

Evolution of UNCLOS and Part XI

LLDC participation in the negotiations

Legal framework governing the Area

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Workshop on the Participation of Land-Locked Developing Countries in the Regime of the Area
and the Benefit-Sharing Mechanism under UNCLOS

Santa Cruz, Bolivia

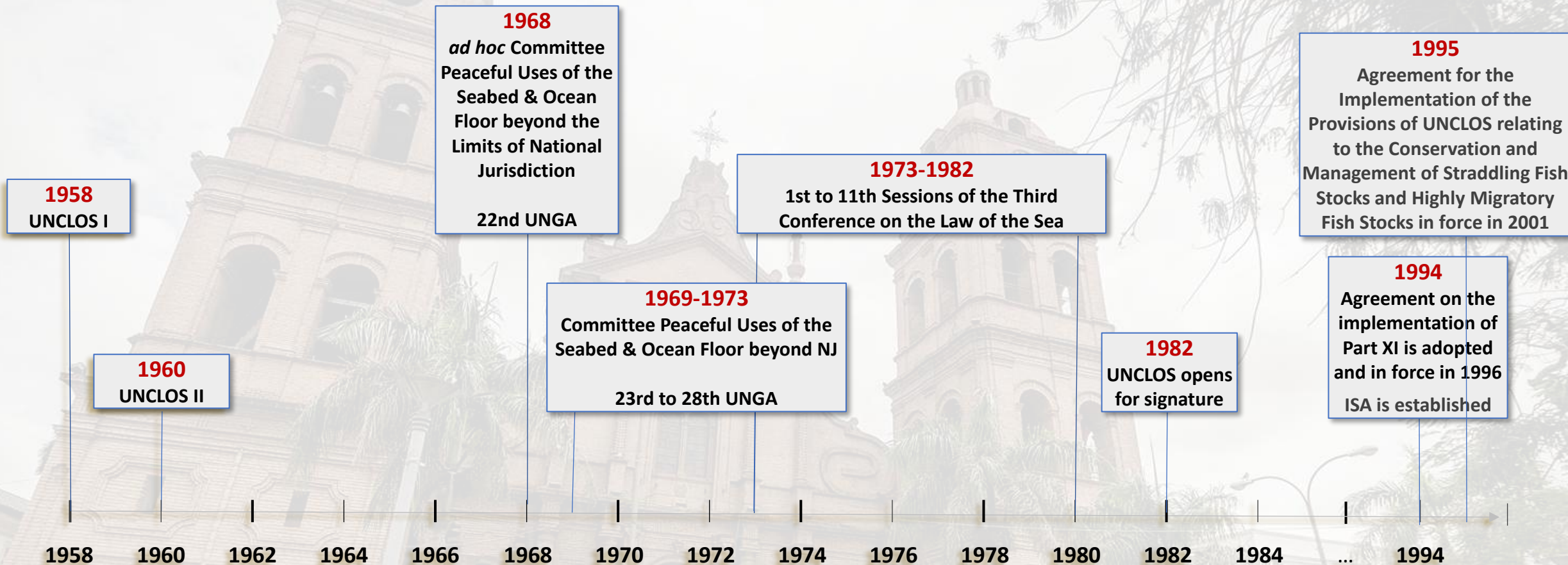
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The first attempt for the international codification of the law of the sea

The ***League of Nations Codification Conference***, held in The Hague, Netherlands, from March 13 to April 12, 1930, with the participation of **47 States**, was the first international conference organised specifically to codify customary international law:

1. Nationality (First Committee)
2. Territorial Waters (Second Committee)
3. Responsibility of States for Damage Caused in Their Territory to the Person or Property of Foreigners (Third Committee)

The conference provided foundational experience that later influenced the codification of the law of the sea during its first Conference held in Geneva in 1958, and the creation of the United Nations International Law Commission in 1947.



UNCLOS I , **Prince Wan Waithayakon** of Thailand:

The sea is the common heritage of mankind and that is in the common interest.
The law of the sea should ensure the preservation of that heritage for the benefit of all.

The (First) Conference on the Law of the Sea (UNCLOS I)

International Law Commission undertook preparation of an agenda for the codification on the law of the sea in 1949 and considered it during its 2nd to 8th sessions from 1950 to 1956, when, as a request of the UNGA, submitted its Final Report.

The Conference was held with the participation of **86 States** in Geneva from 24 February to 27 April 1958. Four separate conventions were adopted by the Conference on 29 April 1958 and were opened for signature until 31 October 1958, and thereafter opened for accession by all Member States of the United Nations, as well as other States and specialized agencies invited by the General Assembly to become party:

1. The Convention on the Territorial Sea and the Contiguous Zone (entered into force on 10 September 1964);
2. The Convention on the High Seas (entered into force on 30 September 1962);
3. The Convention on Fishing and Conservation of the Living Resources of the High Seas (entered into force on 20 March 1966); and
4. The Convention on the Continental Shelf (entered into force on 10 June 1964).

In addition, an Optional Protocol of Signature concerning the Compulsory Settlement of Disputes was adopted, which entered into force on 30 September 1962.

The Convention on the High Seas contains several provisions relating to “States having no sea coast”

Eleven Sessions of the Third United Nations Conference on the Law of the Sea (UNCLOS III)

1st and 2nd Session	(New York, 3–15 December 1973; and Caracas, 20 June to 29 August 1974)
3rd Session	(Geneva, 17 March to 9 May 1975) Informal Single Negotiating Text (ISNT)
4th Session	(New York, 15 March to 7 May 1976) Revised Single Negotiating Text (RSNT)
5th Session	(New York, 2 August to 17 September 1976)
6th Session	(New York, 23 May to 15 July 1977) Informal Composite Negotiating Text (ICNT)
7th and Resumed Session	(Geneva, 28 March to 19 May 1978; and New York, 21 August to 15 September 1978)
8th and Resumed Session	(Geneva, 19 March to 27 April 1979; and New York, 19 July to 24 August 1979) ICNT/Rev. 1
9th and Resumed Session	(New York, 3 March to 4 April; and 28 July to 29 August 1980) ICNT/Rev. 2 / ICNT/Rev. 3
10th and Resumed Session	(New York, 9 March to 16 April 1981; and Geneva, 3–28 August 1981) Draft Convention
11th, Resumed & Final Part of Session	(New York, 8 March to 30 April 1982; New York, 22–24 September 1982 and Montego Bay, 6–10 December 1982) United Nations Convention on the Law of the Sea

The Negotiating Process of UNCLOS III according to Amb. Tommy Koh

1. Longest treaty-making conference: 1973 to 1982.
2. Preparatory work was not entrusted to the International Law Commission or to another expert or specialised group of limited size. Instead, it was entrusted to the 91 member UN Seabed Committee. Meetings were open-ended.
3. UNCLOS III began without the benefit of a single preparatory document.
4. Decision-making at the conference was governed by a “Gentlemen’s Agreement”, 16 November 1973: decisions by consensus and a “package deal” with no reservations.
5. Wide scope of the agenda with 25 items and the theory of their inter-relatedness, i.e., length of the conference and one convention. **164 participating States**, many recently independent.
6. Emergence and formation of new interest groups:
 - i. Coastal States group
 - ii. **Group of Land-Locked and Geo Disadvantaged States**
 - iii. The territorialist group
 - iv. Group of straits States
 - v. Group of archipelagic States
 - vi. Broad shelf States or margineers
 - vii. Oceania group
 - viii. Group of EEC countries
 - ix. Medium line/equidistance group
 - x. Equitable group
 - xi. Land-based producers
 - xii. Group of 5: USA, USSR, UK, France, Japan
 - xiii. Coordinating Group of 5: USA, UK, France, FRG, Japan
 - xiv. Others: G77, Castañeda-Evensen, etc.

The Negotiating Process of UNCLOS III according to Amb. Tommy Koh

7. Unprecedented degree of authority was vested in 4 conference leaders: the President and the Chairmen of the 3 main committees. Other influential individuals: chair of drafting committee (Beesley), chair of formal and informal negotiating groups, e.g., Evensen of Norway, Castaneda of Mexico, Nandan of Fiji.
8. Role of the Secretariat.
9. Role of collegium. President + 3 chairmen + chairman of drafting committee and rapporteur-general. In 1981 and 1982, collegium met weekly and took all decisions collectively and by consensus.
10. Role of Non-Governmental Organisations: What did they contribute?
 - i. Brought independent experts to meet delegates
 - ii. Helped developing countries to close the knowledge gap
 - iii. Afforded delegates opportunities to meet outside conference
 - iv. Influenced domestic positions of countries concerned

The Negotiating Process of UNCLOS III according to Amb. Tommy Koh

11. Challenge of reducing the size of the meetings. Difficult, if not impossible, to negotiate in a forum of 164 States. Conference opposed to creating smaller negotiating groups. Solution: use of informal, private negotiating groups.

Chairman of negotiating group 2 (Tommy Koh) managed a 3-stage process:

- i. Plenary of about 140 delegations;
- ii. Expert group of about 30;
- iii. Final negotiating group of 4: 3 delegations representing G77 (Argentina, Mauritius, Pakistan) and USA.

12. Gentlemen's Agreement on Decision-Making:

- i. Before taking a vote, conference must decide that all efforts at reaching agreement have been exhausted
- ii. Cooling off period
- iii. President will try, with help by General Committee, to achieve an agreement
- iv. Two days notice before voting.

13. Eleventh and final session of UNCLOS III: USA asked for a recorded vote on draft convention.

Voting was: **130 Yes, 4 No, 17 Abstentions.**

LLC participation in the negotiations

In order to increase their influential power, LLC joined the group of geographically disadvantaged States to form the relatively heterogeneous *Group of Land-locked and Geographically Disadvantaged States* that comprised about 55 countries in the final stage of UNCLOS III; among them were mostly developing, but also industrialized countries such as Austria and Switzerland.

After arduous discussions, several special rights relating to land-locked States were included in the UN Convention on the Law of the Sea, such as:

- The right to fly a flag at sea;
- Transit rights;
- Certain rights concerning fisheries in the exclusive economic zone;
- Payments or contributions from resources in the continental shelf beyond 200 M;
- Preferential benefits from mineral resources in the Area;
- Participation in marine scientific research; and
- Participation in the International Seabed Authority (ISA), International Tribunal for the Law of the Sea (ITLOS), and the Commission on the Limits of the Continental Shelf (CLCS).

e.g., Lesotho at ISA, Judge Helmut Türk (Austria) at ITLOS) and Dr. Chisengu Mdala (Zambia) at CLCS

Link between article 76 and 82 in Part VI quid pro quo

Articles 76 and 82 in the Convention are the result of a difficult negotiation compromise during the Third United Nations Conference on the Law of the Sea (UNCLOS III) from 1973 to the 10th Session held in 1981.

Article 82 establishes a unique international royalty on non-living resource exploitation.

It was negotiated into the Convention as a *quid pro quo* for the coastal State's right in Article 76 to define the outer limit of its continental shelf to extend its jurisdiction and exercise sovereign rights for the purpose of exploring it and exploiting its natural resources beyond 200 nautical miles to the outer edge of the continental margin.

United Nations Convention on the Law of the Sea of 1982

Explicit references to land-locked States

PREAMBLE

PART I. INTRODUCTION

PART II. TERRITORIAL SEA AND CONTIGUOUS ZONE

PART III. STRAITS USED FOR INTERNATIONAL NAVIGATION

PART IV. ARCHIPELAGIC STATES

PART V. EXCLUSIVE ECONOMIC ZONE

PART VI. CONTINENTAL SHELF

PART VII. HIGH SEAS

PART VIII. REGIME OF ISLANDS

PART IX. ENCLOSED OR SEMI-ENCLOSED SEAS

PART X. RIGHT OF ACCESS OF LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT

PART XI. THE AREA

PART XII. PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

PART XIII. MARINE SCIENTIFIC RESEARCH

PART XIV. DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY

PART XV. SETTLEMENT OF DISPUTES

PART XVI. GENERAL PROVISIONS

PART XVII. FINAL PROVISIONS

ANNEX I. HIGHLY MIGRATORY SPECIES

ANNEX II. COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

ANNEX III. BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

ANNEX IV. STATUTE OF THE ENTERPRISE

ANNEX V. CONCILIATION

ANNEX VI. STATUTE OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ANNEX VIII. SPECIAL ARBITRATION

ANNEX IX. PARTICIPATION BY INTERNATIONAL ORGANIZATIONS

FINAL ACT. ANNEX VI RESOLUTION ON DEVELOPMENT OF NATIONAL MARINE SCIENCE, TECHNOLOGY AND OCEAN SERVICE INFRASTRUCTURES

Legal framework governing the Area established in 1982

Preamble

Part XI

Articles 133 to 135 General provisions relating to the Area;

Articles 136 to 149 Principles governing the Area;

Article 150 to 155 Development of resources in the Area, including policies;

Articles 156 to 185 The Authority; and

Articles 186 to 191 Settlement of disputes and advisory opinions.

Part XVII

Article 311 (6) provision relating to no amendments of the principle.

Amendment before an international treaty has entered into force

General law of treaties embodied in:

- the Vienna Convention on the Law of Treaties (concluded 23 May 1969, entered into force 27 January 1980); and
- the United Nations Convention on the Law of the Sea

Contain provisions, which address

- the amendment of a treaty after it has entered into force; and
- **amendment before the treaty has entered into force.**

These provisions require a new treaty containing appropriate provisions for its relations with the original instrument.

Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

To address certain difficulties with the seabed mining provisions contained in Part XI of the Convention, which had been raised, primarily by the industrialized countries, the Secretary-General convened in July 1990 a series of informal consultations which culminated in the adoption, 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 of 10 December 1982*. The Agreement entered into force on 28 July 1996.

The Agreement was adopted on 28 July 1994 and entered into force on 28 July 1996. It consists of 10 articles dealing mainly with procedural aspects such as signature, entry into force and provisional application. Its article 2 deals with the relationship between the Agreement and Part XI of the Convention and it provides that the two shall be interpreted and applied together as a single instrument. **In the event of an inconsistency between the Agreement and Part XI, however, the provisions of the Agreement shall prevail.**

The Agreement has an annex, divided into nine sections, dealing with the various issues that were identified as problem areas during the informal consultations. These include **costs to States Parties and institutional arrangements; decision-making mechanisms for the Authority; and potential future amendments to the Convention.**

Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

Preamble

Article 1	Implementation of Part XI
Article 2	Relationship between this Agreement and Part XI
Article 3	Signature
Article 4	Consent to be bound
Article 5	Simplified procedure
Article 6	Entry into force
Article 7	Provisional application
Article 8	States Parties
Article 9	Depositary
Article 10	Authentic texts

Annex

Section 1	Costs to States Parties and institutional arrangements
Section 2	The Enterprise
Section 3	Decision-making
Section 4	Review Conference
Section 5	Transfer of technology
Section 6	Production policy
Section 7	Economic assistance
Section 8	Financial terms of contracts
Section 9	The Finance Committee

The Cooperative Republic of Guyana deposited the 60th instrument of ratification—on 16 November 1993

The International Seabed Authority General Assembly and the Finance Committee

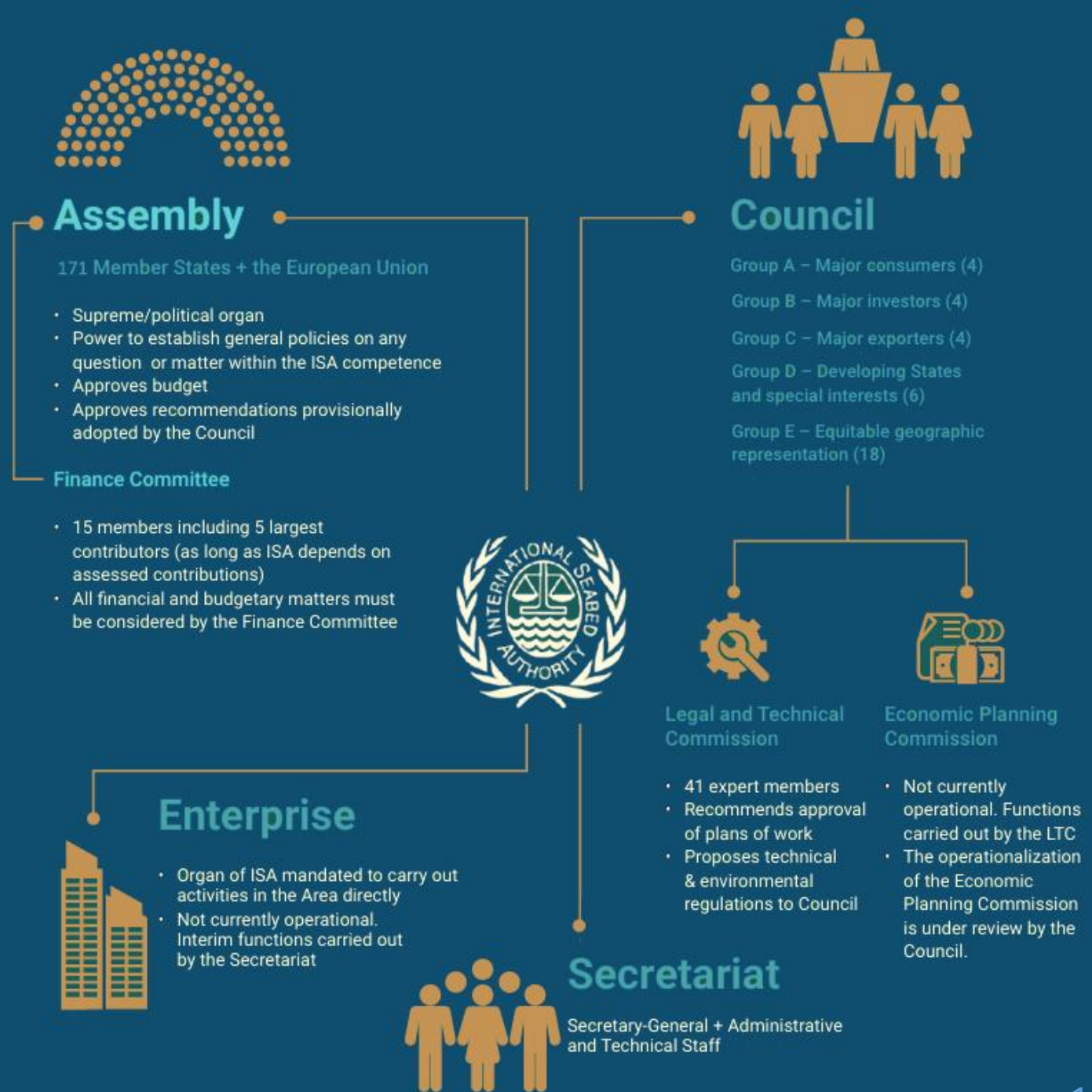
Part XI Agreement Section 9. The Finance Committee

...

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) ...

(f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.





THIRD UNITED NATIONS
CONFERENCE ON LANDLOCKED
DEVELOPING COUNTRIES
AWAZA 2025

AWAZA PROGRAMME OF ACTION

FOR LANDLOCKED
DEVELOPING COUNTRIES
2024–2034

171. We acknowledge the concerns of landlocked developing countries that little progress has been achieved in the implementation of Part X of the United Nations Convention on the Law of the Sea,¹² on the right of access of landlocked States to and from the sea and freedom of transit, and article V of the General Agreement on Tariffs and Trade of 1994 and section I, article 11, of the World Trade Organization Agreement on Trade Facilitation, on freedom of transit, in which the right of access of landlocked States, including landlocked developing countries, to and from the sea and freedom of transit is recognized.

Targets:

- Achieve unfettered, efficient and cost-effective access to and from the sea by all means of transport, on the basis of the freedom of transit in accordance with applicable rules of international law, especially Part X of the United Nations Convention on the Law of the Sea and section I, article 11, of the Agreement on Trade Facilitation.
- Develop resilient, sustainable, safe and smart transit infrastructure to fulfil Sustainable Development Goal targets 9.1.2, 9.a and 3.9.
- Establish a high-level panel of experts with a view to identifying ways and means to ensure seamless access for the landlocked developing countries to and from the sea.
- Significantly expand, upgrade and maintain access to safe, affordable, accessible and sustainable transport infrastructure and national and crossboundary connectivity, including through multimodal systems and closing the missing links in regional infrastructure, while strengthening institutional capacities to manage transport services.
- Develop standardized cross-border transport infrastructure and transit requirements between landlocked developing countries and transit countries.
- Explore the establishment of an infrastructure investment finance facility for landlocked developing countries.
- Aim to establish and strengthen the air transport system in landlocked developing countries with the purpose of developing efficient transit systems, enhancing competitiveness, strengthening regional cooperation and expanding international trade.

¹² United Nations, *Treaty Series*, vol. 1833, No. 31363.