

the annual fixed fee and the obligation of the three registered pioneer investors and of their certifying States to carry out stage I of the exploration work; and (iv) report of the Group of Technical Experts to the General Committee on the application of the Government of the Republic of Korea for registration as a pioneer investor.

On matters arising from the imminent entry into force of the Convention the issues before the PREPCOM included (i) consideration of the provisional agenda for the first session of the Assembly and of the Council of the Authority; (ii) consideration of the budget for the first financial period of the International Seabed Authority; (iii) date of the first session of the Assembly of the Authority; (iv) proposed meeting of the States parties to the Convention relating to the practical arrangements for the establishment of the International Tribunal for the Law of the Sea; and (v) final report of the PREPCOM to the Assembly of the International Seabed Authority at its first session.

It may be recalled that paragraph 3 of Article 308 of the Convention on the Law of the Sea provides that the Assembly of the Authority shall meet on the date of entry into force of the Convention and shall elect the Council of the Authority, which is the executive organ of the Authority comprising 36 members. Accordingly the Secretary-General of the United Nations Mr. Boutros-Boutros Ghali opened the first session of the International Seabed Authority in Kingston on 16 November 1994 to coincide with the coming into force of the Convention. The Three-day Session which was largely ceremonial in nature decided to convene a resumed session between 27th February and 17th March 1995. It may be stated that the Secretariat of the AALCC was represented at the resumed session of the Seabed Authority by the Assistant Secretary-General Mr. Asghar Dastmalchi. The report of that session has been reproduced herewith.

Report on the work of Assembly of the International Seabed Authority during the second part of its first session held in Kingston, Jamaica, 27th February-17th March 1995

The second part of the first session of the Assembly of the International Seabed Authority was convened in Kingston, Jamaica from 27 February to 17 March 1995. The first part, which was primarily of a ceremonial nature, had earlier been held in Kingston from 16 to 18 November 1994 to commemorate the establishment of the International Seabed Authority, which coincided with the entry into force of the United Nations Convention on the Law of the Sea. The third part of the first session is scheduled to be held in Kingston from 7 to 18 August 1995.

The Assembly was attended by delegates from 87 Member-States and one entity, the European Community. 15 states and 5 International Organizations took part in the Session as Observers. The AALCC was represented by the Assistant Secretary-General Mr. Asghar Dastmalchi.

Mr. Hans Corell, Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, acting as the Temporary President of the Assembly, opened the second part of the first session. During the initial meeting the Assembly decided to commence its work under the draft rules of procedure recommended by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea until such time as it adopted its own rules of procedure.

The Assembly had on its agenda the election of the President, the adoption of its rules or procedure, election of members of the Council of the Authority, the nomination and election of the Secretary-General of Authority and election of members of its other major organs (the Legal and Technical Committee and the Finance Committee). Consideration of the final report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, and also the organization of a Secretariat, a provisional budget and other financial matters, and the transfer of property and records from the Preparatory Commission to the Authority were also on the agenda of the meeting.

The Assembly elected by acclamation, Dr. Hasjim Djalal (Indonesia) as President of its first session. On the election of Vice-Presidents for the Assembly, discussions generated on whether regional groups as well as special interest groups should be represented on the Bureau of the Assembly. Finally, four Vice-Presidents Algeria, Mexico, Russian Federation and Canada were elected by acclamation from the list of candidates drawn up by the President of the Assembly after consultations with regional Groups. The four Vice-Presidents represent all the regional groups except Asia, which holds the presidency.

The Assembly, following informal consultations held by the President, appointed the following 10 members to a Working Group assigned to develop the Assembly's rules of procedure Egypt (Chairman), Germany, United Kingdom, Russian Federation, Poland, Brazil, Jamaica, Republic of Korea, Indonesia and Senegal.

The Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea had recommended to the Assembly for its consideration draft rules of procedure contained

in document LOS\PCN\WP.20\Rev.3. In addition, and in the light of the adoption by the United Nations General Assembly 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, the Secretariat had prepared document ISBA\WP.1 containing suggestions for revising the draft rules of procedure of the Assembly issued by the Preparatory Commission taking into account the provisions of the Agreement. At the request of the Assembly, the Secretariat then prepared a working paper by merging these two documents, and the new document (ISBA\WP.2) was then considered by the Working Group. Following discussions, the working group submitted to the Assembly an updated version of the draft rules of procedure (document ISBA\W.3).

The Assembly in the course of discussing the draft rules of procedure recognized the difficulties and lack of agreement on the provision of Rule 85 on the terms of office of some Council members, which calls for determining by lottery which Council members will serve an initial two-year term. But finally the Assembly adopted the Rules of Procedure and decided that the determination of the members of the Council whose terms were to expire at the end of two years, should as a general rule, be left to the agreement of each group. If no agreement could be reached, the members whose terms were to expire at the end of two years should be chosen by lots to be drawn by the President of the Assembly immediately after first election.

The complexity of determining the criteria for membership in the various groups of States in the Council, caused great difficulties and consumed almost the entire time of the session. According to the Agreement Relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea, the Council shall consist of 36 members from five groups of States.

Group I would have four members from among those parties which, during the last five years, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the international seabed area—the “Area”. Of those four, one should be the State with the largest economy in eastern Europe in terms of gross domestic product, and the other having the largest economy in terms of gross domestic product on the date of the entry into force of the Convention.

Group II would have four members from among the eight parties which have made largest investments in preparation for and in the conduct of activities in the Area. *Group III* would consist of four States parties

which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies.

Group IV would have six members from among developing States, representing special interests. The special interests to be represented would include those States with large populations, land-locked or geographically disadvantaged States, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States.

The last group, *Group V*, would have 18 members elected on the basis of equitable geographical distribution, provided that each geographical region shall have at least one member elected. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean, and the Western Europe and other States.

Different formulae and several criteria for membership in the Council were discussed in the Assembly. The President of the Assembly was asked to draw up a list of countries for applying for membership in the Council under specific interest categories defined by the Convention and the Agreement, to enable those States to start negotiating on nomination for the Council. As the number of potential candidates in each interest group exceeded the number of seats allotted for that group, so it seemed necessary that the principle of rotation, as mentioned in the Agreement should be applied as a general rule. States in those groups should themselves determine how to apply the principle. There was no doubt that a State could be nominated from only one group, even if that State met the criteria for membership in more than one group.

During the debate, it appeared that the questions of equitable geographical distributions of seats in the Council would be problematic. Many speakers said that the Council should provide both for representation among interest groups and for equitable geographic distribution. As both are important so it should be determined which countries fell into which categories, with countries specified for more than one category being listed in only one. It was argued by some developing countries that equitable geographical distribution must be an essential part of the final make-up of the Council. Out of the 36 members of the Council, the appropriate representation for each regional group had to be determined. To some degree the allocation in Group I (a), II (b) and III (c) would affect membership in Group IV (d) and V (e).

In determining the appropriate representation in the Council there were divergent views, whether distribution of Council seats among the regional groups should be in proportion to their membership in the Assembly of the Authority or other criteria including the "so called North-South balance", the principle of fairness and flexibility to be considered economic weightage in determining seat allocations which measured the financial contribution of States to the Authority, the seriousness of members candidacy and the idea that distribution of seats should be forward-looking with no reference to past formulae were discussed extensively.

The representative of Sudan proposed that by dividing the number of members in the Assembly 139 by the 36 Council seats, each Council seat would represent 3.86 Assembly members. By dividing the number of member States in each region by that figure he calculated the following formula for proportional representation. Africa which has 44 members, would have 11.39 seats; Asia with 38 members, should have 9.84 seats; Eastern Europe, with 13 members States, should have 3.76 seats, Latin America and the Caribbean with 23 members, should get 5.96 seats, and the Western European and other States, with 21 members, would get 5.44 seats. Several representatives of developing countries explained that the Convention and the Agreement on the implementation of Part XI, provided clear guidance on how Council seats were to be allocated. The letter of those agreements should be adhered to. If the Assembly pursued the concept of "weighted voting", it would be opening up a Pandora's box and, in effect, going backwards.

The industrialized countries of the West believed that the principle of equitable geographical representation on the Council should not be based on proportionality, in other words, simply the number of members in each group. Although their group was small, it included powerful consumer and producer interests that should be adequately reflected on the Council. So the need to seek a proper balance between industrialized countries on the one hand and developing countries, on the other, should be properly adhered. The aim was that the majority of the South would not be in a position to automatically achieve a decision with a two-thirds majority, only to be voted in one of the chambers on the Council. The North-South "balance would also prevent a minority from constantly blocking decisions".

The representative of France speaking on behalf of the Western European and other States Group, said that he agreed that the Assembly must abide by the letter of the agreement which spoke of equitable geographical distribution. His Group was not trying to go back on the Agreement, but

the last category of members described in the Agreement dealt specifically with equitable geographical representation. There was no case for equitable geographical distribution in the Council to be based solely on the number of States in each regional group. Proportionality was not the sole parameter for applying the criterion of equitable geographical distribution. Criteria other than numbers should be used. The councils of other international organs, such as the Food and Agriculture Organization (FAO), had strong powers; therefore, the Council of the International Seabed Authority would have a very important character. The Assembly should take a closer look at the positive arguments in favour of the two ideas of his Group. The first was the question of partnership in the exploitation of the deep seabed to ensure that products were extracted and distributed. Partners should be equal and the notion of blocs should not be emphasized excessively. If that were to be the case, then the industrialized countries, which were in a minority, would not be keen to accede to the Convention. If the industrialized group were relegated to a minority, they would be frustrated.

The Assembly should base its decisions on real, international, objective criteria. For example, in the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF), the Western European States had the largest number of seats. Those were facts that had meaning in the capitals of those States. The Western States would prefer to avoid the use of blocs and a North-South dichotomy. No party should be put in an uncomfortable, minority position.

Other representatives of the industrialized countries while endorsing the views put forward by France indicated that the composition of the Council should inspire confidence in those capitals where ratification of the Convention was still being considered. The application of equity in the present context required a political decision, taking into account a multitude of factors to achieve a balanced cooperation, not confrontation. It was mentioned that the Authority was not a political international organization like others, it was an economic body, dedicated to exploiting resources of the deep seabed. States such as the Western States should be able to bring to bear their economic weight in the work of the Authority. There was reference to other bodies in the United Nations system, in which proportionality had not been the basis for determining equitable geographical distribution of seats. The UNDP and the UNICEF governing bodies had distributions that were consistent with the desire of the Western States, to ensure the positive engagement of the Industrialized Countries to develop the technology for the mining of the deep seabed. If those States failed to undertake the work, there would be no benefits to be shared.

In essence, it was mentioned that, there were only two groups of States; those which undertook activities and those that did not do so, Partnership between both the groups was needed. The West had not put forward exaggerated proposals, because the Convention had made clear that there could be at least nine Council members from developed countries.

The developing countries surprised by the new demands of the industrialized States reminded that the North was not in danger of being swamped in the Council, in a manner similar to that of the United Nations Conference on Trade and Development. In fact many industrialized developing countries such as the Republic of Korea which were neither in the South nor in the North, were likely to be major operators in the International Seabed Area. There could not be any rigid dichotomy between two supposed categories of countries in respect of deep seabed mining. Many so called developing countries were more industrialized than countries in Europe and they were in fact in a state of a "in-betweenity". Many speakers from "the Group of 77" were of view that the Assembly should adhere to the clear formula dealing with the composition of the Council as contained in the Agreement and not reconsider the criteria for determining Council membership. It should work with the legal text before it, remembering that it was enacting legislation of a permanent nature. States that might lack the capability or technology today might develop those abilities in the future, and their interest should not be frustrated today.

The representative of Brazil proposed that the Assembly should try to evaluate the real interests of States and regions by assessing their presence at the current session, the very first of The International Seabed Authority. Based on the list of participants, there was a total of 75 States taking active part in the Assembly; 23 from Africa; 19 from Asia, 15 from Latin America and the Caribbean, 15 from Western European and other States; and 3 from Eastern Europe. That was a ratio of 2.08 Assembly member to each Council seat. based on a division by 2.08, therefore, 11 Council seats should be allotted to Africa; 9 to Asia; 7 to Latin America and the Caribbean, 7 to Western Europe; and 1 to Eastern Europe, for a total of 35 seats. The one seat outstanding in the Council could be allocated later.

Some developing countries recalled that they had made several concessions to ensure universal participation in the Convention by recognizing the interests of nations that had not ratified the Convention. Equitable geographical representation was necessary to secure cooperation

by all sides. No group of States should be allowed to exercise hegemony over the Council.

The comparison of the Authority with other International Organizations was odious as the Authority was different from other bodies. The Council should not elevate the interests of some groups above those of others to such an extent that they would dominate the Council at the expense of those who had ratified the Convention. The Authority was to govern a Common Heritage of Mankind that was why all interest must be kept in balance.

The President, after several lengthy discussions, proposed a formula for allocating the seats in the Council in respect of each regional group. His proposal took into account the concept of proportionality and the need to maintain a balance in the representation in the Council. The President made the following suggestions that:

- (a) The distribution of seats among the geographical regions for this election of the members of the Council shall be without prejudice to the distribution of seats among the geographical regions for the next election of the members of the Council, which shall have to take into account the new membership of the Authority at that time:
- (b) Representation by a member in the present Council of a particular group of States referred to in paragraph 15 (a) to (d) of section 3 of the Annex to the Agreement, shall, whether or not the principle of rotation is applied in that Group, be without prejudice to its representing other groups of States in the future; at the same time, the representation by members in the present Council of the various groups of States does not preclude the rights of other States to represent these groups in the future;
- (c) The general balance of seats established in the present Council between developing and developed countries shall be maintained in the future.

The President's proposal regarding the allocation of seats in the Council was discussed extensively in meetings of regional groups. Since no unanimous decision emerged from the discussions of the proposal it was not possible to reach consensus on this issue.

The meetings of the group of States referred to in paragraph 15 (a) of the Agreement, "States parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent

in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area”, known as Group A or group I were attended by Belgium, Brazil, China, France, Germany, Italy, Japan, Republic of Korea, Russian Federation, United Kingdom and United States (Coordinator). The Group met to discuss the nomination of four States meeting the criteria contained in that paragraph for election to the Council.

The Group decided not to recommend a list of States meeting the criteria of paragraph 15 (a). Members of the Group held different views on the interpretation of the criteria. Some expressed the view that the criteria require that a consuming or importing State must meet the 2 per cent threshold for the value of each of the four minerals (manganese, copper, cobalt and nickel). Others expressed the view that the criteria require that States meet the threshold for the combined value of all four minerals. Without prejudice to the resolution of this question in regard to future elections, the Group decided to take a flexible and inclusive approach to its deliberations.

The Group took note of the fact that the United States, the United Kingdom, the Russian Federation, Japan, Germany, Belgium and Italy informed the President of the Assembly of their interest in being nominated for election to the Council. Belgium, Italy and Germany decided to withdraw their requests to be nominated by the Group on the understanding that, without prejudice to the interests of other States meeting the criteria in paragraph 15 (a), the application of the principle of rotation in future elections would provide opportunities for their election to the Council as representatives of the Group.

The Group agreed to the nomination of Japan, the Russian Federation, the United Kingdom and the United States. The Group agreed to nominate the Russian Federation and the United States for election for a two-year term and to nominate Japan and the United Kingdom for a four-year term. It should be noted that the acceptance by the Russian Federation and the United States of two-year terms is on the understanding that the Assembly will affirm, at the time of election, that paragraph 15 (a) requires the inclusion of one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and of the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, should those States seek re-election to the Council under that paragraph, and upon the understanding that the principle of rotation would apply to Japan and the United Kingdom after four years.

After the initial meetings of the group of States referred to in paragraph 15 (b), or Group II “which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals”, known as Group B or Group II, the coordinator of the Group, Canada, informed the President that after considering information provided by delegations with respect to investments by their States in preparation for and in the conduct of activities in the Area, the delegations unanimously agreed that the following States constitute the eight largest investors for purposes of paragraph 15(b): China, France, Germany (Coordinator), India, Japan, the Netherlands, Russian Federation and the United States.

The Group of the eight largest investors proceeded to discuss the nomination of the four candidates to represent the Group in the Council. Five States, China, France, Germany, India and the Netherlands, declared their intention to represent the Group in the Council. In consultations between the interested States as well as between them and the coordinator, it was not possible to reach agreement on which four States shall be nominated. It was also not possible to decide which of the candidates will be nominated to serve on the Council for a two-year term or for a four-year term. Also unresolved is the question of the application of the principle of rotation.

The meetings of the group of States referred to in paragraph 15 (c), or Group III, “States parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area”, known as Group C, were attended by Australia (Coordinator), Brazil, Canada, China, Chile, Cuba, France, Gabon, India, Indonesia, Mauritania, Mexico, Namibia, Philippines, Poland, Russian Federation, South Africa, United States and Zambia.

Six countries from this Group—Australia, Chile, Gabon, Indonesia, Poland and Zambia—presented their candidatures for the four seats available in this Group. Although some delegations indicated a willingness to be flexible, at this stage—and particularly in the light of the fact that other issues still need to be resolved—there has been no final agreement on the four candidates.

It was also agreed that the principle of rotation should apply to future elections of candidates for the Group, and that this should be interpreted as meaning that there is a general expectation that members of this Group will move on and off the Council. This would not preclude the

possibility of individual countries making informal arrangements between themselves, such as reciprocal support arrangements. Nor would it preclude countries having consecutive terms on the Council, if this was agreed by the Group.

It was further agreed that at this stage it was not appropriate to make a definitive list of countries eligible for election to the Group. However, some delegations suggested that this was something which should be considered in the future. Reference was made to an informal understanding reached at the Third United Nations Conference on the Law of the Sea that the Group should reflect an equal balance between developing and developed countries. But some delegations challenged it and questioned the logic and reason to maintain an equal balance between the North and the South in this group exclusively. The issue of which candidates would be nominated for a two-year term and which would be nominated for a four-year term was not discussed.

The meetings of the group of States referred to in paragraph 15 (d), of the Agreement "developing States parties, representing special interests", which include those "States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States", known as Group D, were attended by Argentina, Bangladesh, Brazil, Burkina Faso, Cameroon, China, Costa Rica, Cuba, Egypt, Fiji, Gabon, India, Indonesia (Coordinator), Jamaica, Kuwait, Malaysia, Malta, Marshall Islands, Mauritania, Mexico, Mozambique, Myanmar, Nigeria, Oman, Paraguay, Philippines, Republic of Korea, Sudan, Trinidad and Tobago, United Arab Emirates, Vietnam and Zambia. Several States declared their intention to seek nomination to the Council within this Group, and other States also expressed their interest in being nominated in either Group D or Group E. In view of the discussions taking place in other Groups, no definitive list of candidates of this Group has been drawn up.

The President, at the concluding meeting expressed the hope that during the third part of the first session of the International Seabed Authority which would be held in Kingston from 7 to 18 August 1995 the matter of the election of the Council members would be resolved. Some delegates, however, could not conceal their dissatisfaction, as no business was accomplished, except the adoption of the Rules of Procedure.

Ad hoc meeting of states parties to the United Nations Convention on the Law of the Sea

On the question of establishment of the International Tribunal for the Law of the Sea the PREPCOM at its session held in August 1994 had recommended that the Secretary-General convene an ad hoc meeting of the State parties to the Convention soon after the entry into force of the Convention. Following this recommendation of the PREPCOM relating to the establishment of the International Seabed Tribunal an ad hoc meeting of State Parties to the Convention on the Law of the Sea was convened in New York in November 1994. That meeting of the State Parties to the Convention decided on 22nd November 1994 *inter alia* that: (i) there will be a deferment of the first election of the Members of the Tribunal. The date of the first election of the 21 Members will be 1 August 1996. This will be a one-time deferment; (ii) Nominations would open on 16 May 1995. A State in the process of becoming a party to the Convention may nominate candidates. Such nominations shall remain provisional and shall not be included in the list to be circulated by the Secretary-General of the United Nations in accordance with Article 4(2) of Annex VI, unless the State concerned has deposited its instrument of ratification or accession before 1 July 1996; (iii) nominations will close on 17 June 1996; (iv) The list of the candidates will be circulated by the Secretary-General on 5 July 1996; (v) Subject to the above decisions all procedures relating to the election of the members of the Tribunal as provided for in the Convention shall apply; and (vi) no changes shall be made to this schedule unless the States Parties agree by consensus.

III. The United Nations Decade of International Law

(i) Introduction

The topic entitled "The United Nations Decade of International Law" was first placed on the agenda of the Twenty-ninth Session of the Asian-African Legal Consultative Committee held in Beijing in 1990 following upon the adoption by the General Assembly of resolution 44/23 declaring the Decade of the Nineties as the United Nations Decade of International Law. The main objectives of the Decade are:

- (i) to promote acceptance of and respect for the principles of international law;
- (ii) to promote methods and means for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;
- (iii) to encourage the progressive development and codification of International Law; and
- (iv) to encourage the teaching, study, dissemination and wider appreciation of international law.

Introducing the item at the Twenty-ninth Session of the Committee the Secretary-General observed, *inter alia*, that it was appropriate that the Committee address itself to and respond to the resolution 44/23 of the General Assembly. The Committee at its Twenty-ninth Session after due consideration of the Secretariat Note mandated the Secretariat to prepare a comprehensive study on the United Nations Decade of International Law. Subsequently, the Secretariat prepared and forwarded to the office of the Legal Counsel of the United Nations its observations and views on the Decade which were reproduced in the Report of the Secretary-General of the United Nations on the item "The United Nations Decade of