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United States of America: draft appendix to the law of the sea Treaty concerning mineral resource development in the international sea-bed area

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necessarily be effective, because of the obvious conflicts of interest which would exist among producers, on the one hand, and between producers and consumers, on the other.

It is assumed, of course, that membership in any such agreements would include most of the countries with a major interest in the production, trade and consumption of the various metals. However, even under these circumstances, not only the decision-making process, but also the development and implementation of means of enforcing decisions would be problems of major proportions. Moreover, the joint product nature of sea-bed production makes it difficult to selectively manage, through commodity agreements as well as through production restrictions, the amount of recovery from the sea-bed of individual metallic components of nodules.

Finally, commodity agreements are incapable of being designed to aid just the land-based producers that are developing countries. Their very nature requires them to be based upon existing capacity and this would mean favouring the industrially advanced producers.

Compensation

The function of compensation is often to pay a supplement to a high cost producer in order to permit that producer to stay in operation when the market price is too low to enable him to operate profitably without the supplement. Since the higher cost producers are being subsidized in their operation, they have little incentive to reduce costs or improve the quality of their product. If the sea-bed segment of the industry, in this case, were required to provide a subsidy to land-based producers, additional costs would be imposed on sea-bed mining and consumers of sea-bed products and the effect would be similar to that of production restrictions. Thus, a compensation scheme for land-based production could lead to upward pressure on prices.

Compensation does have the advantage, however, that it can be selectively applied so that only developing country producers are eligible. In addition, compensation can be provided only to the extent that resources freed from mineral production are not employable in other productive activities. If such a system were adopted, it would be desirable to use it in a way that encourages internal adjustment in the countries affected.

IV. Conclusions

The following conclusions concerning the effects of production restrictions, commodity agreements and compensation can be drawn from the preceding analysis:

- (1) All three schemes invariably cause prices to be higher than they would otherwise be;
- (2) Restricting sea-bed production cannot effectively stabilize land-based producer revenues, much less increase them, due to the small segment of the market served by sea-bed production;
- (3) Commodity agreements are extremely difficult to establish and have built-in impediments to their success;
- (4) Except for compensation, these solutions cannot be selectively applied solely to benefit developing country producers.

In a summary of effects that are to be expected from these three types of restrictions on sea-bed production, one point is most important. To the extent there are beneficiaries of restricting sea-bed production, they will be land-based producers who are largely the industrially developed countries. Those suffering the greatest losses will be the world's consumers, including the peoples of the lesser developed economies who depend so heavily upon the capital goods made with these minerals for increasing their future standards of living.

DOCUMENT A/CONF.62/C.1/L.6

United States of America: draft appendix to the law of the sea Treaty concerning mineral resource development in the international sea-bed area*

[Original: English]
[13 August 1974]

Article I

GENERAL

1. All commercial prospecting, evaluation and exploitation activities in the international sea-bed area which have as their principal or ultimate purpose the discovery, appraisal or exploitation of mineral deposits shall be conducted in accordance with this Convention, these regulations, supplementary regulations promulgated by the Authority in accordance with this Convention, and the terms and conditions of [legal arrangements].

2. Any [legal arrangements] entered into between the Authority and other entities as defined in article II must be drawn in strict accordance with this Convention, these regulations and supplementary regulations promulgated by the Authority in accordance with the provisions of this Convention. (Hereinafter, the term "this Convention" shall be deemed to include these regulations and supplementary regulations promulgated in accordance with the provisions of this Convention.) The Authority shall not have the right to require terms and conditions in [legal arrangements] not found in this Convention.

*These articles are preliminary in nature and are intended to reflect concepts rather than final detailed provisions. It is expected that revisions and additions will be submitted by the United States.

Article II

LEGAL RELATIONSHIPS

1. The Authority may enter into [legal arrangements] concerning evaluation and exploitation with a Contracting Party, group of Contracting Parties or natural or juridical persons which obtain the sponsorship of a Contracting Party or group of Contracting Parties (hereinafter referred to as "Party or Person"). The Authority may not enter into [legal arrangements] for such purposes with any other entity.

2. In those cases in which a Contracting Party elects to act as a Sponsoring Party rather than as the direct recipient of the rights granted pursuant to [legal arrangements] the Sponsoring Party shall be responsible for the performance of any duties or obligations imposed by this Convention on natural or juridical persons which it sponsors.

3. The [legal arrangements] shall grant the right to mine. The right to mine shall include both the evaluation and the exploitation of mineral deposits.

4. It shall not be necessary to enter into [legal arrangements] to engage in commercial prospecting, which shall be governed by the provisions of article III.

Article III

THE RIGHT TO CONDUCT COMMERCIAL PROSPECTING

1. All States and persons natural or juridical shall have the right to conduct commercial prospecting in the international sea-bed area in accordance with the provisions of this Convention.

2. The term "commercial prospecting" shall, for the purpose of this Convention, mean the carrying out of geophysical and geochemical measurements, bottom sampling, dredging, drilling and other forms of subsurface entry with the intention of locating mineral deposits for the purpose of evaluation and exploitation.

3. Any State or person natural or juridical conducting commercial prospecting activities shall so inform the Authority. The Authority shall acknowledge receipt of this information by issuing a prospecting certificate.

4. The prospecting certificate shall be issued for a two-year period and shall be automatically reissued for additional two-year periods.

5. If the Tribunal finds, on complaint of the appropriate organ of the Authority or any Party or Person, that a prospector has conducted his activities in such a way as to result in a gross and persistent violation of this Convention, the Tribunal may prohibit that Party or Person from prospecting for a period of two years. At the expiration of such period, the prospector shall be entitled to engage in prospecting again without regard to the previous activities which gave rise to the prohibition.

6. Notwithstanding the provisions of paragraph 2 of this article, no State or person, natural or juridical, shall have the right to conduct drilling or any other form of excavation in the international sea-bed area deeper than 300 metres below the surface of the sea-bed for purposes of commercial prospecting, evaluation and exploitation unless such State or person obtains the right to mine pursuant to article IV.

Article IV

THE RIGHT TO MINE

General conditions

1. Any Party or Person, as defined in article II, paragraph 1, shall be entitled to enter into [legal arrangements] with the Authority, which shall grant the right to mine to such Party or Person (hereinafter referred to as the miner) when the following conditions have been met:

(a) The miner declares to the Authority that in his judgement exclusive rights to an area or areas are essential to the pursuit of further commercial activity. In the case of a miner who is a natural or juridical person, the declaration to the Authority shall be made by his Sponsoring Party.

(b) In the case of a miner who is a natural or juridical person, he shall submit to the Sponsoring Party all raw data which he has acquired from the international sea-bed area prior to the date of his application for a right to mine to the extent such data concern the physical and chemical properties of the area or areas and the resources for which he seeks an exclusive right to mine. The Sponsoring Party shall ensure that appropriate protection is provided for such data in order to protect the commercial value of such data to the miner.

(c) The miner shall describe the category of mineral or minerals for which he seeks the right to mine. The right to mine shall only extend to minerals within that category. The mineral or minerals shall be described as falling within one of the following two categories:

Category (i) Fluids or minerals extracted in a fluid state, such as oil, gas, helium, carbon dioxide, water, sulphur and saline minerals, steam, hot water or brine or geopressed

fluids, metalliferous muds and any hard minerals found more than three metres beneath the surface of the sea-bed.

Category (ii) Hard minerals on the surface of the sea-bed or beneath the surface of the sea-bed not deeper than three metres including nodules.

(d) The Sponsoring Party, in the case of a natural or juridical person, shall ascertain the financial and technical competence of the miner and shall provide assurances to the Authority that the miner is financially and technically competent to engage in mining and comply with the conditions imposed by this Convention.

(e) The miner shall agree to comply with this Convention and any Tribunal orders or decisions.

(f) The Authority shall be entitled to receive an application fee not to exceed [US \$50,000] to defray the administrative expenses of the Authority.

2. Upon receipt by the Authority of the declarations, statements, assurances and application fee required pursuant to paragraph 1, the Authority shall enter into [legal arrangements] granting the right to mine to the Party or Person requesting it in an area or areas to be designated by that Party or Person not to exceed, in the case of minerals described in paragraph 1 (c) (i) of this article, 300 square kilometres per area applied for. In the case of minerals described in paragraph 1 (c) (ii), the area or areas to be designated shall not exceed 30,000 square kilometres per area applied for.

3. The precise manner in which the area or areas is described shall be in conformity with supplementary regulations to be promulgated by the Authority in accordance with the terms of this Convention.

4. The right to mine shall be an exclusive right to mine in that no other Party or Person shall be granted any right to evaluate or exploit minerals in the same category and area unless the right to mine is forfeited in accordance with article V, paragraph 2, suspended in accordance with article VIII or transferred in accordance with article IX.

Procedures

5. In the event any Party or Person applies for the right to mine the same category of minerals in the same or an overlapping area applied for by another Party or Person, the first such Party or Person to have so applied shall be granted the right to mine.

6. During the first day after this Convention comes into force, the following procedure for awarding applications for the right to mine shall be used in lieu of the procedure set forth in paragraph 5 of this article. All applications for a right to mine shall be held sealed and unopened by the Authority until the opening of business on the first working day after 24 hours have elapsed from the time this Convention comes into force measured in local time at the site of the Authority. At that time, the Authority shall publicly open and determine whether applications have been received for the same category of minerals in the same or overlapping areas. The Authority shall make public all such competing applications when they are opened and no subsequent applications shall be accepted for the same category of minerals in the same or overlapping areas. In the event any such competing applications have been received, the right to mine the area or areas in question shall be awarded by the Authority within 30 days to the highest bidder after a request is made to the competing applicants, or their Sponsoring Party, in the case of natural or juridical persons, for sealed bids. A bid shall consist of a commitment on the part of the bidder to transfer to the Authority a specified amount of money in a common convertible currency to be named by the Authority in its request for bids. Operations under [legal arrangements] for the right to mine may commence upon full payment of the bid commitment.

7. The Authority may enter into other [legal arrangements] with respect to the right to mine minerals in the other category in the same area or areas which have already been awarded to a miner. The Authority shall ensure that in such cases the [legal arrangements] include a provision requiring non-interference by succeeding rights holders with the Party or Person first granted the right to mine in the area. The Authority shall promulgate supplementary regulations in accordance with the provisions of this Convention to ensure that holders of the right to mine do not unjustifiably interfere with other uses of the area.

Article V

THE RIGHT TO MINE—EVALUATION AND EXPLOITATION PHASES

1. The right to mine shall be conducted in two phases: (a) an evaluation phase which shall commence when the right to mine is granted and shall terminate when commercial production is achieved as defined in paragraph 3 of this article or at the end of 15 years, whichever occurs first; (b) an exploitation phase which shall commence when the evaluation phase is terminated and which shall terminate after 20 years. An additional period of 20 years shall be granted for exploitation under the original right to mine at the option of the miner but the right to mine shall be amended to be made subject to such regulations as are in force at that time.

2. The miner shall forfeit the right to mine at the end of the evaluation phase if he has not achieved commercial production as defined in paragraph 3 of this article.

3. Commercial production shall be deemed to have begun if for a period of six consecutive months the miner engages in activity of sustained large-scale recovery operations which yield a sufficient quantity of material as to clearly indicate that the principal purpose is large-scale production rather than production intended for information gathering, analysis, equipment or plant testing.

4. In the event the appropriate organ of the Authority determines that commercial production has been achieved, it may require that the miner commence the exploitation phase. In the event of a dispute between the Authority and the miner concerning whether the miner has commenced commercial

production, the evaluation phase shall continue until the dispute has been settled in accordance with dispute settlement procedures provided for in this Convention. Any other Party or Person who believes that a Party or Person holding a right to mine has commenced commercial production but has not entered into the exploitation phase of his right to mine may request the Authority to so determine and, in the event of disagreement with the Authority's determination, may resort to the dispute settlement procedures provided for under this Convention.

5. Any Party or Person which has obtained the right to mine shall, if the right is forfeited under paragraph 2 of this article, make available all data which it has acquired as defined in article IV, paragraph 1 (b) to the Authority. In the case of a natural or juridical person such data shall be submitted by the Sponsoring Party. The Authority shall make such data available to the public immediately upon receipt.

Article VI

REQUIREMENTS TO ENSURE DILIGENCE DURING THE EVALUATION PHASE

1. In order to ensure that the miner carries out his evaluation work in a diligent manner, he shall be required to make periodic expenditures. The Authority shall promulgate supplementary regulations in accordance with the terms of this Convention, selecting specific levels of expenditure from the allowable range set out in paragraph 2 of this article. These expenditure requirements shall be applied in such a manner as to assure that they do not discriminate in form or in fact between different miners. The Authority, in selecting the specific amounts, shall be guided by the principle that these amounts should be at a level adequate on the one hand to ensure diligence and on the other to ensure that there is no discrimination against *bona fide* miners who have the intention of serious evaluation.

2. The Authority shall select a level from the following schedule³² and shall require that the miner spend not less than the amount specified per annum per each area which he has been awarded. When the Authority selects a level within each category or time period, that level for that time period shall be applied to all miners without discrimination.

Paragraph 1 (c) (i) Minerals			Paragraph 1 (c) (ii) Minerals		
Years	Amount per annum (In dollars)		Years	Amount per annum (In dollars)	
1-5	120,000-	200,000	1	120,000-	200,000
6-10	300,000-	1,200,000	2-5	300,000-	400,000
11-15	400,000-	1,200,000	6-10	600,000-	1,500,000
			11-15	750,000-	1,500,000
TOTAL	4,100,000-	13,000,000	TOTAL	8,070,000-	16,800,000

3. With respect to paragraph 1 (c) (ii) minerals, expenditures for equipment purchase or off-site construction costs directly related to the area or areas for which the miner holds the right to mine shall apply towards fulfilment of these requirements.

4. Expenditures in excess of the required amount for any given year shall be credited to the requirement for the subsequent year or years.

5. In the case of a natural or juridical person, the Sponsoring Party shall be responsible for ensuring compliance with paragraphs 1 and 2 of this article.

Article VII

ADDITIONAL REQUIREMENTS DURING THE EXPLOITATION PHASE

1. The provisions of article VI shall not apply when the exploitation phase commences pursuant to article V.

2. The following additional terms and conditions shall apply during the entire period of the exploitation phase:

³² An automatic mechanism should be found for changing these figures with inflation.

(a) Payment to the Authority, in the case of a natural or juridical person by the Sponsoring Party, of such revenues as are established pursuant to article X;

(b) Any Party or Person must submit, in the case of a natural or juridical person through the Sponsoring Party, all raw data which he has acquired from the international sea-bed area concerning the area for which he holds exclusive rights to the extent such data concern the physical and chemical properties of the area or areas and the resources either while he held a prospecting certificate or during the previous evaluation phase or if he did not hold a prospecting certificate, all such data which he may have acquired from others prior to obtaining the right to mine.

Such Party or Person shall also submit once each year during the exploitation phase all such data described above and all data concerning the amount of production achieved and [such other data as is directly relevant to the implementation of article X].

Article VIII

SUSPENSION OF THE RIGHT TO MINE

1. The right to mine shall be suspended and no compensation shall be paid by the Authority to the miner if any of the following events occurs:

(a) The Tribunal finds on complaint of the Authority or any Party or affected Person that the Party or Person holding the right to mine has conducted his activities in such a way as to result in a gross and persistent violation of this Convention if such violations are directly related to his mining activities and were not caused by circumstances beyond his control.

(b) The Tribunal finds, on complaint of the Authority, that a Party or Person has wilfully failed to comply with a final or interlocutory decision of the Tribunal.

2. No final suspension of the right to mine may be implemented except after the miner has had a reasonable opportunity to exhaust the procedures provided for in this Convention for the settlement of disputes which shall include *de novo* review of the facts and law in the matter by the Tribunal. If the miner holds the right to mine more than one area, suspension shall only apply to the area or areas which have given rise to the situation for which suspension is the penalty. Suspension or other penalties imposed pursuant to this article shall not prejudice the right of a Party or Person to obtain the right to mine in other areas in the future.

3. The period of suspension shall be proportionate to the nature of the violation.

4. The Tribunal may, in lieu of suspending the right to mine, impose monetary penalties proportionate to the nature of the violation and not to exceed . . . per violation. The Tribunal may also impose monetary penalties proportionate to the nature of the violation and not to exceed . . . per violation for violations which are not gross and persistent if such violations are directly related to his mining activities and were not caused by circumstances beyond his control.

5. Any Party or Person whose right to mine is suspended pursuant to this article shall make available all data which it has acquired as defined in article IV, paragraph 1 (b) and article VII, paragraph 2 (b) to the Authority. In the case of a natural or juridical person such data shall be submitted to the Authority by the Sponsoring Party. The Authority shall hold such data in secret.

Article IX

TRANSFERABILITY OF THE RIGHT TO MINE

1. The right to mine shall be freely transferable provided the transferee agrees to comply with all applicable provisions of this Convention and any Tribunal orders or decisions.

2. In the case of a transferee who is a natural or juridical person, such person must obtain the approval of the transferor's Sponsoring Party to the transfer unless the transferee elects to obtain the sponsorship of another Contracting Party or group of Contracting Parties in which case such new Sponsoring Party shall have previously certified to the Authority its willingness to assume the role of Sponsoring Party immediately upon the completion of the transfer of rights and certifies compliance with article IV, paragraph 1 (d).

3. The right to mine may be transferred in whole or in part.

4. The rights of the transferee, whether transferred in whole or in part, shall be identical to the rights held by the transferor prior to the transfer.

Article X

INCOME OF THE AUTHORITY—REVENUE COMMITMENTS OF CONTRACTING PARTIES AND SPONSORING STATES

Any Party or group of Parties holding the right to mine, or acting as Sponsoring Parties under the terms of article II, shall be required to make annual financial payments during the exploitation phase in a convertible currency according to [formula].

DOCUMENT A/CONF.62/C.1/L.7

Text on conditions of exploration and exploitation prepared by the Group of Seventy-Seven*

[Original: English]
[16 August 1974]

BASIC CONDITIONS

1. The Area and its resources being the common heritage of mankind, the title to the Area and its resources and all other rights in the resources are vested in the Authority on behalf of mankind as a whole. These resources are not subject to alienation.

2. Title to the minerals and all other products derived from the resources shall not pass from the Authority except in accordance with the rules and regulations laid down by the Authority and the terms and conditions of the relevant contracts, joint ventures or any other such form of association entered into by it.

3. The Authority shall from time to time determine the part or parts of the Area in which activities relating to exploration and exploitation may be conducted.

4. All contracts, joint ventures or any other such form of association entered into by the Authority relating to the exploration of the Area and the exploitation of its resources and other related activities shall ensure the direct and effective control of the Authority at all times, through appropriate institutional arrangements.

*Circulated in accordance with the decision taken by the Committee at its informal meeting 16 August 1974.