FINAL ACT

The "Final Act" document is self-explanatory; it records the organization and operation of the Conference, beginning with the UN General Assembly decision of December 17, 1970, continuing through the convening of the Third UN Conference on the Law of the Sea in 1973, and finishing with the signing of the Final Act by 140 representatives of states and other Conference participants in Montego Bay on December 10, 1982. (This must not be confused with the signing of the Convention itself in accordance with Article 305, an act performed by 117 states on the same day.) In general, the signing of the Final Act is purely formal and does not create any treaty obligations. The Resolutions I-IV contained in Annex I to the Final Act, however, are an exception, as the Conference considered the resolutions to be an integral whole with the Convention,[1] especially in regard to the "Preparatory Commission" and "Pioneer Activities" discussed below.

PREPARATORY COMMISSION

As it was clear that considerable time would pass between the closing of the Conference and the entry into force of the Convention, it was seen as desirable to establish the *Preparatory Commission for the International Sea-Bed Authority and. for the International Tribunal for the Law of the Sea* to make use of the interim period. The Commission's work was to commence as soon as fifty states had signed the Convention,[2] which, as previously mentioned, was already the case in Montego Bay on December 10, 1982. All states which have signed the Convention have the right to participate through their representatives in the Commission, including the right of participation in the taking of decisions; states which have signed only the Final Act may participate fully in deliberations, but not in the taking of decisions.[3] The Commission held its first meeting in March 1983 and its first session in August/September 1983; it has since been working continuously. Five special committees were established with the following tasks:

(a) Dealing with problems of developing land-based producers of nickel, copper, cobalt, and manganese which might be affected by deep-sea mining;[4]
(b) Preparing rules, regulations, and other measures for an early commencement of operations by the Enterprise;[5]
(c) Preparing a sea-bed mining code;[6]
(d) Making preparations for the Tribunal for the Law of the Sea.[7]
(e) Preparations for the Assembly, Council, Commission, and Secretariat of the Sea-Bed Authority[8] and for matters concerning pioneer activities[9] are made by the plenary session or its general committee.

As the Preparatory Commission is to follow the rules and procedure of the Third UN Conference 1973-1982, it attains the importance - within the scope of its task - of a "continuous mini-conference", although with the significant distinction that states which have not signed the Convention have the status only of observers. The Commission is to remain in existence until the conclusion of the first session of the Assembly of the Sea-Bed Authority,[10] at which time the Preparatory Commission is to present a final report to the Assembly on all matters within its mandate.[11] When the Convention enters into force, the rules, regulations, and procedures drafted by the Commission are to apply provisionally pending their formal adoption by the Authority.[12]

A separate report is to be prepared regarding the Tribunal for the Law of the Sea, containing recommendations for a meeting of the states parties for the nomination and election of the members of the Tribunal.[13] The Commission's report could possibly include the recommendation to choose another seat in place of Hamburg[14] for the Tribunal if the Federal Republic of Germany has at that point not yet become state party to the Convention.

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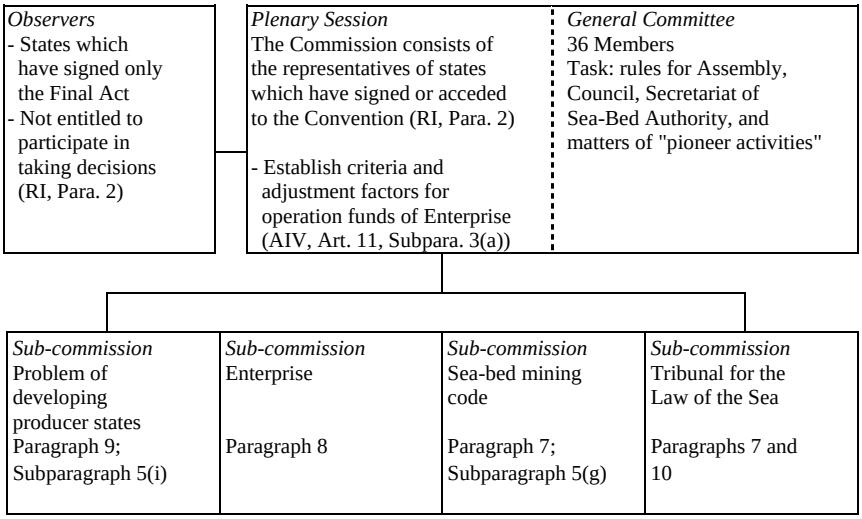
[1] Final Act, Para. 42
[2] RI, Para. 1
[3] RI, Para.. 2
[4] RI, Para. 9; Subpara. 5(i)
[5] RI, Para. 8
[6] RI, Para. 7, Subpara. 5(g)
[7] RI, Para. 7&10
[8] RI, Subpara. 5(a-f)
[9] RI, Subpara. 5(h)
[10] RI, Para. 13
[11] RI, Para. 11
[12] Art. 308, Para. 4
[13] RI, para. 10
[14] AVI, Art. I

PREPARATORY COMMISSION

NB: The schematic layout includes the established sub-commissions.



- The Authority and its organs are to recognize and honor the rights and obligations arising from Resolution I and the decisions of the Commission taken pursuant thereto (RII, Para. 13; Art. 308, Para. 5);
- Until formal adoption by the Sea-Bed Authority, rules, regulations, and procedure drafted by the Commission are to apply provisionally (Art. 308, Para. 4)

THE REGIME FOR "PIONEER ACTIVITIES"

The regime for "pioneer activities" was established to permit investments for activities in the Area[1] and to ensure immediate commencement of mining activities upon entry into force of the Convention. It emerged from the requests of industrialized states for a safeguard for the considerable investments which had already been made by some companies and consortia, with the intention of giving these pioneers priority with respect to other - non-pioneer - investors for the recovery of investments as soon as possible after the conclusion of the 1973-1982 Conference. Other states, especially from among the developing countries, were keenly interested in preserving the main principles of the regime for the deep-sea Area. The pioneer regime is to remain in effect until the entry into force of the Convention,[2] although the events of this interim period will continue to have an influence long after that point.[3] The resolution provides that companies, consortia, state enterprises, and the like which invested at least US$30 million before 1983 or, in particular cases, before 1985[4] may under certain conditions apply to the Preparatory Commission for registration as a "pioneer investor" and for registration of a "pioneer area"[5] which may not exceed 150,000 square kilometers.[6] The conditions for registration concern the status of the sponsoring state as a signatory to the Convention,[7] a certification of the level of pioneer expenditures[8], and the assurance that claims of applicants do not overlap[9]. Three years after allocation of a "pioneer area", 20% of the same reverts to the Area, an additional 10% within another two years, and an additional 20% later on.[10]

Once a pioneer investor has been registered, he may carry out pioneer activities, which include all preliminary measures for exploitation,[11] but exclude commencement of commercial production, which may only take place when, after entry into force of the Convention, the Sea-Bed Authority has approved the plan of work[12] and issued a production authorization[13]. The Authority must give due regard to decisions made by the Preparatory Commission.[14] Only pioneer investors from states which are parties to the Convention will be approved to begin operations in the Area.[15] The "rights" of pioneer investors from other states will be terminated after a short time;[16] however, this lapse of rights can be prevented if the pioneer investor changes its nationality and sponsorship to a state party to the Convention within a certain period of time.[17] Prior to the commencement of commercial operations, the pioneer investor is required to pay a certain fee[18] and, at the request of the Preparatory Commission, carry out exploration (costs to be reimbursed) in the reserved area, provide training, and perform Convention obligations related to the transfer of technology[19] in order to ensure that the Enterprise is able to keep pace with states and other entities with respect to activities in the Area.[20] Every state which has certified the level of pioneer expenditures is to ensure that the necessary operating funds for the Enterprise are made available when the Convention enters into force,[21] an obligation to which all states parties will be subject to one degree or another on that future day[22].

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[1] Preamble of RII
[2] RII, Para.14
[3] Art. 308, Para. 5
[4] RII, Subpara. 1(a)
[5] RII, Para. 2-3
[6] RII, Subpara. 1(e)
[7] RII, Para.2
[8] RII, Subpara. 2 (a)
[9] RII, Para. 5
[10] RII, Subpara. 1(e)
[11] RII, Subpara. 1(b)
[12] RII, Para. 8; AIII, Art. 6
[13] RII, Subpara. 9(a)(Art. 151)
[14] RII, Para. 13 (Art. 308, Para. 5)
[15] RII, Subpara. 8(a); Para. 9
[16] RII, Subpara. 8(c)
[17] RII, Para. 10
[18] RII, Subpara. 7(a-b)
[19] RII, Para. 12
[20] Preamble of RII
[21] RII, Subpara. 12(b)
[22] Art. 170, Para. 4; AIV, Art. 11

THE "PIONEER INVESTORS"

The following states can apply for registration of pioneer investors (RII, Subpara. 1(a)(i-iii)

1st Category

France, Japan, India, USSR (as state or sponsor of state enterprise or one of its nationals)

2nd Category

Nationals of other industrialized countries (Belgium, Canada, West Germany, Italy, Japan, the Netherlands, UK, USA) (The composition of the groups is related to consortia existing at that time)

3rd Category

Any developing country (as state or sponsor of state enterprise or one of its nationals, or any group of them)

On the conditions that:- (RII, Para. 1-5)
- The investments (as of 1982/1985) amounted to at least US$30 million
- Only states which have signed the Convention may apply for the registration of pioneer investors
- The sponsoring state must certify the level of the investment expenditure
- The application is to indicate the prospective area, which may not overlap other areas already allocated or applied for

OBLIGATIONS PRIOR TO ENTRY INTO FORCE OF THE CONVENTION

(RII, Subpara. 1(b); Para. 7; Para. 12)

- The pioneer investor may undertake only "pioneer activities" as defined by the Resolution, which do not include commercial operation

- Pay registration fee of US$250,000
- Agree to periodic expenditures

- Carry out exploration in reserved area at request of Commission (costs reimbursed)
- Provide training
- Transfer of technology

When the Convention has entered into force

Only states parties or pioneer investors from states parties to the Convention
- May apply for approval of a plan of work (RII, Para. 8)
- May apply for a production authorization (RII, Para. 9)
- Must pay an application fee of US$250,000 and an annual fixed fee of US$1 million (RII, Para. 6)

Rights of pioneer investors from other states

- Are terminated (RII, Subpara. 8(b); Para. 10)