Chapter 20

Resolution and Agreement Relating to the Implementation of Part XI*

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 November¹ 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.

I 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

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* This chapter, based on a paper read at a conference in Heidelberg in January 1995, was first published in *55 ZaöRV* (1995) 275-289. The text has been slightly edited but not updated.

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.
Part XI. The United States, Germany and the United Kingdom proceeded to withhold signature and several industrialised states which did sign expressed political reservations about the terms of Part XI. In 1982, 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. 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.

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. Industrialised countries welcomed this significant offer and the following year the Secretary General of the UN, Senor Perez de Cuellar, began informal consultations on outstanding issues which were preventing universal participation in the Convention. 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, Senor Perez de Cuellar made a valuable summary of the consultations to the end of 1991, 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 resolved 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

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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.
8 For accounts of the consultations, see Anderson, 42 ICLQ 654 (1993) and 43 ICLQ 886 (1994) – now Chapters 16 and 17 above.