powers between states and international organisations and 2) the possibility of the Agreement serving as a model.

– The Convention and, now, the Agreement have created or constituted the Authority and the Tribunal, as well as the Commission on the Limits of the Continental Shelf. Each body has a defined role and powers. A State, upon becoming a party, surrenders certain competences, but acquires new ones as a member of the Authority or as a party able to invoke the Convention *vis-à-vis* other parties and, in

some circumstances, non-parties[19]. Clearly, there is a redistribution of some national and international competences. This redistribution is most apparent in relation to the management of deep seabed mining. The redistribution is much less apparent in the case of the management of living resources beyond the limits of the national jurisdiction. Certain aspects of the issue are under discussion in the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks.

– The origin of the consultations was dissatisfaction with Part XI, including the fear by industrialised states that it would set some undesirable precedents. The Agreement was not framed in order deliberately to set new precedents. Rather, it was a pragmatic attempt to solve in the 1990s specific problems with concepts dating from the 1970s. It was the product of a last-minute exercise before entry into force of the Convention: the calling of the consultations, their conduct and their outcome all showed innovation and improvisation. If the Agreement eventually proves to have set new precedents, this would be an unexpected side-effect.

The Agreement has quickly attracted signatures or support for provisional application from all the significant industrialised states, as well as from significant developing states, including several parties to the Convention. The legislatures of many industrialised states are currently considering ratification or accession to the Convention and ratification of the Agreement. The latter appears to have met the problems voiced by industrialised countries in the Secretary General's consultations. It seems to have struck a fair balance between the principle of the Common Heritage of Mankind and the aspirations of developing countries on the one hand, and current attitudes towards economic issues and the positions of industrialised countries, on the other. More widely, the Agreement has rescued the Convention on the Law of the Sea from an uncertain fate by opening up a real possibility for achieving the goal of universal participation in the Convention. A great tribute is due to the leaders of the Group of 77 who accepted the need to compromise over Part XI in order to secure the support of the industrialised world for the Convention and its institutions. Some of them are here today, notably my fellow student in the 1950s and my fellow panellist, Ken Rattray.

[19] For a detailed review, see R. Wolfrum, Entry into Force: Legal Effect for Parties and Non-Parties, in Proceedings of the 18th Annual Seminar of the Center for Oceans Law and Policy (in press).