

Harper suggested that those who believe that the Committee serves some useful purpose were free to convey their views to the appropriate people. Letters may be addressed to Leon E. Panetta, Director, Office of Management and Budget, Old Executive Office Building, 17th Street and Pennsylvania Avenue, NW, Washington, DC 20503, and/or The President of the United States, The White House, 1600 Pennsylvania Avenue, Washington, DC 20500. ♦

UN OBSERVER REPORTS -

by Richard Hartzman

General Assembly Establishes Post of UN High Commissioner for Human Rights. In a development hailed by many as an important step in creating more effective international human rights institutions, the General Assembly, on December 20, 1993, approved a resolution—48/141—establishing the position of UN High Commissioner for Human Rights. The new High Commissioner will be appointed by the Secretary-General subject to approval by the General Assembly. He or she will have the rank of Under-Secretary-General and will serve a four-year term, with the possibility of renewal for one additional four-year term. The High Commissioner will be located in Geneva with a liaison office in New York.

The action by the General Assembly culminates more than four decades of efforts. The proposal for a High Commissioner has been on the table since at least 1951 when Uruguay put it before the UN Human Rights Commission. The idea resurfaced in the 1960s and continued to be on the UN agenda, though it was routinely shunted aside.

The impetus to act finally grew out of last June's World Conference on Human Rights. The Vienna Declaration and Programme of Action [32 *ILM* 1661 (1993)] recommended that the General Assembly, at its 48th session, "begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights."

The 48th session of the General Assembly allocated the question to the Third Committee. Responding to the call of the Vienna Declaration, the Third Committee, on November 12, established an open-ended working group to undertake, as a priority matter, the High Commissioner question, and to consider also the other recommendations of the Vienna Declaration. The working group was instructed to begin its deliberations with consideration of the question of the High Commissioner "with a view to completing this consideration by the end of the work of the Third

Committee." Most representatives to the Committee who addressed the establishment of the working group favored the time limit set for consideration of the post of High Commissioner. However, the Chinese and Cuban representatives, while expressing willingness on the part of their countries to participate constructively and flexibly, voiced strong reservations about the time limit and noted that the Vienna Declaration recommended beginning rather than completing the consideration.

The working group held 13 meetings between November 15 and December 11. During this period the United States submitted a draft resolution to establish the High Commissioner's post (UN Doc. A/C.3/48/L.59), and Malaysia submitted proposed amendments to the U.S. draft (UN Doc. A/C.3/48/L.79). The two proposals reflected, respectively, the views of Western countries seeking the creation of a post with considerable powers to act on behalf of human rights, and of Third World countries concerned with issues of sovereignty and the placing of the right to economic development on an equal level with civil and political rights.

A compromise resolution acceptable to both Western countries and the Non-Aligned Movement was crafted by a group led by José Ayala Lasso, UN Ambassador from Ecuador and chair of the working group (UN Doc. A/C.3/48/L.85). That consensus proposal, with minor oral revisions, was put before the Third Committee on December 16, and, after a procedural skirmish, was approved by acclamation and greeted with applause. The following Monday, December 20, the resolution was adopted by the General Assembly by consensus.

In the compromise, the Western countries agreed to modification of language which would have charged the High Commissioner with responsibility for the "elimination and prevention" of human rights violations to refer more ambiguously to "playing an active role in removing the current obstacles" to the realization of human rights and "preventing the continuation of human rights violations." They further agreed to the removal of an explicit reference to the use of fact-finding missions and acceded to language requiring the High Commissioner "to respect the sovereignty, territorial integrity and domestic jurisdiction of States." Western countries also acceded to language giving recognition to the right to development as part of the context for action by the High Commissioner. However, Third World countries agreed to drop language which would have prevented the High Commissioner from using "human rights as a condition for international cooperation for development."

The High Commissioner's responsibilities, in addition to removing current obstacles and preventing

human rights violations, will include: rationalization and strengthening of UN human rights activities; co-ordination of those activities, including education and public information programs; supervision of the Centre for Human Rights; provision of advisory services and technical and financial assistance to requesting states; dialogue with governments to secure respect for human rights; promotion of human rights, including the right to development; and enhancement of international cooperation with regard to human rights. The full text of the resolution will appear in the January issue of *ILM*.

The Secretary-General is expected to begin the selection process in January 1994. The resolution directs the Secretary-General to provide appropriate staff and resources for the High Commissioner. For the 1994-95 biennium, it is expected that \$1.41 million will be allocated, allowing for, among other things, a staff of two professionals; one in Geneva and one in New York. While the initial funding for the new post is small and its effectiveness will depend on the individual selected to be High Commissioner, the consensus approval of the new institution and the applause with which it was greeted are hopeful signs of a strengthening commitment to the human rights agenda by the world community.

Consultations on the Law of the Sea. The latest round in a series of informal consultations on the Law of the Sea convened by the Secretary-General was held in New York from November 8 to 12, 1993. The recent deposit of the 60th instrument of ratification means that the Convention will enter into force November 16, 1994. This adds a sense of urgency in seeing that the Secretary-General's consultations are brought to a successful conclusion. The consultations began in July 1990 as a means of achieving universal participation in the UN Convention on the Law of the Sea, and in recognition that problems with some aspects of the Convention's provisions on deep seabed mining had inhibited certain industrialized countries, including the United States, from signing or ratifying the Convention. The Preparatory Commission for the Convention, in which the United States does not participate, had not been able to resolve all of these issues. The Commission began meeting in 1983 and concluded a draft provisional final report in April 1993. Its annual meeting will be held in February 1994.

Nine issues relating to deep seabed mining were identified as problem areas during the course of the consultations: costs to states parties, the Enterprise, decision-making, the review conference, transfer of technology, production limitation, the compensation fund, financial terms of contracts, and environmental

concerns. In 1992, those participating in the consultations decided that environmental issues were not controversial in the seabed mining context and eliminated the item from the list of problem areas.

The consultations received a boost in April 1993 when the U.S. Government, after completing an inter-agency review, expressed the new Administration's intention to take a more active role in the search for a solution. While Madeleine Albright, U.S. Ambassador to the UN, reaffirmed the Administration's commitment to the objective of a widely accepted Convention, she warned that the U.S. continued to find serious problems with the mining provisions.

The November 1993 meeting, attended by the representatives of 100 states, was the fourth one held in 1993, and the twelfth since 1990. As in prior meetings, discussions were guided by an Information Note provided by the Secretariat. In addition, the delegation of Sierra Leone presented a paper containing ideas for a form of agreement should the consultations not resolve the outstanding problems. More importantly, a revision of "the Boat Paper" was circulated among the delegates. The Boat Paper, so-called because of a drawing of a boat on the cover page, was anonymously prepared by the representatives of several developed and developing countries (though not necessarily reflecting the positions of those countries) for the preceding round of consultations held from August 2-6, 1993. It contains a proposed UN resolution and agreement covering the problem areas which have been under discussion during the consultations.

Intensive face-to-face discussions were initiated during the August round. In that round, discussions covered the question of cost-effectiveness as it applies to the seabed institutions; the composition of the organs of the Authority; their mode of decision-making and their functions; and the Enterprise. At the end of the November round, brief discussions were held on procedural alternatives for implementing the results of the consultation. An updated version of the Boat Paper was prepared after the November meeting. A further meeting was scheduled for January 31 through February 4, 1994.

At this state of the consultations there appears to be agreement on general principles regarding many of the substantive issues but differences as to details. In this column, there is sufficient space to describe only briefly the salient features of the proposals, features which may yet be modified.

The proposals anticipate that there will be a prolonged period before deep seabed mining begins. During that interim period, the seabed mining institutions would be established in a minimal and cost-effective form, with institutional functions to be

activated in an evolutionary manner as they become needed. In addition to the Assembly and the Council of the Seabed Authority, a Finance Committee, not envisioned in the Convention, would be established. Until the Authority becomes self-financing, this Committee would include the five largest contributors to the administrative budget of the Authority. The functions of the Economic Planning Commission (CLOS Articles 163 and 164) would be performed by the Legal and Technical Commission until the Council decides otherwise or until the first work plan for exploitation is approved. The various bodies of the Authority would meet only as frequently as required to perform their functions. The Review Conference mechanism of Article 155 of the Convention would be substantially modified or eliminated altogether. It has not yet been agreed whether the expenses for the Authority during the interim period would be met by assessments from members of the Authority or through the UN budget.

Current proposals would establish decision-making, as a general rule, by consensus in all organs of the Authority. However, if efforts to reach a consensus in the Assembly or Council were exhausted, decisions, in general, would be reached by a simple majority of States present and voting on procedural matters; and by a two-third majority of States present and voting on substantive matters. Significant exceptions would be that consensus would still be required in the Council where the Convention currently requires it; and that any of the four chambers to be established in the Council (major consumer/net importers, major investors, major net exporters, and developing countries) could oppose a decision by simple majority vote. In the Legal and Technical Commission, voting would be by simple majority of members present and voting. Decisions on financial and budgetary matters would be based upon the recommendations of the Finance Committee whose substantive decisions would be taken by consensus.

The Enterprise, which is the organ of the Authority directed to carry out mining activities (CLOS Article 170), would commence its operations with joint ventures. The obligation of mandatory transfer of technology to the Enterprise and developing countries would be eliminated, as would the obligation to provide the Enterprise with the funds needed to explore and exploit one mine site. With regard to commercial production policies, States Parties would agree not to subsidize the production of minerals except as may be permitted under GATT; the rights and obligations relating to unfair economic practices under multilateral trade agreements would apply; there would be no discrimination between minerals from land and from the deep seabed; and States

Parties which are parties to multilateral trade agreements would have recourse to the dispute settlement procedures of those agreements. A dispute settlement mechanism for non-GATT members has yet to be specified. Economic assistance to developing countries which suffer adverse consequences from deep seabed mining would be based on specified principles not presently spelled out in the Convention, and would be provided for through an economic assistance fund under the control of the Authority.

The rigid provisions regarding the financial terms of contracts for the exploration and exploitation of the seabed contained in Article 13 of Annex III to the Convention would be replaced by a far more general and flexible scheme to be fleshed out in rules and regulations subject to periodic revision. Revisions would apply retroactively to existing contracts only at the election of the contractor. The system of payments would be governed by principles of fairness to the contractor and the Authority, and of non-discriminatory application. Rates for payments would be within the range of those prevailing with respect to land-based mining in order to avoid an unfair competitive advantage to either seabed or land-based miners.

The Secretariat's Information Note outlines four procedural alternatives for implementing the results of the consultations, each of which raise problems of a political and/or legal nature. The first alternative would be a formal protocol amending Part XI of the Convention—the seabed provisions. The second contemplates an interpretative agreement. The third alternative involves an interpretative agreement establishing the structure and functioning of the Authority and Enterprise during the interim period, accompanied by a procedural arrangement to convene a conference to establish the definitive regime for seabed mining when commercial production becomes feasible. The fourth alternative envisions an agreement additional to the Convention which would become an integral part of and enter into force with the Convention. The agreement would constitute the guiding framework for the actions of the Authority and for establishing the functions and organs of the Authority on an evolutionary basis, as needed.

The approach to implementation taken in the Boat Paper involves an agreement which would be interpreted together with Part XI of the Convention as a single instrument, and which would enter into force after an unspecified number of countries had acceded to it. States already parties to the Convention would automatically be considered a party to the agreement unless they notified the UN within a time period to be specified that they preferred active accession. States which had not yet ratified the Convention would do so simultaneously with the agreement.

The discussions have not ruled out either combining different elements of the existing alternatives for implementation or finding another one. ♦

GOLER TEAL BUTCHER HUMAN RIGHTS AWARD ANNOUNCED

The Society was pleased to be able to announce the establishment of the "Goler Teal Butcher Medal for Excellence in International Human Rights Law" at the Human Rights Day Community Luncheon sponsored annually in Washington by the United Nations Association of the National Capitol Area. The Society's announcement at the luncheon, held on December 9, 1993, was as follows:

"The medal was established to honor Goler Teal Butcher's distinguished record of service not only to the American Society of International Law but to the cause of international human rights over several decades as a scholar, practitioner and public official. For this purpose the Executive Council of the Society has authorized the striking of a medal—one of only two awarded by the Society—to be known as the Butcher Medal. The Society is grateful to Professor Henry Richardson of Temple University School of Law, a long-time associate and friend of Butcher, for agreeing to chair the Society's committee on the Butcher Medal. Through this award, the Society seeks to honor Butcher by reaffirming its commitment to the causes to which she dedicated her life and work, and to encourage others to follow in her footsteps."

Persons interested in contributing to the funding of this award should contact Henry J. Richardson, III, Temple University School of Law, Philadelphia PA 19122; Tel.: 215-787-8987, Fax: 215-787-1185.

Another Society member honored at the luncheon was Amy Young, honored by the American Bar Association's Section on International Law and Practice for her work in human rights advocacy. ♦

WHAT'S ONLINE IN INTERNATIONAL LAW - by Paul Zarins

In this column I want to continue to focus on developments in Internet resources relevant to international law. I will discuss the details of improved access to United Nations resolutions, then describe an excellent, free guide to Internet usage, and finally briefly mention a recently formed discussion group and a new electronic journal.

In previous columns I have discussed some plans and partial developments in access to UN resolutions, but the recent posting of the full text of UN resolutions on an Internet Gopher server is perhaps the best actual development yet. If you have Gopher capability available, the command "gopher gopher.undp.org" will connect directly to a menu of UN resources, including the texts of resolutions from the General Assembly, Security Council, and ECOSOC for approximately the last ten years. Options for sending a resolution text back to one's own personal computer as a file or an e-mail message are offered. It does remain to be seen how well these postings will serve the need for timely access to the most recent resolution texts. I found the coverage of Security Council resolutions, for example, to be lagging about two months or more. In the meantime, I should point out that the currency of UN Press Releases, which is another menu choice on the very same Gopher server, is impressive. These releases are often available within one day and thus are a source of very current information about recent resolutions. To have such information available quickly and for free is truly encouraging. Other menu choices offered on the gopher.undp.org computer may be of equal interest to researchers following UN developments.

Exploring via menu choices is, of course, the very essence of the Internet Gopher process. As I detailed in the September/October 1993 *Newsletter* column, one could eventually find the above UN resources by simply using the gopher command without any specific address and then choosing from a series of menus. Having a specific gopher address, such as gopher.undp.org, streamlines the process. To ease the process even more, there is the technique of using "bookmarks." Once you have found a resource of interest, the simple command "a" (for add) will create a personal bookmark. You will be prompted to give the bookmark a name of your own choosing. The next time you want to return to this resource, you can enter the command "gopher -b", see a list of personal bookmarks, and select the appropriate one for a direct return to that resource. The exact commands needed to make use of this bookmark facility may vary from one computer system to another, but the relative ease should be similar.

With the Internet having become the latest hot topic, store shelves are filling up with more and more new books about the subject, some of which have been mentioned in earlier columns. One alternative to these commercially published books, some of which are quite costly, is the free *An Introduction to Using the Internet at Saint Louis University School of Law* by James Milles, updated as of December 16, 1993.