

Third United Nations Conference on the Law of the Sea

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

A/CONF.62/C.1/SR.22

22nd meeting of the First Committee

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume IV (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Third Session)*

22nd meeting

Monday, 28 April 1975, at 3 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

International régime for the sea-bed and the ocean floor beyond the limits of national jurisdiction (*continued*)

1. Mr. FARMAN (Afghanistan) said that it was to be hoped that the new opportunities offered by the oceans and their resources would make it possible to remove some of the inequalities of the modern world. The concept of the common heritage of mankind, universally recognized as the basic principle of the law of the sea, excluded a situation in which only a minority of States profited from the sea's natural resources. The future convention should preserve mankind's common heritage, and its provisions should be just and equitable, so as to solve the special problems of developing countries, and particularly land-locked countries.
2. At Caracas the article entitled "Who may exploit the area" had been considered fundamental because it embodied all the principles connected with the régime and the machinery for protecting the common heritage.
3. A majority of States had considered it necessary to establish a strong International Authority with comprehensive powers and universal membership, which alone would be competent to carry out activities associated with the exploitation of the resources of the sea-bed. Although that was the most just formula, in a spirit of compromise the Group of 77 had also proposed a variant, that reproduced as variant B of article 9 in document A/CONF.62/C.1/L.3.¹
4. His delegation endorsed the ideas expressed at the 20th meeting by the co-ordinator of the Group of 77 with regard to the structure of the proposed machinery. The assembly, the supreme organ of the Authority, should be composed of all member States. It should be instrumental in establishing the indispensable political, economic and social balance between developing and developed countries, land-locked and coastal States. In the other organs with limited representation, such as the council, the executive organ, there should be fair representation for land-locked and geographically disadvantaged States and for developing countries, and no State should have special rights, such as the veto.
5. Because the chief factor which hampered the economic development of land-locked States was the high price of their imports and exports, his delegation considered that account should be taken of that fact in the system of revenue distribution applied to sea-bed resources. The international area should be used for peaceful purposes only.
6. His delegation reserved the right to speak again on the subject when it was discussed in detail.
7. Mr. ELARABY (Egypt) said that his delegation fully endorsed the views and arguments advanced by the co-ordinator of the Group of 77 and urged delegations not to be too hasty to describe them as rigid.
8. Two basic principles should be taken into account when considering the exploration and exploitation of the sea-bed beyond national jurisdiction. The first was that those resources were the common heritage of mankind and that all States, whatever their economic development and technological progress, should therefore be partners in those activities and be jointly responsible for safeguarding the common heritage. The second was that the rules and regulations embodied in the future convention would remain in force for many years and should therefore take into consideration possible future developments. In the light of those principles, his delegation was unable to accept any rules which would restrict the powers of the International Authority.
9. Since all parties to the convention would have the right to review and supervise the actions of the International Authority, the assembly should have wide competence for policy-making, providing general guidelines and distributing revenue in the interests of all members. However, since in all probability the assembly would normally meet only once a year, there should also be a council with a limited membership based on equitable geographical distribution, with no permanent seats for States or groups of States, to provide continuity. The council should not, however, take any important decisions without consulting the assembly, and a suitable balance should be established between the powers and responsibilities of the two organs.
10. There should be a compulsory and effective system for settling disputes arising from the exploration and exploitation of the resources of the sea-bed. The best solution was probably to establish a special law of the sea tribunal.
11. It should be remembered that any agreements reached at the Conference would be ineffective unless they reflected a spirit of international co-operation which was more in line with the needs of the age than was competition.
12. Mr. RICHTER (Federal Republic of Germany) said that his delegation supported the statement of the United States representative at the previous meeting, as that reflected its basic thinking about the powers and functions of the Authority and its internal structure.
13. The confidence of the industrialized countries in the outcome of the Conference, at least with regard to the work of the First Committee, would depend largely on the establishment of satisfactory machinery. It was only natural to expect the degree of usefulness, active participation and knowledge contributed to the common cause by a member to be taken into account in designing the machinery. There was wide agreement on the need for an assembly, a council with subsidiary organs and a secretariat. The assembly should have power to lay down general policy guidelines, whereas the council, as its executive organ, should supervise the exploration of the area and the exploitation of its resources in accordance with the convention. It should adopt and amend rules and regulations, in addition to the basic conditions, in order to ensure non-discriminatory and orderly exploration and exploitation. It should also consider and approve recommendations to the assembly, adopt the Authority's administrative and financial regulations, specify and implement the revenue distribution system in

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. III (United Nations publication, Sales No. E.75.V.5).

accordance with the convention and request advisory opinions from the tribunal on any relevant issue. It might establish a subsidiary organ to approve the contracts negotiated by the secretariat and supervise compliance with the convention and with the terms of contracts.

14. The secretariat should be similar to those of other international organizations. A director-general should be appointed by the council, with the approval of the assembly, and the paramount consideration in the recruitment of staff should be to secure the highest standards of efficiency, technical competence and integrity.

15. His delegation believed that the basis existed for drafting a single negotiating text on the machinery in the near future.

16. Mr. YANKOV (Bulgaria) said that his delegation attached great importance to the establishment of international machinery for the orderly management of the common heritage and to provide an institutional infrastructure for an effective and just international régime.

17. The charter of the Authority should define its basic purposes—which, of course, were ultimately dependent on the legal content of the future international régime. They should, however, include: encouraging the exploration and exploitation of the mineral resources of the sea-bed and the subsoil thereof for the benefit of all mankind, taking account of the special needs of developing and particularly developing land-locked countries; strengthening, through the co-operation of member States in exploration and exploitation, international peace and security, and promoting friendly relations among States; guaranteeing all States, without discrimination and on a basis of equality, access to mineral sea-bed resources for peaceful purposes; ensuring that the exploration and exploitation of those resources were safe, orderly and rational, so as to guarantee their optimum utilization; promoting the transfer of technology to developing countries and others; and ensuring that the marine environment was not adversely affected by the exploitation of sea-bed resources.

18. The International Authority should have regulatory and licensing functions and be empowered, when appropriate, to enter into contractual arrangements with States or to undertake exploration and exploitation itself. It was premature to specify its powers and functions and those of its organs in detail, since that was related to the outcome of the negotiations on article 9, in particular to the conditions of exploration and exploitation. His delegation was prepared to show some flexibility, but would be greatly concerned if the Authority were to be thought of as a kind of super-organization with cumbersome, unwieldy and expensive machinery: it should be an effective tool for applying the common heritage principle.

19. The Authority's principal organs should be an assembly, a council, a secretariat and an operational board which would co-ordinate, organize and, when appropriate, undertake exploration and exploitation. The board should operate under the guidance of the council and be responsible to it.

20. The assembly should consist of all member States and should meet every year and when convened at the request of the council or of a majority of its members. Procedural decisions should be taken by a majority of members present and voting, and substantive decisions by a two-thirds majority of members present and voting, provided the number included at least a majority of the member States.

A decision on whether a question was substantive or procedural should be taken by a majority of members present and voting. The assembly might discuss and make recommendations on any questions within its competence or related to the powers and functions of its organs.

21. The council, the executive organ of the Authority, should meet regularly not less than twice a year and whenever necessary for the performance of its functions. Its members should be elected by the assembly in accordance with the principle of equitable geographical distribution; in that connexion his delegation was prepared to accept any formula that would ensure fair representation of all States.

22. Procedural decisions in the council should be made by a majority of members present and voting, and substantive decisions should, as a general rule, be taken by consensus. In his delegation's opinion, a consensus had nothing in common with either a veto or a mechanical majority. The consensus was emerging as a new and flexible institution of international law which had already proved its usefulness in law-making and the adoption of international treaties of a generally agreed universal character. The Authority would be effective, after all, only if it functioned by general agreement.

23. The operational board might be empowered, subject to the approval of the council, to enter into service contracts for joint ventures with States and to undertake exploration and exploitation itself if and when that became feasible.

24. The secretariat should consist of a secretary-general and such staff as the Authority deemed necessary. Its size should be proportionate to the scale of the Authority's functions, which would certainly vary over the years.

25. Mr. TIEN Chin (China) said that he agreed with representatives of developing countries that the international sea-bed machinery should be an organization jointly administered by all sovereign States, big and small, on a basis of equality. It should not fall under the control of and be monopolized by the super-Powers or be used by them to plunder the common heritage of mankind, but should work for the benefit of all peoples. The organization should have broad powers, including the right to direct exploration and exploitation of sea-bed resources, and should regulate all activities in the international area, such as scientific research, production, processing and marketing. The super-Powers must not be allowed to reduce the machinery to a hollow administrative framework devoid of real power.

26. The machinery should have an assembly, a council and an enterprise. The assembly, the supreme organ, should be composed of all States and should formulate policy on all important matters and give instructions to the council and other subsidiary organs. The council, as an executive organ, should be responsible to the assembly and operate according to the guidelines laid down by it. The enterprise would be subordinate to the assembly and the council, and would be responsible for all operations related to exploration, exploitation and scientific research.

27. The composition of the assembly and the council should be consistent with the principles of equality among States and of rational geographical representation. Developing countries, as the majority, should have greater weight in the council. The council and other subsidiary organs should not be subjected to any form of control or manipulation by the super-Powers. In the assembly and the council, proce-

dural matters should be decided by a simple majority and matters of substance by a two-thirds majority. His delegation was opposed, as were many developing countries, to the super-Powers introducing a disguised veto system with the aim of appropriating the international sea-bed.

28. The machinery and the régime for the exploration of the international sea-bed were closely interrelated. The international machinery should be governed by the international régime, and the régime should be enforced by the machinery. The régime would have to embody the common heritage concept and be in consonance with the demands of all countries. The developing countries were demanding machinery which would ensure that such a régime was implemented, but the super-Powers were working for a régime that would enable them to appropriate the international sea-bed and were therefore trying to weaken the machinery. Two conflicting views had existed about the machinery and régime for some years, and recent discussions in the First Committee and in its Working Group on the subject had shown that the super-Powers were maintaining their unreasonable demands on both questions. Until those demands were abandoned no real progress was possible.

29. In conclusion, he said that the proposed single text on the machinery for the exploitation of the international sea-bed should reflect the demands of the majority of States and should serve the interests of all peoples.

30. Mr. RAKOTOSIHANAKA (Madagascar) said that he entirely agreed with the statements of the representatives of Zaire and Yugoslavia at the 21st meeting and with most of the points made by the Peruvian representative at the 20th meeting.

31. A fairly wide measure of agreement had been reached concerning the International Authority, but some differences of view concerning its competence and powers still had to be resolved. In his delegation's view, the Authority must be representative and possess legal personality. The powers and composition of the assembly and council should be those proposed by the Peruvian representative. The assembly, as the supreme organ of the Authority, should be vested with all its powers; he was strongly opposed to any device of the type embodied in the United Nations Charter whereby a small and unrepresentative body had the power to paralyse the whole organization.

32. The decisions of the assembly would be mandatory and, in some cases, accompanied by enforcement measures. Major issues should be decided by a two-thirds majority and others by a simple majority. Its directives would provide the legal framework within which the council would operate. The principle of equitable geographical distribution should be given due weight in electing the members of the council, and he was opposed to conferring any kind of veto power on a minority in the council. The establishment of an enterprise should be expressly provided for in the convention, as should a planning commission for exploration and exploitation operations.

33. In conclusion, he said that his delegation wanted a strong, flexible democratic Authority that would protect the interests of all States.

34. Mr. LAUTERPACHT (Australia) said that his delegation supported the establishment of an International Sea-Bed Authority having wide powers to control exploration and exploitation activities in the sea-bed area beyond national jurisdiction and to exploit the resources available

to it for the benefit of mankind. The Authority should have the full powers of a juridical person in both international and municipal law, and the power to make treaties and other agreements with States and international organizations for the implementation of its objectives.

35. The structure and operation of the Authority should be simple, efficient and economical. Its principal organs should be an assembly, a council, an enterprise and a secretariat, all of whose powers and relationships should be defined in detail in the convention.

36. The assembly should consist of all States bound by the convention establishing the Authority. It would be the principal deliberative and legislative organ of the Authority, would elect the council, and would have power to establish subsidiary organs, to adopt criteria and rules covering operations in the area and the sharing of benefits among States and to approve an annual plan of apportionment of benefits proposed by the council. Its decisions would be adopted by a simple majority except in the case of important matters such as the exercise of legislative powers and the issuing of policy directives, which would require a two-thirds majority.

37. The council should be constituted on the basis of equitable geographical distribution and the need to represent the interests of all groups of States. His delegation favoured a council of 36 members, each having one vote. Decisions on matters of substance would require a two-thirds majority and procedural decisions a simple majority, the question of whether an issue was substantive or procedural being decided by a procedural vote.

38. The council would be primarily concerned with the supervision, co-ordination and implementation of the Authority's activities. It would appoint and supervise the organs concerned with the exploitation of the area, with power to propose to the assembly the establishment of subsidiary organs, and would prepare and submit budgets to the assembly. The subsidiary organs should include an economic commission, which would maintain continuous surveillance of the effects of mining in the area on the economies of countries producing and consuming similar minerals of land-based origin, and an advisory commission on scientific and technical matters.

39. His delegation attached particular importance to the proposed enterprise. The enterprise should possess a personality separate from the Authority; it should have its own governing body, appointed by the assembly, and a chief executive officer. Its function would be to carry out exploration and exploitation of the area on behalf of the Authority, either on its own account or in association with States, State enterprises or private persons.

40. The secretariat should play an important role within the Authority. It should negotiate contractual relationships with States, juridical persons or companies, and should be associated in an administrative capacity with the enterprise. It should also have the necessary supervisory functions to ensure that contractors and the enterprise complied with appropriate terms and conditions, and with the rules and regulations governing activities in the area.

41. In the matter of the settlement of disputes, his delegation was committed to strict observance of the rule of law in all matters connected with the operation of the Authority and to the availability of effective procedures for the settlement of disputes. In certain circumstances, decisions of the organs of the Authority should be open to

judicial review at the instance of aggrieved parties, although disputes should be settled by negotiation and conciliation whenever possible. His delegation favoured the establishment of a law of the sea tribunal with jurisdiction over all disputes arising out of or in connexion with the future convention. Should the establishment of such a tribunal prove impossible, it would support a tribunal of more limited competence to deal with disputes relating to the activities of the Authority; it might be a standing body in the sense that its members would be elected for a fixed period but would not require the full-time commitment of its members. Litigation, after all, was a last resort. His delegation would not oppose provision for arbitration as an alternative to judicial settlement of disputes, provided it was a fully effective system and could not be frustrated by the non-co-operation of one party. His delegation saw the institutional and the substantive sides of the proposals relating to the deep sea-bed as fully interlocking. The one could not be effectively established without the other.

42. Mr. KOPAL (Czechoslovakia), speaking on behalf of the group of land-locked and geographically disadvantaged States, said that since the group had not expressed its views on earlier proposals concerning revenue distribution which had been submitted to the sea-bed Committee, it had deemed it proper to submit a draft article on that issue.

43. For the purposes of the system of revenue distribution proposed in document A/CONF.62/C.1/L.13, three groups of States were considered: all developing countries, the land-locked and geographically disadvantaged States, and all States. The formula proposed for revenue distribution among those groups favoured countries with large popula-

tions and low *per capita* income. Within certain limits, some countries might accumulate shares under one or more of the categories listed in paragraph 1. It was also proposed that the International Authority would distribute no net revenue until its funds had reached a specified level.

44. If it was to serve the cause of justice, the new law of the sea must contain provisions granting privileged treatment to certain categories of States. Many objective studies had confirmed that most sea-bed resources, and certainly those which were most accessible, were concentrated in areas adjacent to the coasts of States. Even if land-locked and geographically disadvantaged States were granted participation rights in those areas, they would be at a disadvantage in the exercise of such rights because of their unfavourable geographical position. They should therefore be given some compensating advantage in the area beyond the limits of national jurisdiction.

45. Mr. LEVY (Secretary of the Committee) said that at the 20th meeting the representative of Singapore had requested that the Secretariat should provide information on various economic and technical aspects of sea-bed development and on important factors affecting the financial return from nodule mining. In view of the complexity of the issues involved, the Secretariat was giving careful consideration to the written proposal submitted by the representative of Singapore. The Special Representative of the Secretary-General would report to the Committee on the matter at the following meeting.

The meeting rose at 4.45 p.m.

23rd meeting

Wednesday, 7 May 1975, at 3.45 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

International régime for the sea-bed and the ocean floor beyond the limits of national jurisdiction (*concluded*)

1. Mr. PINTO (Sri Lanka) Chairman of the Working Group, reminded members that when he had reported to the Committee at the 20th meeting, he had outlined the provisions contained in the document entitled "Basic conditions of exploration and exploitation" (CP/Cab.12). He had also mentioned on that occasion that there had been differences of opinion within the Working Group due to the existence of different economic and social systems.

2. According to one group of States, while the Authority should have broad discretion as to how to exploit one portion of the area, a specified part of the area should be subject to a separate régime in which States members of the Authority, which would be treated on a basis of absolute equality, might have a certain autonomy subject to over-all supervision by the Authority. During the discussion, some delegations had proposed that that principle should be taken more strictly into account, while others had questioned the necessity of incorporating it in the document.

3. According to another group of States, there should be a device whereby any applicant for a contract for exploitation activities would be required to propose to the Authority a choice of two areas of equivalent commercial

interest for the conduct of operations under a contract. On concluding a contract with the applicant with respect to one of those areas, the Authority would have the right to retain all data concerning the second area, with a view to subsequently exploiting it as it saw fit. That two-area system had been viewed as a part of an over-all agreement which would ensure continued exploitation, as well as the conclusion of contracts with qualified applicants on a non-discriminatory basis.

4. In the light of the discussion which had been held in the Working Group and of the results obtained during informal consultations, he thought it would be advisable to revise document CP/Cab.12 so that it would reflect the views expressed by all delegations. The revised version would not contain any reference to the differences of opinion he had mentioned. On the other hand, States which had sought to defend certain positions and certain interests by submitting the proposals in question would be able to request the inclusion in the text of other elements intended to serve the same or similar purposes. It would be necessary to determine whether the elements now contained in the text were adequate, or whether they should be supplemented or amended, and whether they could be the subject of a general agreement. Furthermore, among the new elements to be included in the revised version, there was a certain number of provisions concerning direct exploitation by the