

At the meeting of the Working Group of the AALCC on the Law of the Sea held in Geneva in 1971, the AALCC requested its members to prepare working papers on the then existing problem areas relating to the new Law of the Sea which included subjects such as the international regime for sea-bed area beyond national jurisdiction, fisheries, archipelagos, economic zones, straits used for international navigation, and the problems of landlocked States. In response to this request a number of important papers were presented for consideration of the AALCC. Some of these papers contained submissions and proposals which later formed the basis of certain important concepts which were developed within the framework of the United Nations Conference. Special mention should be made in this connection of the paper. "The exclusive economic zone concept" submitted by Mr. Frank Njenga of Kenya; the working paper submitted by the Delegation of Indonesia on the "Concept of Archipelago"; the Malaysian paper entitled "International Straits"; "preliminary draft and outline of the Convention on the sea-bed and ocean floor and subsoil thereof beyond national jurisdiction", prepared by the then Rapporteur of the Sub-Committee on the Law of the Sea, Mr. C.W. Pinto of Sri Lanka; a position paper on the landlocked States submitted by Ambassador Tabibi of Afghanistan; and a paper on the "proposed regime concerning fisheries on the high seas" submitted by the Government of Japan.

One of the principal objectives of the AALCC is to provide a forum for the Governments of Asian and African States to discuss important international legal and related socio-economic issues with a view to developing common approaches and stands which could safeguard the interests of the countries in the region. Such common approaches are then adopted at international conferences, especially those convened by the United Nations. It is indeed gratifying that the AALCC has been able, through the process of consultation, discussion and negotiation, to make a modest contribution towards the successful resolution of some of the most difficult issues that have arisen at international legal conferences. In this connection, mention might be made of the numerous efforts that the

AALCC made towards finding acceptable solutions to some of the principal issues before the Second Committee of the Law of the Sea Conference.

Inspired by the outcome of these initiatives, the AALCC resolved to focus greater attention on a priority basis to the issues then unresolved before the Law of the Sea Conference, including especially those relating to the establishment of a legal regime for the international sea-bed area.

Following the third session of the Law of the Sea Conference held in Geneva in 1975 which produced the Informal Single Negotiating Text (SNT) the AALCC prepared a detailed study of these texts for consideration at the meeting of the Sub-Committee of the Whole held in New Delhi in February 1976.

This meeting was held to examine the provisions contained in the SNT and to discuss common strategies for safeguarding the interests of the Asian-African States and to examine possible amendments to the provisions of the SNT which might be made to achieve the objective at the following sessions of the Conference. The documentation prepared by the Secretariat for this meeting focussed on the provisions of the SNT which fell short of the recommendations of the AALCC made at its previous sessions and suggested recommendations for improvements of these parts of the text.

The New Delhi meeting of the Sub-Committee of the Whole was followed by the fourth session of the U.N. Conference on the Law of the Sea held in New York in the spring of 1976. At this session the SNT was revised and a Revised Single Negotiating Text (RSNT) which also included the new text of provisions relating to settlement of disputes was released. Following these developments the AALCC Secretariat prepared a detailed study of the RSNT which formed the basis of discussions at the seventeenth session of the AALCC held in Kuala Lumpur in June-July 1976.

At this session the AALCC considered in detail several questions that arose out of the revision of the SNT. These



matters were discussed in the Plenary and in the Sub-Committee of the Whole and special attention was focussed on the provisions relating to the exploitation of the international sea-bed area which many delegations felt were inadequate to give effect to the principle of the common heritage of mankind.

The Kuala Lumpur Session of the AALCC was followed by the fifth session of the U.N. Conference on the Law of the Sea held in New York during August-September 1976. In an effort to speed up the process of negotiations, the First Committee established at that session a Workshop chaired by two co-Chairmen in order to conduct negotiations informally and freely on the important matters before them. The Workshop, however, was able to examine only some of the provisions relating to the system of exploitation of the international sea-bed area. They had before them three papers submitted by the Group of 77, U.S.A. and U.S.S.R. reflecting the different stands taken by them on the First Committee issues. The Second and the Third Committees too had informal and formal negotiations on some key issues including the question of interests of landlocked and other geographically disadvantaged States, regime of passage through straits used for international navigation, the status of the exclusive economic zone, scientific research and transfer of technology while the Plenary continued with its discussions on settlement of disputes.

For the eighteenth session of the AALCC held in Baghdad in February 1977, the AALCC Secretariat prepared a further study which outlined the progress of the negotiations at the fifth session of the U.N. Conference. In that study certain tentative suggestions concerning a suitable interim regime for sea-bed exploitation were made for consideration of the AALCC.

At the sixth session of the U.N. Conference on the Law of the Sea held in New York in June-July 1977, much of the discussions in the First Committee centred around a compromise interim regime on the system of exploitation of sea-bed mineral resources. The Second and Third Committees and the

Plenary continued with negotiations, *inter alia*, on the issues relating to the rights and interests of landlocked and geographically disadvantaged States, the status of the exclusive economic zone, pollution prevention, and settlement of disputes. At the conclusion of that session, it was decided that the President should undertake, jointly with the Chairmen of the three main Committees, the preparation of an Informal Composite Negotiating Text (ICNT) which would bring together in one document the draft articles relating to the entire range of subjects and issues covered by Parts I, II, III and IV of the RSNT. The Conference also agreed that the ICNT so produced would be informal in character and would have the same status as the SNT and RSNT and would, therefore, serve purely as a procedural device and only provide a basis for further negotiations without affecting the right of any delegation to suggest revisions in the search of a consensus.

For the nineteenth session of the AALCC held in Doha (Qatar) from 16 to 23 January 1978, the Secretariat prepared a study which focussed on some of the crucial issues that were likely to form the subject-matter of negotiations at the seventh session of the U.N. Conference on the Law of the Sea, which was to commence shortly thereafter.

Following the Doha Session, a four-day inter-sessional meeting was convened in New Delhi from 31 July to 3 August 1978 which was attended by participants from seventeen countries, namely, Argentina, Canada, Egypt, Federal Republic of Germany, Ghana, India, Indonesia, Jamaica, Japan, Kenya, Mauritius, Norway, Poland, Thailand, United Kingdom, U.S.A. and USSR. Observers from twenty-one other countries also attended. That meeting concentrated on issues relating to the financial arrangements of the International Sea-bed Authority and the financial terms of contracts with the Authority. The results of this meeting were contained in the documents prepared for the Seoul Session.

#### Seoul Session (1979)

At the Seoul Session, the Law of the Sea was discussed in three Plenary meetings and three meetings of the Sub-



Committee of the Whole. The discussions both in the Plenary and the Sub-Committee of the Whole were primarily centred on the following matters :—

1. System of exploration and exploitation of the International Sea-bed Area and resource policy.
2. Financial arrangements of the Authority and the Enterprise and financial terms of contract for exploration and exploitation.
3. Organs of the Authority—their composition, powers functions.

In addition, matters relating to exclusive economic zone, optimum utilization of its resources, regional and sub-regional co-operation as also the rights and interests of landlocked and geographically disadvantaged States with particular reference to the resources of the exclusive economic zone were also discussed.

On the system of exploration and exploitation and resource policy, some doubts were expressed as to whether a parallel system would become workable, and if not, whether consideration should be given to reverting back to the original position of the developing countries. In this connection it was recalled that the parallel system as incorporated in the RSNT emerged out of the proposal of developed countries. The Group of 77 had, during the Sixth Session of the Conference, after considerable discussions, agreed to proceed on the basis of the parallel system for a period of 20 years, provided, the Authority would also be undertaking sea-bed mining activities within the same time-frame as the contractors. Most of the delegations were of the view that progress would be retarded if negotiations were placed on any other basis at this stage of the Conference and expressed the view that it would be better to continue the negotiations on the basis of a parallel system focussing attention on ways and means by which the areas reserved for the Authority could be exploited simultaneously with those of the contractors. Views were expressed that in order to do so, the Authority should have sufficient finances and technology. In regard to the finances

it was felt that one of the practical means by which this could be achieved would be by obtaining from the contractors an initial payment as had been envisaged in one of the proposals. However, if this was not acceptable, other avenues needed to be explored which would make the Enterprise viable. Finances through borrowing was not considered to be an appropriate means of establishing a viable Authority. It was felt that a system of joint ventures, either on the rotation system or on a compulsory or incentive oriented basis might be considered in this regard. If this was to be regarded as a proper approach, further consideration would need to be given to finding ways and means by which the Authority would enter into joint ventures on acceptable terms and conditions.

With regard to the question of ensuring the viability of the Enterprise, the view was expressed that the proposal for incorporating a system which would promote the further exploration by private parties and States, after a specified number of mine sites had been put into operation by such entities, might be subject to the condition that the sites banked with the Authority for exploitation by the Enterprise will also be put into operation, should be given serious consideration. It was felt that this would ensure that in practice the production control mechanism would operate upon volumes of production to be available on both sides of the parallel system. With regard to the modalities for undertaking such operations by the Enterprise, it was stated that such activities can, at the initial stages at least, be undertaken as joint ventures or under similar arrangements.

A view was expressed that the benefits to be disbursed by the Authority should be distributed only to the developing countries as the developed countries would reap adequate direct benefits from their exploitation of mine sites.

On the financial arrangements of the Authority and the Enterprise and financial terms of contract for exploration and exploitation, there appeared to be broad agreement on the need to continue the negotiations at the Law of the Sea Conference within the broad framework of the discussions that had taken place at the sixth and seventh sessions of the



UNCLOS III and also taking into account the compromise formulae contained in the proposals of the Chairman of Negotiating Group II, Ambassador T.T.B. Koh of Singapore. The main thrust of the negotiations at the forthcoming session of the Conference, it was felt, should be to find a way to strike a balance between the investors' need to ensure a reasonable profit on their investments and the international community's need to ensure that the common heritage principle was given effect to for the benefit of mankind. Reference was also made to the proposal which had been discussed at several sessions of the Conference which required the contractors to pay a certain sum of money at the outset to be calculated at the rate of \$ 1 per ton of dry nodules which would be extracted from the international seabed area as a means by which the Enterprise could be made viable. It was said that this payment may not in fact be as burdensome as some are inclined to think in view of the fact that it constitutes a relatively small proportion of the total investment that the contractors would be making with regard to the sea-bed mining activities, as well as the fact that this sum will, in any event, be capitalized, and as such, would ultimately be recovered by the investor. One delegation stated that they were unable to accept this proposal as it constitutes a heavy front-end burden on the contractor.

Referring to the specific provisions of Ambassador Koh's proposal, some delegates expressed the view that with regard to the quantum of attributable net proceeds, the question should be resolved having regard to the larger question of the value that ought to be attached to the nodules, instead of relating it to the costs involved in the various stages of operation, such as extraction, transportation and processing. In this connection the view was expressed that the figure of 40% referred to in Ambassador Koh's draft may not adequately reflect the value to be attached to the resources of the international sea-bed area. One delegation, on the other hand, was of the view that Ambassador Koh's proposal of 40% was too high and unrealistic.

On the question of the composition of the Council and its decision-making power there was general agreement that its powers should be such as to ensure that no interest group

would be vested with what amounted to a veto power in the Council. In this connection reference was made to the discussions that were held in Mexico and Geneva since the conclusion of the last session of the Conference, especially the proposal made by the Jamaican Delegation which contemplated a three tiered system of voting: a simple majority for procedural matters; a two-thirds majority of those present and voting on substantive matters; and for five or six identifiable critical matters, a vote of two-thirds of those present and voting provided there were less than nine negative votes cast. In this connection, it was pointed out that there was considerable difficulty in identifying a small group of five or six matters in respect of which the third system of voting would apply. Views were also expressed that this third requirement may not be workable. Opinion was also expressed that the requirement of nine negative votes was too high.

The view was expressed that as the Assembly was the supreme organ of the Authority all the residuary powers will vest in it.

#### Jakarta Session (1980)

For the twentieth session of the AALCC held in Jakarta, the Secretariat brought out a comprehensive document outlining the progress of the negotiations at the United Nations Conference thus far and the contributions of the AALCC. At the Session extensive discussions took place on matters relating to joint ventures in regard to exploitation of sea-bed resources and composition and voting powers of the decision-making organ of the Sea-bed Authority. In addition, the AALCC considered at length the US proposal submitted at the closure of the eighth session of the Conference relating to the establishment of a Preparatory Commission and an advanced site designation system with a view to protect investments already made. These matters were taken up for intensive discussions at an inter-sessional meeting of experts held in New Delhi in February 1981. That meeting considered in detail the constitution, powers and functions of the Preparatory Commission and the system of protection of preparatory investments as proposed in the US paper.



The participants of the expert group meeting were of the view that the United States proposal for advance designation of mine sites, particularly in the context of the unilateral legislations enacted or sought to be enacted by industrialized nations, was unacceptable. Several participants considered that designation of advance mine sites went against the principles and purposes of the proposed Convention which have emerged as a result of protracted negotiations over a number of years. Such advance designation of mine sites, it was felt, would tilt the balance in favour of industrialized countries and multinational corporations as against the Enterprise. Furthermore, it was felt that the functions sought to be entrusted to the Preparatory Commission in regard to this matter were not consistent with the normal concept of a Preparatory Commission. Some of the participants also expressed dissatisfaction with the type of threat implied in the United States proposal regarding the prospective miners proceeding on the basis of the unilateral national legislations in the event the proposal for advance designation of mine sites was not accepted. The participants also reaffirmed the position of the Group of 77 against promulgation of unilateral legislations by any State.

The participants, however, recognized the need for incentives for the continuation of prospecting, research and other forms of preparatory work during the interim period between the adoption of the Convention and its coming into force so long as such incentives did not deviate from the basic principles embodied in the Convention in maintaining a balance between the activities of the prospective miners and those of the Enterprise. They also recognized that certain preparatory work during the interim period could be conducive to accelerating production of sea-bed minerals soon after the Convention came into force.

Several participants considered that sufficient incentives already existed in the provisions of the Draft Convention such as those in regard to the production limits during the first five years, the anti-monopoly provisions as also the provision contained in Annex III, Article 7(3)(c). Some participants also expressed the view that if the incentives of the type contemplated in the United States proposal were to be conceded,

it would encourage promulgation of unilateral legislations. Nevertheless, most of the participants were of the view that some further incentives could be contemplated by adopting a procedure basically on the following lines :—

- (i) Upon the establishment of the Preparatory Commission, the prospective miner would furnish to a competent organ of the Commission, detailed information concerning the activities undertaken by it in relation to preparatory work concerning a mine site such as research, designing of equipment, etc. and the quantum of investments made by it from the time of adoption of the Convention. Such information would be collated and transmitted to the Authority together with the report of the Preparatory Commission envisaged in the Draft Resolution.
- (ii) The Authority will examine and take into account such information concerning the work done and the investments made whilst entertaining applications under Rule 6 of Annex III and in granting of preference to the applicant on the basis of its investments and preparatory work in a suitable manner to be provided for under the rules.
- (iii) If the preparatory work undertaken by the applicant has involved exploration and development of the area which it offers, the applicant would be reimbursed of the proportionate costs in respect of half of the area which would constitute the reserved area for the Enterprise in the event of the contract being awarded by the Authority to the applicant.

This method of approach, it was felt, would provide adequate incentives to potential miners and in practical terms would achieve the objective of promoting investments.

The participants expressed the view that the United States proposal could not be considered in its present form. In this context it was also emphasized by several participants that if the proposal were to be considered, certain basic changes would be



necessary. Such changes should in particular ensure that States and multilateral corporations would not have any advantage over the Enterprise. Some participants suggested that in order for the matter to be considered, the following minimum requirements should be contemplated :—

- (a) The Preparatory Commission may entertain applications for advance designation of mine sites at the expiry of a period of six months after the conclusion of the preparation of draft rules relating to Article 17 of Annex III provided that not less than thirty States have ratified the Convention by that time.
- (b) The applicant applying for permission by the Preparatory Commission shall not receive any licence under the national legislation of a State, which is inconsistent with the Convention. Both the applicant and the State of his nationality shall also undertake not to invoke any national law which is inconsistent with the provisions of the Convention.
- (c) The Preparatory Commission in entertaining such applications for advance designation of mine sites with a view to creating priorities in favour of the applicants shall limit itself to the number of areas which are likely to be taken up by the Authority in the initial stages on the basis of a time based programme, having due regard to production control limitations, equitable distribution of areas and the needs of the Enterprise.
- (d) The priority accorded to an applicant through advance designation of a mine site in respect of a State or entity sponsored by it would lapse at the end of a period of three years if the State has not ratified the Convention by that time.
- (e) The applicant in whose favour a priority has been created shall develop that part of the area earmarked for the Enterprise in the same manner and within the same time-frame as the area in respect of which priority has been created in favour of the applicant.

The applicant shall also give an undertaking to enter into joint venture arrangements with the Enterprise in regard to the area designated for the Enterprise if a contract in respect of the area in respect of which priority has been created is given in favour of the applicant by the Authority when it comes into existence and the Enterprise expresses its willingness to enter into such joint venture arrangements.

- (f) The applicant upon designation of an area in its favour for the purpose of according priority shall make appropriate arrangements for introducing training programmes for personnel of the developing countries as also such other categories of personnel as may be determined by the Preparatory Commission.
- (g) All costs incurred in processing of applications including obtaining of technical advice by the Preparatory Commission shall be payable by the applicant as a condition prerequisite to entertaining such applications.
- (h) The decision in the Commission concerning advance designation of mine sites shall be taken by consensus.

The meeting, however, was not in a position to give consideration to these suggestions.

As regards the Preparatory Commission, the participants were agreed that such a Commission should be established through a resolution of the Conference. The participants were of the view that the Commission shall be composed of one representative of each State which is either a signatory to the Convention or has acceded to it. As regards the commencement of functions of the Preparatory Commission, the following views were expressed :—

- (a) The Commission shall be convened as soon as possible after fifty States have signed or acceded to the Convention. Provisions of paragraph 10 of the Draft Resolution were accordingly acceptable.



- (b) The Commission should be competent to take up its normal preparatory functions so soon after its constitution as may be practicable concerning the various organs of the Authority including the Enterprise.
- (c) In regard to the additional functions contemplated in paragraph 5 of the Draft Resolution concerning making of studies and preparation of draft rules, regulations and procedures relatable to Article 17 of Annex III of the Convention, the work should be taken up at a point of time when its membership becomes adequately representative of various interest groups and geographic regions.

In regard to (c) views were expressed that the Commission should be sufficiently representative of geographical regions and interest groups in order to ensure adequate expertise in the formulation of the draft rules which would facilitate adoption of such rules by the Authority. The suggestion was also made that the Commission should have a membership of at least half the number of States which had participated in the Conference before it takes up the work of preparation of draft rules relatable to Article 17 of Annex III.

In regard to the question of finances of the Commission the meeting was of the view that the expenses of the Commission should be met out of the regular budget of the United Nations. There was general agreement that the Commission should establish its own rules of procedure and also such subsidiary bodies as may be required. Regarding the duration of the Commission, there was general agreement that the Commission shall remain in existence until the Convention enters into force and the Assembly and the Council are being convened and thereafter until such time as the Assembly may decide. In regard to the crucial issue of the functions of the Commission these were discussed under two broad heads, namely :—

- (a) Normal functions of the Preparatory Commission; and

- (b) The additional functions contemplated in paragraph 5 of the Draft Resolution concerning preparation of draft rules relatable to Article 17 of Annex III.

In regard to the preparatory work to be done by the Commission for the establishment of the Seabed Authority, it was pointed out that the enumeration of the functions in paragraph 4 of the Draft Resolution should not be taken as exhaustive but merely as illustrative. Attention was drawn to the preamble of the Draft Resolution that the purpose of establishing the Commission was to take all possible measures to accomplish expeditious commencement of effective operation of the International Seabed Authority and to provide the necessary arrangements for the performance of its functions and duties. It was felt that the functions of the Commission should embrace all activities which would ensure achievement of the objectives set out in the preamble. In particular, mention was made that the work of the Preparatory Commission should relate to preparatory work in regard to the establishment of the Enterprise so that the same is in a position to go into operation soon after the Convention comes into force.

By way of illustration it was pointed out that the work of the Preparatory Commission in relation to the Seabed Authority might include the following :—

- (i) Preparation of draft rules of procedure of the Assembly and the Council.
- (ii) Draft rules and regulations concerning the organs of the Council.
- (iii) Matters relating to agreements with the United Nations and other international organizations.
- (iv) Draft of staff regulations.
- (v) Preparation of recommendations concerning the budget for the first financial period.
- (vi) Draft financial regulations.