UNITED NATIONS

THIRD CONFERENCE ON THE LAW OF THE SEA

PROVISIONAL

For participants only

A/CONF.62/C.1/SR.15
22 August 1974

ORIGINAL: ENGLISH

Second Session

FIRST COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at the Parque Central, Caracas,
on Tuesday, 20 August 1974, at 4 p.m.

Chairman:	Mr. ENGO	United Republic of Cameroon
Rapporteur:	Mr. MOTT	Australia

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ECONOMIC IMPLICATIONS OF SEA-BED EXPLOITATION (A/CONF.62/C.1/L.3, L.6, L.7, L.8 AND L.9) (continued)

Mr. IGUCHI (Japan) said that working paper A/CONF.62/C.1/L.9 did not represent the final position of the Japanese Government on the conditions of exploration and exploitation of the resources of the international sea-bed area. His delegation was submitting that paper now in order to observe the deadline for proposals on that item, so that it could be studied in connexion with the three other proposals (A/CONF.62/C.1/L.6, L.7 and L.8) before the Committee.

The basic conditions governing the exploration and exploitation of sea-bed resources must be determined in advance and embodied in the convention so as to ensure the efficient and effective operation of the sea-bed activities to enrich the world community with the fruits of the common heritage of mankind. It would be undesirable to leave the decision on basic conditions to the future international machinery.

No country wished there to be anarchy, instability or inefficiency in the exploitation of the common heritage of mankind, and consequently there was a need to establish objective criteria for selecting eligible entities, defining objectives and the various phases of activities, determining the nature and content of rights and duties, establishing international standards, and choosing among competing applications from contractors. It was essential to draft basic norms to govern such matters in order to establish a stable relationship between the authority and entities engaging in exploration and exploitation activities. The effective mobilization of managerial, scientific technological, and financial resources of existing enterprises was the key to the success of the international régime, and conditions of exploitation should be established to induce enterprises to work under the international régime for the benefit of the international community. The Japanese working paper had been drafted with that consideration in mind.

His delegation welcomed any further suggestions for improving or supplementing its working paper since it had not had sufficient time to examine all aspects of the various complex issues involved.

In the Japanese working paper the activities of exploration and exploitation had been divided into three phases, namely, general survey, evaluation and exploitation. Scientific research, processing, transportation and marketing had not been included.

(Mr. Iguchi, Japan)

The first phase, general survey, should be as free and open as possible and therefore a system of registration which gave rise to a non-exclusive right renewable every two years had been adopted.

The second and third phases, evaluation and exploitation, would be conducted on the basis of legal contracts concluded between the authority and eligible entities. The authority should be willing to enter into a contract whenever a proposal for efficient and effective exploitation of resources was made in accordance with established rules and regulations. The selection of contractors should not be arbitrary. However, in the case of competing applications, the authority should choose one contractor on the basis of the two objective criteria proposed in the Japanese working paper.

There would be no limit to the size of the area in which a general survey could be conducted. In the case of evaluation and exploitation for which exclusive rights were granted, the size of the area would be determined on the basis of the criterion of effective conservation and utilization of resources. The areas should be defined by co-ordinates of latitude and longitude. A number of technical factors should be taken into account in determining the actual size of areas in which permission was granted for the exploitation of different categories of minerals. His delegation was provisionally proposing 60,000 square kilometres as the optimum area for the exploitation of manganese nodules. A system of relinquishment was also envisaged in the Japanese working paper whereby a contractor would renounce one half of the contract area upon attainment of commercial production. Such a system would permit the reservation of promising mining areas for late-comers and assist the developing countries to participate more fully in the development of sea-bed resources. His delegation attached great importance to the widest possible participation of nationals of developing countries in the exploitation of sea-bed resources, and it would do its best to promote the transfer technology they desired.

The Japanese working paper also included a system of inspection by the authority to guarantee that contractors complied with their obligations under the convention and any other applicable rules. To ensure that areas would not lie unused after the conclusion of a contract, the obligation to invest certain sums of money regularly had been imposed on contractors. Contractors would also have to comply with other international standards relating to the conduct of operations, navigational safety,

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(Mr. Iguchi, Japan)

preservation of the marine environment and installations and devices. Provisions on compensation for damage had also been included, and in the case of pollution damage the liability of contractors or subcontractors was absolute.

Mr. MUKUNA KABONGO (Zaire) said that the question of exploration and exploitation of the international sea-bed area revealed the basic differences between the industrialized countries on the one hand and the producers of land-based minerals, especially under-developed countries, on the other. While the possibility of exploiting the minerals of the sea-bed was a welcome prospect for consuming countries, it was a cause of serious concern to developing countries whose economies were largely dependent on the exploitation of raw materials.

Problems of development concerned the international community as a whole. Developing and industrialized countries alike had their respective contributions to make towards the improvement of the human condition, based on prosperity, well-being and justice, which were the essential conditions of international peace and stability.

The economic implications of the exploitation of the resources of the international sea-bed area should be viewed from the perspective of justice and the equitable sharing of the benefits that would accrue. Access to scientific and technical know-how was of primary importance at a time when an authority with supra-national powers was about to be established.

Confidence in the international authority would depend on how far agreement was reached on the principles governing its action. In that connexion, document A/CONF.62/C.1/L.7 was of great value both in itself and as an instrument for negotiation. Given the flexible approach that was the key-note of the Conference's work, negotiations on that basis should lead to a consensus. The basic conditions defined in document A/CONF.62/C.1/L.7 was a start towards giving effect to the principle of the common heritage of mankind. That document could stand improvement, which would come from exchanges of views and future negotiations.

Mr. WUENSCH (German Democratic Republic) said that the Committee had undoubtedly made progress in the past weeks thanks to the compromises made by many delegations.

A supra-national organization to which States would transfer all their rights with regard to the international sea-bed area was not suited to the task of exploiting the mineral resources of the area, especially since many aspects of deep-sea mining were new and unfamiliar. /...

(Mr. Wuensch, German Democratic Republic)

The right of all States to engage without discrimination in the exploration and exploitation of the resources of the sea-bed should be expressly recognized in the convention .

His delegation supported variant 9A of document A/CONF.62/C.1/L.3 with regard to the question of who might exploit the area.

Although his delegation held different views on some specific issues, document A/CONF.62/C.1/L.8 was a suitable basis for negotiations aimed at reaching an agreement satisfactory to all.

His delegation was optimistic about the possibility of reaching agreement in Caracas and at the next session of the Conference. He emphasized however that both legal theory and the practice of States confirmed the view that norms of international law could be codified only by universal agreement and not merely by the decision of a majority.

Mr. HARAN (Israel) commenting on the view that the international sea-bed régime should be a catalyst of a new order of social justice, said that his delegation believed that it should also be a catalyst of a new order of distributive justice.

As originally conceived, the international area was to comprise that portion of the sea-bed and ocean floor beyond existing national jurisdictions. However, the contemplated extension of the various zones of national jurisdiction would bestow increased resources on a number of coastal States and correspondingly reduce the dimensions of the international area. Many countries such as Israel would not receive any benefit, or might even suffer, from the extension of marine resource jurisdictions. Such countries had an interest in guaranteeing that the resources of the international area would effectively be made available to mankind as a whole. His delegation would therefore evaluate any proposals before the Committee in terms of whether they were conducive to the effective and rational exploitation of sea-bed mineral resources.

Basic conditions governing the exploration and exploitation of the international sea-bed area should be spelled out in the future convention on the law of the sea. Such conditions would include non-discrimination, security of tenure and a system for the settlement of disputes to ensure against any arbitrary interference with exploration and exploitation activities carried out in accordance with existing standards relating to the prevention of marine pollution and freedom of navigation.

(Mr. Haran, Israel)

The nationals and companies of many States would not be able to participate in many sea-bed activities because of geographical, financial or technological limitations. Therefore, the conditions of exploration and exploitation should take that fact into account and ensure at least the indirect participation of such persons and companies in the form of technical training, transfer of technology, and subcontracting. Provision should be made to facilitate the participation of land-locked, shelf-locked and other geographically disadvantaged States in exploration and exploitation activities in the international area. For example, no customs duties should be imposed on the sea-bed mineral production of land-locked States by transit States.

Steps should be taken to ensure that not all areas of the international sea-bed area would be distributed at once.

In assigning contracts, the international authority should take into account whether prospective contractors came from States which had not benefited materially from the extension of marine resource jurisdictions. The international authority should also receive a part of the mineral production of the area in kind so as to accumulate a buffer stock which could be used for purposes of commodity stabilization.

Mr. CHAMBERLAIN (United Kingdom) said that his delegation understood that the statement made by the Chairman at the 14th meeting of the Committee had been a personal summary of the debate on the economic implications of sea-bed mineral exploitation. If that summary was to be reflected in any report the Committee might make to the plenary of the Conference, he was bound to record that his delegation did not share all of the Chairman's conclusions. Although the Chairman referred to one of the points made by the United Kingdom delegation, namely that the fears of adverse economic effects from deep-sea mining upon all States had been greatly exaggerated, the major point made by his delegation had not been included in that summary, namely that the sea-bed authority was not an appropriate organization for arranging commodity agreements. Should such agreements prove necessary, they would have to be made on a world-wide basis, embracing not only the mineral production of the international sea-bed area but land-based production as well. The agenda of the Trade and Development Board of UNCTAD which was meeting in Geneva that same week included an item on commodity agreements. His delegation reserved the right to make a further statement on that point after it had been able to study more carefully the Chairman's personal summary.

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(Mr. Chamberlain, United Kingdom)

In his report on the informal meetings, the representative of Sri Lanka had referred to differences in some of the figures included in documents A/CONF.62/C.1/L.6 and L.8. Those differences were more apparent than real. In an endeavour to simplify the draft by providing, where feasible, identical conditions for hard minerals and hydrocarbons, the sponsors of document A/CONF.62/C.1/L.8 had included a provision for relinquishment in article IX which, while well adapted to the needs of hard mineral mining, was not so well adapted to the requirements of hydrocarbons. Exploration for hydrocarbons in the deep sea-bed entailed high-cost seismic operations and it was necessary to grant exclusive exploration areas of at least the size provided for in document A/CONF.62/C.1/L.8. However unlike the hard mineral industry, the nature of hydrocarbon exploration was such that it would be reasonable to provide for progressive relinquishment at two or three-year intervals, thus leaving the explorer with a final right to an area or areas totalling about 500 square kilometres. That figure was not markedly different from the one proposed in document A/CONF.62/C.1/L.6 for the exploitation phase. With regard to the size of areas for superficial mineral deposits proposed in document A/CONF.62/C.1/L.8, the original area of 60,000 square kilometres after relinquishment of one third was not very different from the 30,000 square kilometres proposed in document A/CONF.62/C.1/L.6.

Mr. VANDERPUYE (Ghana) said that his delegation had sponsored document A/CONF.62/C.1/L.7 and supported it unreservedly. The Group of 77 favoured direct control by the proposed Authority over all stages of exploitation operations.

The proposals submitted by the United States, (A/CONF.62/C.1/L.6), and those of eight European Powers (A/CONF.62/C.1/L.8 and Japan (A/CONF.62/C.1/L.9) were based on the same concept of minimum control by the Authority in the exploitation of the resources of the area, although those of the United States were more balanced in that they conceded greater control to the Authority in certain stages of the operations.

Article IV, paragraph 1 (f) and article X of the United States draft appendix (A/CONF.62/C.1/L.6) envisaged payments to the Authority. His delegation did not agree with that concept since it appeared to affect the title of the Authority to the minerals in the area envisaged in article 2 of the proposals submitted by the Goup of 77 (A/CONF.62/C.1/L.7). Article V of the United States proposals contained specific provisions concerning forfeiture and suspension of the right to mine, which were absent from the working document by the European Powers, which, in fact, allowed

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(Mr. Vanderpuye, Ghana)

the contractor to relinquish its allocation and opt out of the contract without giving the Authority a corresponding right to suspend the contract or reduce the area allocated to a contractor. It also allowed assignment of the contract without the consent of the Authority. Such arrangements were unsatisfactory and unacceptable to his delegation, as was the size of the contract area envisaged in article VII of document A/CONF.62/C.1/L.8 and the foot-note to paragraph 6 of section IV of document A/CONF.62/C.1/L.9. In view of the explanation by the representative of the United Kingdom, it would appear that that article should be redrafted. Under article IV of document A/CONF.62/C.1/L.8 an applicant could hold up to six contracts in respect of each category of resources, or up to 414,000 square miles, at any given time. His delegation considered that that area was unrealistically large and rejected that proposal. In fact it considered that all the proposals in the paper submitted by the European Powers were weighted in favour of the exploiter without providing corresponding safeguards to protect the common heritage of mankind. Furthermore, all three documents contained details which were best omitted from a document outlining basic conditions which were intended as general guidelines for awarding contracts and not as the specific provisions of a model contract.

The CHAIRMAN, replying to the representative of the United Kingdom, reiterated that the summary of economic implications which he had provided at the previous meeting was a personal assessment. If anything had been omitted, it was because he had attempted not to present a report. When decisions were taken he would ensure that all the relevant factors, comments and opinions were taken into account.

Mr. MARTIN (Federal Republic of Germany) said that the proposals submitted by the Group of 77 were a useful contribution to the work of the Committee. However, the views of his delegation differed from those of the Group on some aspects of the basic conditions.

His delegation doubted whether the spirit of the Declaration of Principles required that title to the area be vested in the Authority as provided in paragraph 1 of document A/CONF.62/C.1/L.7. Much would depend on the structure of the Authority which had not yet been discussed. Article 9 could not be considered independently of the basic conditions or the structure of the Authority.

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(Mr. Martin, Federal Republic of Germany)

His delegation could not wholly agree with paragraph 3 since it had understood that the purpose of the Authority would be to promote rather than hinder the exploitation of resources. It also had reservations concerning the terms of paragraph 5. In particular, it considered that marketing, which was important to consumer countries, was outside the sphere of competence of the Authority. He expressed concern that under the provisions of paragraph 6 (b), a decision by the Authority would be regarded as final. His delegation had understood that the concept of mandatory dispute settlement had been accepted in principle. The rules and regulations referred to in paragraph 8 should be discussed at the present Conference and incorporated in the Convention.

He did not intend to comment on the remaining paragraphs of the document, but that did not mean that his delegation agreed with the proposals it contained. He preferred to focus on the positive aspects of the Group's proposals, which were not so much in the wording as in the fact that they represented an attempt to deal with the future relationship between the Authority and exploitation entities. In particular, the statements by the representatives of Colombia and Nigeria at the informal meetings encouraged the hope that negotiations would be fruitful.

ORGANIZATION OF WORK

Mr. DE SOTO (Peru) explained that, at the previous meeting, he had not, as the Chairman had understood, intervened to reserve the right to call a vote. There was no need to reserve what was a permanent right. He had intervened to suggest that as a measure of self-discipline, the Committee should set in motion the procedure provided for under article 37. The representative of the German Democratic Republic had stated that decisions should be taken by general agreement and never by majority. While Peru was a party to the "gentleman's agreement" which had been endorsed by the present Conference, the rules of procedure also provided for other methods. The ideas he had put forward at the previous meeting were in accordance with those rules.

With regard to the negotiating group, his delegation considered that it should be an official subsidiary organ of the Committee in accordance with the provisions of rule 50, and that, as such, it should be subject to all the relevant provisions of the rules of procedure.

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Mr. WALDRON FAMSEY (Barbados) felt that it would be useful to review the decision to set up a formal negotiating group. It was impossible to conceive that in the 10 days left to the Conference such a group could successfully tackle the problems relating to article 9 in particular, as well as the basic conditions and articles 1 to 21. Furthermore, the representative of Peru had suggested the possibility of implementing the provisions of rule 37 of the rules of procedure. Under its present mandate the negotiating group would have to be a group of the whole.

He considered that it had been procedurally unwise to invite Dr. Pinto to act as Chairman of a formal negotiating group. The Chairman of the Committee should have been invited to assume that position in order to enable him to assess the progress of the negotiations with regard to possible implementation of rule 37.

The Committee should decide at the present meeting whether it was impossible for the negotiating group to fulfil its mandate in the limited time available and whether consequently, the group should be held over to the beginning of the second session; alternatively it should decide to reduce the mandate of the negotiating group. A possible solution would be to establish a formal negotiating group under the chairmanship of the Chairman of the Committee to negotiate exclusively on article 9. The basic conditions could be considered in so far as they were relevant to those negotiations. The work of the Committee could not advance until conceptual and philosophical differences had been resolved.

The proposals submitted by the United States and those in document A/CONF.62/C.1/L.8, which he regarded as one and the same, were unacceptable to his delegation. They were based on the concept that the international area was a res nullius in which the Authority would act simply as a register for mining prospectors, contrary to the proposals submitted by the Group of 77 which provided that title to the Area and its resources and effective control over the exploitation of those resources would be vested in the Authority.

The CHAIRMAN said that he found himself in a somewhat difficult situation because of the way matters had developed and also because he himself was personally involved in his capacity as Chairman. He recalled that at the 11th meeting of the Committee the representative of Brazil had urged the Chair to begin consultations immediately with members of the Committee with a view to establishing negotiating machinery on article 9. Subsequently, at the 14th meeting of the Committee, the representative of Brazil had proposed that a formal negotiating group, presided over

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by Mr. Pinto, the Chairman of the informal meetings of the Committee, should be established to negotiate articles 1 to 21, with particular emphasis on article 9 and the basic conditions of exploitation; the Committee had adopted that proposal. Acting on that decision, he had begun consultations with members of the Committee on the composition of the formal negotiating group; he was encountering some difficulty but would continue consultations and report to the Committee the following day. If, however, the proposal made by the representative of Barbados was approved, he would have to seek further instructions from the Committee.

Mr. TRAORE (Mali) asked if any new factors had to be taken into account which would necessitate a reconsideration of the decision the Committee had taken at its previous meeting. In particular, he inquired if the difficulties being encountered by the Chairman in his consultations concerning the composition of the proposed formal negotiating group were at the regional group level or whether they involved new elements. He also asked if the proposal made by the representative of Barbados arose from the Committee's failure to distinguish between the old and new mandate of the Chairman under the two proposals made by the representative of Brazil, or whether new developments had made the previous day's decision inapplicable.

The CHAIRMAN said that as a crucial point had been reached in consultations on the establishment of the group, it would be inadvisable to report at the present time on the status of those consultations. The only new element to be taken into account by the Committee was the observation by the representative of Barbados that the mandate of the formal negotiating group proposed at the previous meeting by the representative of Brazil was too wide, with the result that too many members of the Committee wished to participate in it.

Mr. GONZALES-LAPEYRE (Uruguay) agreed with the representative of Barbados that it was necessary to restrict the scope of the negotiations and to limit the formal negotiating group to the current session of the Conference.

Mr. FONSECA (Colombia) said that he was speaking in the hope of resolving a difficult situation so that the Committee could benefit from the efforts and considerable progress it had made in the last few weeks. He believed there was a broad consensus in the Group of 77 that a negotiating group should be established, with restricted membership, but in which any member of the Committee could participate if

(Mr. Fonseca, Colombia)

he so desired. Since there was so little time left, he felt the group should concentrate on article 9 and the basic conditions of exploitation. With regard to the composition of the negotiating group, he himself agreed with the United States representative that 25 or 30 members would be ideal, but he was willing to consider any reasonable compromise formula. As a compromise formula, he suggested nine representatives from each regional group, and one representative for each proposal, namely the representatives of the United States, Japan, Western European States, the Group of 77, and Australia, giving a total of 50 members. That might seem large to some, but it was a compromise suggestion which he was making after consultation with members of the Group of 77.

Mr. WARIOBA (United Republic of Tanzania), Mr. TOURE (Mauritania), Mr. KEITA (Guinea) and Mr. MUKUNA-KABONGO (Zaire) expressed the view that the Committee should not reconsider the decision it had taken at its 14th meeting.

Mr. ALLOUANE (Algeria) drew attention to rule 36 of the rules of procedure. He expressed the hope that a ruling by the Chairman would obviate the need for the application of that rule.

Mr. VANDERPUYE (Ghana) said that, although he did not believe the Committee should review the decision it had taken the previous day, the terms of reference of the negotiating group should be restricted to draft article 9 and the basic conditions of exploitation. The chairmanship of the negotiating group should not be an issue. The Chairman should continue consultations on the composition of the group and report back to the Committee as soon as possible. Any negotiating group established should be carried over to the next session of the Conference.

Mr. BEMAKINWA (Nigeria) said that it would have been helpful if the Chairman had reported on how far he had proceeded with the consultations on the establishment of negotiating machinery he had agreed to undertake at the request of the representative of Brazil at the 11th meeting. He supported the views of the representative of Barbados that the original procedure suggested should be followed and that the Chairman should fully explore all possibilities for negotiation, perhaps informally.

Mr. CARAFI (Chile) said he understood that any negotiations should be handled by the Chairman. The negotiating group proposed by the representative of Brazil at the previous meeting to be chaired by Mr. Pinto should discuss the items referred to it and then report back to the Committee.

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Mr. PARK SOO GIL (Republic of Korea) said that the Committee should abide by the decision it had taken at the previous meeting. The mandate of the proposed negotiating group should, however, be defined more clearly; in particular, a decision should be taken on whether the group should be dissolved at the end of the current session of the Conference, in which case a small group would be more efficient, or whether it should be carried over to the next session of the Conference, in which case a larger group representing all interest groups, along the lines suggested by the representative of Colombia, would be desirable.

The CHAIRMAN suggested that, as well as continuing consultations on the composition of the negotiating group, he should also consult with members of the Committee on the mandate of the group.

Mr. RATINER (United States of America) said that he had understood that the mandate of the negotiating group had been decided by the Committee. If there was to be any further consideration, even informal, of its mandate, he would request the application of rule 36 of the rules of procedure.

Mr. WALDRON-RAMSEY (Barbados) considered the position taken by the United States representative untenable, as a formal decision by the Committee did not preclude informal consideration of that decision.

Mr. RATINER (United States of America) rejected the statement made by the representative of Barbados, observing that since rule 36 of the rules of procedure had not been applied to the proposal by the representative of Barbados purely out of courtesy, the discussion of that proposal should not be continued.

The CHAIRMAN said that the establishment of a negotiating group which would be able to carry out its functions properly would require the co-operation of every member of the Committee. He trusted that all members of the Committee would use their usual good sense in trying to reach a decision on setting up the negotiating group.

The meeting rose at 6.45 p.m.