

~~INFORMATION ABOUT~~ THE PREPARATORY COMMISSION FOR THE
International Sea-bed Authority and for the
International Tribunal for the Law of the Sea.

The Preparatory Commission was established by resolution I of the Third United Nations Conference on the Law of the Sea which, together with the United Nations Convention on the Law of the Sea, was adopted in New York on 30 April 1982.

On 10 December 1982 the United Nations Convention on the Law of the Sea was opened for signature in Montego Bay, Jamaica and was signed by 119 States and entities. On that same date the Final Act of the Third United Nations Conference on the Law of the Sea was also signed by 140 States.

The signature of either the Convention or the Final Act was the condition set forth by resolution I for a State to become a participant to the Preparatory Commission as a member or observer. Paragraph 2 of this resolution states:

"The Commission shall consist of the representatives of States and of Namibia, represented by the United Nations Council for Namibia, which have signed the Convention or acceded to it. The representatives of signatories of the Final Act may participate fully in the deliberations of the Commission as observers but shall not be entitled to participate in the taking of decisions."

The Final Act was closed for signature on 10 December 1982. A State could only become a member of the Preparatory Commission by signing before ~~the~~ ^{that} ~~date~~ ~~9~~ December 1984 or acceding to the Convention thereafter.

Twelve States signed the Convention after 10 December 1982, thereby were entitled to attend the First and resumed First Session of the Preparatory Commission. 1/ Three additional States have signed the Convention since the conclusion of the First Session. 2/

1/ Afghanistan, Antigua and Barbuda, Benin, Democratic Kampuchea, Dominica, Guatemala, Japan, Madagascar, Oman, Republic of Korea, Sao Tome and Principe, and Zaire

2/ Equatorial Guinea, Mali, and Swaziland

~~ANNEX~~ Report on the work of the First Session of the Preparatory Commission, including consideration of the Rules of Procedure:

RESULTS OF THE FIRST PART OF THE FIRST SESSION
Kingston, Jamaica, 15 March - 8 April 1983

The Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea (Preparatory Commission) was established by resolution I of the Third United Nations Conference on the Law of the Sea which states:

"1. There is hereby established the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea. Upon signature of or accession to the Convention by 50 States, the Secretary-General of the United Nations shall convene the Commission, and it shall meet no sooner than 60 days and no later than 90 days thereafter."

The United Nations Convention on the Law of the Sea was opened for signature in Montego Bay, Jamaica on 10 December 1982, and was signed at that time by 118 States and the United Nations Council for Namibia on behalf of Namibia. The conditions for convening the Preparatory Commission having been met, the dates of its first session were set from 15 March-8 April with provision for a further meeting in 1983 if required. Invitations were issued to States and other entities to participate as either members or observers, in accordance with paragraph 2 of resolution I.

I. PROVISIONAL AGENDA AND ORGANIZATION OF WORK

The Preparatory Commission had before it a note by the Secretariat on the organization of work (LOS/PCN/1), the provisional Agenda (LOS/PCN/2), and a working paper prepared by the Secretariat on the Draft Rules of Procedure (LOS/PCN/WP.1).

II. ELECTION OF THE CHAIRMAN AND ADOPTION OF A CONSENSUS STATEMENT OF UNDERSTANDING

The late Special Representative of the Secretary-General of the United Nations for the Law of the Sea, Bernardo Zuleta, as Acting Chairman of the Preparatory Commission, opened the session at which the provisional agenda was approved. He read out a message from the Secretary-General. A statement was also made by the Deputy Prime Minister of Jamaica, Mr Hugh Shearer.

Thereafter the meeting was adjourned, and consultations started on the question of the chairmanship of the Commission. In the absence of any formal structure of the Preparatory Commission at this stage, the Special Representative of the Secretary-General carried out those intense consultations at meetings held with the Chairmen of the five regional groups and the Chairman of the Group of 77.

While the candidature of Minister Joseph Warioba for the chairmanship of the Preparatory Commission was endorsed by consensus, the election was deferred until an agreement could be reached on other matters concerning the composition of the General Committee and the composition and structure of the special commissions, as well as the very important aspect of the decision-making procedure of the Preparatory Commission.

After several rounds of consultations the Special Representative was entrusted with the task of formulating a preliminary draft Statement of Understanding which was to provide the basis on which the Preparatory Commission would decide on its organizational structure, the mandates of its organs, and its rules of procedure. On 7 April there was a consensus on the final text of the Statement of Understanding and on 8 April, the final day of the session, the Preparatory Commission elected, by acclamation, its Chairman, Joseph Warioba, Minister for Justice and Attorney-General of the United Republic of Tanzania and adopted the "Consensus Statement of Understanding" (LOS/PCN/3).

Statements were made at the closing meeting by the Chairman and by USSR, Japan, Brazil, Australia, Algeria, Zambia, Iraq, Gambia. (It should be noted that the Preparatory Commission does not have summary records.)

III. COMPOSITION AND STRUCTURE OF THE COMMISSION

The Statement of Understanding contemplated that in addition to the Plenary of the Commission, Special Commissions enjoying equal status would be established.

The Plenary was to deal with the reports of the Special Commissions, those matters specifically allocated to it, and any residual functions not specifically allocated to other bodies.

The Special Commissions were to be open to all signatories in accordance with paragraph 2 of resolution I. The Statement of Understanding left open the question of participation of signatories other than States (for example intergovernmental organizations).

The Special Commissions and Plenary would deal with the following matters, as allocated:

(1) The rules, regulations and procedures on administrative financial and budgetary matters pertaining to the various organs of the Authority (para. 5(g) of resolution I).

(2) The measures necessary for the early entry into effective operation of the Enterprise (para. 8 of resolution I).

(3) The problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area (paras. 5(i) and 9 of resolution I).

(4) The rules, regulations and procedures for the exploration and exploitation of the Area (Annex III and other related provisions of the Convention).

(5) The implementation of resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules.

(6) The practical arrangements for the establishment of the International Tribunal for the Law of the Sea (para. 10 of resolution I).

In establishing the bureaux of all the organs of the Preparatory Commission due regard was required to be paid to the practice of the United Nations General Assembly and of the Third United Nations Conference on the Law of the Sea and to the need for each regional group to be represented. The Chairman of the Preparatory Commission, the other members of the bureau of the plenary as well as the members of the bureaux of the Special Commissions would constitute the General Committee and would be elected on the basis of equitable geographical representation.

IV. CONSENSUS REQUIREMENT IN RULES OF PROCEDURE

The Statement of Understanding also dealt with the important question of the decision-making procedure. The compromise outlined by the Statement required the Commission to ensure that all decisions requiring consensus in the Convention - inter alia articles 160(2)(e); 161; 162; Annex IV, article 11(3)(c) - would also require consensus in the Preparatory Commission. However, it did not rule out that there could be other matters which would also require decisions by consensus.

The Statement of Understanding stated also that the Preparatory Commission would adopt by consensus the rules and procedures for the implementation of resolution II and the establishment of adequate machinery to administer the régime for the protection of pioneer investors.

V. DECISIONS RELATING TO FUTURE WORK PROGRAMME; TIMING AND VENUE OF FIRST RESUMED SESSION

It was decided that the Preparatory Commission would meet again at a resumed session of 4 weeks duration which should be held immediately preceding the thirty-eighth session of the General Assembly for the convenience of delegations and to avoid additional expenses. The possible dates were established as 22 August to 16 September or 15 August to 9 September 1983. The venue for the meeting could not be resolved and it was left to the Chairman to undertake further consultations on the question. The Preparatory Commission decided that the elaboration of the basic decisions reached in the Statement of Understanding, including the adoption of Rules of Procedure, should be completed in the first two weeks of the resumed session.

VI. DRAFT RULES OF PROCEDURE

The Secretariat had presented a preliminary set of draft Rules of Procedure (LOS/PCN/WP.1 dated 21 March 1983, and Corr.1). The draft was intended to identify issues and provide examples of options where possible.

Two regional groups, namely the Western European and Other States Group and the Eastern European Group provided preliminary reactions in writing. The submission of the Eastern European Group (LOS/PCN/WP.3) took the form of an amendment to the Secretariat draft; the response of the Western European and Other States Group (LOS/PCN/WP.5) consisted of comments on the Secretariat draft.

RESULTS OF THE SECOND PART OF THE FIRST SESSION
Kingston, Jamaica, 15 August - 9 September 1983

I. AGENDA AND ORGANIZATION OF WORK

The items on the agenda remained unchanged from the first part of the session. It included the election of officers, the adoption of the rules of procedure and the organization of the work of the Preparatory Commission.

At the opening plenary meeting, on 15 August 1983, the Chairman of the Preparatory Commission stated that if an agreement could be reached on the issues contained in the Consensus Statement of Understanding (LOS/PCN/3), it would greatly advance the work of the Commission. He called on the regional groups to carry out consultations.

Following the earlier practice, the Chairmen of the regional groups reported the outcome of their groups' consultations to joint meetings with the Chairman of the Commission held periodically.

The consultations centered on the following issues: (1) the structure and number of Special Commissions; (2) the subject matter to be allocated to each Special Commission; (3) representation in the General Committee and its overall size; (4) the decision-making rules which would supplement the list of items on which it had already been agreed that decisions would be taken by consensus (as reflected in LOS/PCN/3); (5) the rules for the implementation of resolution II; (6) the Rules of Procedure of the Preparatory Commission; and, (7) the programme of work.

It was considered appropriate that consultations would continue on items 1, 2 and 3 above at meetings of the Chairmen of regional groups. The possibility of establishing a working group of limited size with 4 or 5 representatives per region, constituting a core with open-ended participation, was considered for the negotiations on the Rules of Procedure. Consideration was also given to establishing another working group of limited membership to carry out consultations on the drafting of rules for implementing the pioneer investment arrangements under resolution II.

II. CONSIDERATION OF THE RULES OF PROCEDURE

An informal working group on rules of procedure, headed by the Chairman of the Preparatory Commission, was set up with 6 representatives per region. At the first meeting of the group, on 22 August 1983, the Chairman explained that it was to be a "consultative" group on the technical aspects of the rules of procedure: it was not intended to establish any precedent regarding negotiation techniques or status of participants; its purpose was to facilitate the expeditious completion of organizational matters.

On 26 August 1983, an agreement was reached whereby each regional group could appoint 6 representatives, only one of whom could be from an observer delegation. Observers would not be permitted to participate in the decision-making of the working group.

The working group would be open-ended, but only representatives designated by the regional groups could participate in the discussions. It was also agreed that there could be rotation of observers.

The working group held a total of nine meetings. Principal among the issues discussed were the mechanisms for and extent of participation of observers under paragraph 2 of resolution I (signatories of the Final Act), the clarification of the definition of members referred to in that paragraph, participation of observers other than those contemplated in resolution I, and the interrelationship of the various organs of the Preparatory Commission.

The group considered the following documents:

- LOS/PCN/WP.1 - Secretariat Draft Rules;
- LOS/PCN/WP.3 and Rev. 1 - Eastern European Group papers;
- LOS/PCN/WP.5 and Corr.1 - Western European and Others Group papers;
- LOS/PCN/WP.9 - Latin American Group paper;
- LOS/PCN/WP.10 - Asian Group paper;
- LOS/PCN/WP.11 - African Group paper.

It also had before it a series of comparative tables to facilitate its work (LOS/PCN/WP.12 and Adds. 1 - 4).

Upon completion of the review by the working group, the Chairman prepared a comprehensive revised set of draft rules of procedure (LOS/PCN/WP.15 and Corr. 1), incorporating those aspects which had been discussed in the group of Chairmen of the regional groups. (Agreements which had been reached in the latter group had been contained in informal papers issued by the Chairman on 18 August and 6 and 7 September, and were later incorporated in document LOS/PCN/27.)

On 8 September, the Plenary met for the purpose of discussing the composite package on the rules of procedure. The Chairmen of the regional groups presented the views of their groups. The Rules of Procedure of the Preparatory Commission were then adopted. They are contained in document LOS/PCN/28 and Corr.1

As adopted, the Rules of Procedure allow all States and entities which have ratified, acceded or otherwise adhered to the United Nations Convention on the Law of the Sea to participate in the Preparatory Commission as full members. The rights of observers under paragraph 2 of resolution I are delineated, and provision is made for the invitation of observers other than signatories of the Final Act. A General Committee is established and consists of the Chairman, 14 Vice-Chairmen, the Rapporteur General, and the Chairman and four Vice-Chairmen of each of the four Special Commissions (a total of 36). In addition to its normal functions, the General Committee is also mandated to exercise executive functions on behalf of the Commission in respect of matters relating to resolution II. Consensus is provided as the decision-making mechanism on questions of substance, except that in certain situations and for residual matters a two-thirds majority rule shall apply if efforts to reach consensus have been exhausted.

III. STRUCTURE AND FUNCTIONS OF THE COMMISSION

Simultaneously with the negotiations on rules of procedure, consultations were continued in the consultative body comprising the Chairman of the Preparatory Commission and the Chairmen of regional groups on the composition and size of the General Committee, on decision-making, and also on the allocation of items to the different Special Commissions, including the Plenary which would function as a Special Commission.

An agreement was reached on the basis of an informal proposal of the Chairman. As a consequence, on 8 September 1983, the Commission elected the officers of its Bureau and of the four Special Commissions as well as the members of its Credentials Committee.

The Preparatory Commission elected the following 14 Vice-Chairmen: Algeria, Australia, Brazil, Chile, China, France, India, Iraq, Japan, Liberia, Nigeria, Soviet Union, Sri Lanka and the Republic of Cameroon.

It elected Kenneth Rattray (Jamaica) as Rapporteur-General.

Hasjim Djalal (Indonesia) was elected Chairman of Special Commission I on the problems that could be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area. This Commission is entrusted with the functions referred to in paragraphs 5(i) and 9 of resolution I. Its Vice-Chairmen are Austria, Cuba, Romania and Zambia.

Lennox Ballah (Trinidad and Tobago) was elected Chairman of Special Commission II on the Enterprise for the adoption of all measures necessary for the early entry into effective operation of the Enterprise. This Commission is entrusted with the functions referred to in paragraph 8 of resolution I and paragraph 12 of resolution II. Its Vice-Chairmen are Canada, Mongolia, Senegal and Yugoslavia.

Hans Sondaal (Netherlands), was elected Chairman of Special Commission III for the preparation of rules, regulations and procedures for the exploration and exploitation of the Area (sea-bed mining code) [resolution I, paragraph 5(g)]. Its Vice-Chairmen are Gabon, Mexico, Pakistan and Poland.

Gunter Goerner (German Democratic Republic), was elected Chairman of Special Commission IV for the Tribunal to prepare recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea [resolution I, paragraph 10]. Its Vice-Chairmen are Colombia, Greece, Philippines and Sudan.

The members of the Credentials Committee are Austria, China, Colombia, Costa Rica, Hungary, Ireland, Ivory Coast, Japan and Somalia.

The Preparatory Commission also decided that the General Committee of 36 members should act on behalf of the Preparatory Commission as its executive organ for the administration of resolution II.

At the final meeting of the Preparatory Commission, the Chairmen of the four Special Commissions presented a first short report. The Preparatory Commission also adopted the report of the Credentials Committee, presented by its Chairman, Karl Wolf (Austria), who was unanimously elected. Statements were made by Indonesia, Trinidad and Tobago, Netherlands, German Democratic Republic, Austria, Algeria (as Chairman of the Group of 77), Japan (as Chairman of the Asian Group), France (as Chairman of the Western European Group and others), Brazil (as Chairman of the Latin American Group), Kenya (as Chairman of the African Group), USSR (as Chairman of the Eastern European Group), India, Liberia, Chile, Jamaica and Sri Lanka.

The most important document of the Preparatory Commission for 1983 is LOS/PCN/27 inasmuch as it contains in three Annexes: the structure of the Commission, the functions of its organs and bodies, the officers and the procedures and guidelines for registration of pioneer investors under resolution II as well as the rules of procedure on decision-making.

IV. DECISIONS RELATING TO FUTURE WORK PROGRAMME; TIMING AND VENUE OF FUTURE SESSIONS

The Preparatory Commission decided to give high priority to the elaboration and adoption of rules, regulations and procedures for the implementation of resolution II (LOS/PCN/27).

Based on a proposal by the Chairman, the Preparatory Commission decided that the Secretariat could reissue documents of the Law of the Sea Conference relevant to the work of the Commission; prepare indexes to the articles of the Convention and Annexes and documentation of the Conference that might facilitate the work of the Commission; compile background papers on relevant legal, financial, economic and technical issues; and prepare working papers.

The Preparatory Commission decided that it would hold one regular session a year at Kingston for a period of four weeks, and one session a year of the working groups (Plenary, Special Commissions and the subsidiary bodies) of the Preparatory Commission for four weeks, in Kingston, New York or Geneva, as it may decide. The Preparatory Commission may at any time decide to hold additional sessions for itself or for its working groups.

For 1984 it was decided that the Preparatory Commission would hold its regular session in Kingston during the spring (19 March - 13 April) and a session for the working groups in New York or Geneva during the summer, the venue for which would be determined at the second session.

V. TRIBUTE

On the proposal of Chile, the Preparatory Commission observed a minute of silence in memory of the late Ambassador K. K. Breckenridge, who had been the representative of Sri Lanka to the Law of the Sea Conference for many years.

~~WJAMW~~ Information about submission of applications for registration as pioneer investor and resolution of conflicts with respect to overlapping areas:

I. SUMMARY

Paragraph 2 of resolution II sets forth that "as soon as the Commission begins to function" any State signatory to the Convention may apply to the Commission on its behalf or on the behalf of any entity specified in paragraph 1(a) for registration as a pioneer investor. Applicants must ensure before making applications that areas in respect of which applications are made do not overlap one another or areas previously allocated as pioneer areas (paragraph 5(a)). If conflicts concerning overlapping of areas were not resolved by 1 March 1983, such conflicts should have been submitted by the prospective certifying States to binding arbitration in accordance with UNCITRAL Arbitration Rules to commence not later than 1 May 1983 (paragraph 5(c)).

In 1983 two prospective pioneer investors, India and the USSR, met and ensured themselves that the areas in respect of which they intend to apply to the Preparatory Commission do not overlap each other. They informed the Chairman of the Preparatory Commission and announced their intention to submit to the Preparatory Commission applications for registration as pioneer investors. Other pioneer investors reserved their position with regard to the communications made by India and the USSR, and insisted that before submitting any application, the Preparatory Commission should have begun to function effectively and all prospective pioneer investors must negotiate in order to identify and resolve possible conflicts arising from the overlapping of areas. Applications for registration were submitted by the USSR on 21 July 1983, and by India on 10 January 1984.

II. COMMUNICATIONS TO THE PREPARATORY COMMISSION

In a letter dated 6 April 1983, addressed to the Preparatory Commission, the Chairman of the USSR delegation to the first session of the Commission expressed that the Soviet enterprise was ready to begin the exchange of co-ordinates of areas with other certifying States, and to begin negotiations for the resolution of possible conflicts concerning boundaries of such areas. It was expressed moreover, that if the Commission did not receive any notification from other certifying States of their readiness to exchange co-ordinates and initiate negotiations by 1 May 1983, the USSR will consider that it has complied with the provisions of paragraph 5(a) of resolution II and will submit an application for the registration of the Soviet enterprise as the first pioneer investor (LOS/PCN/4).

On 24 April 1983, the Permanent Representative of India to the United Nations sent a letter to the Chairman of the Preparatory Commission expressing that its Government was prepared to exchange geographical co-ordinates of the area claimed by it with the USSR, as well as with any other prospective certifying State in order to initiate negotiations on the settlement of any possible dispute concerning the limits of the area. It also announced its intention to submit an application to the Preparatory Commission (LOS/PCN/7).

The Permanent Representatives of the USSR and India informed the Chairman of the Preparatory Commission on 4 May 1983 and 13 May 1983 respectively that representatives of both Governments met in New Delhi on 29 and 30 April 1983 and determined that there were no overlaps of areas in respect of which their Governments intended to submit respective applications to the Preparatory Commission (LOS/PCN/19 and 21).

Other prospective certifying States, members or observers of the Preparatory Commission replied to the letters sent by India and the Soviet Union reserving their position with respect to the submission of applications for registration as pioneer investors.

France expressed that since the Preparatory Commission has not yet adopted the texts which will ensure that the relevant provisions of the resolution are actually implemented, it was clear that the Commission has not begun to function for the purposes of implementing the resolution. It also referred to discussions conducted at the initiative of the delegation of Canada amongst potential certifying States in order to agree on a procedure for identifying and resolving possible overlapping claims, and it expressed its determination to continue such negotiations beyond the original timetable established in paragraph 5 of resolution II (LOS/PCN/8).

In a letter dated 28 April 1983, the Government of Japan expressed that only after procedures to exchange co-ordinates are complied with by prospective certifying States, applications for registration may be submitted to the Preparatory Commission. The Japanese Government does not accept the assertion of the Soviet Union that prospective certifying States must send due notification to the Preparatory Commission by 1 May 1983 of their readiness to exchange co-ordinates and to negotiate (LOS/PCN/11). As a consequence, if an application is submitted on 1 May 1983, it cannot be regarded as being in conformity with resolution II and such application will not grant any right or priority.

Canada, in a letter dated 28 April 1983, emphasized the fact that negotiations with a view to developing a mechanism to resolve potential conflicts over mining sites had been conducted at the initiative of the Canadian Government. Canada is prepared to continue those negotiations and considers that any attempt by a State to be registered as a pioneer investor would be incompatible with those on-going negotiations (LOS/PCN/15).

The Netherlands, in a letter dated 27 April 1983, expressed that the expiration of the deadlines mentioned in paragraph 5(c) of resolution II does not affect the obligation of prospective certifying States to ensure, before making applications to the Commission, that areas in respect of which applications are made do not overlap one another (LOS/PCN/18).

The Permanent Representative of Indonesia pointed out that since the Preparatory Commission had not been completely organized and therefore had not been able to exercise its function effectively, the Government of Indonesia reserved its position with regard to various claims by potential pioneer investors (LOS/PCN/20).

Four observers to the Preparatory Commission, Belgium (LOS/PCN/14 and 16), Federal Republic of Germany (LOS/PCN/9), Italy (LOS/PCN/10) and United Kingdom (LOS/PCN/13) sent letters to the Chairman of the Preparatory Commission reserving their positions to any action that might be taken by any prospective certifying State. The Federal Republic of Germany and Italy stressed the fact that since the Convention will remain open for signature until 9 December 1984, those States which have not yet signed the Convention may decide to do so at a later stage and avail themselves of all rights conferred upon them under resolution II.

III. SUBMISSION OF APPLICATIONS

On 20 July 1983, the Acting Permanent Representative of the USSR transmitted to the Special Representative of the Secretary-General for the Law of the Sea a letter addressed to the Chairman of the Preparatory Commission submitting an application for registration as a pioneer investor of the Soviet enterprise "Southern Production Association for Marine Geological Operations" ("Yuzhmorgeologiya"). A sealed package which, according to the letter contains the data and information referred to in paragraph 3(a) of resolution II was submitted attached to the letter and subsequently placed in safe custody by the Secretary-General. The Acting Permanent Representative of the USSR stated in the letter that the co-ordinates of the area were being kept by the Permanent Representative of the USSR to the United Nations in a sealed package which will be transmitted immediately to the Preparatory Commission at the request of its Chairman (LOS/PCN/30).

On 10 January 1984, the Acting Permanent Representative of India sent a letter to the Secretary-General submitting, on behalf of the Government of the Republic of India, an application for registration as a pioneer investor contained in an envelope addressed to the Chairman of the Preparatory Commission and in a sealed and locked box said to contain detailed geographical co-ordinates and relevant data and information.

By the time the application on behalf of the Government of India was submitted, the Preparatory Commission had adopted specific rules to be applied for the submission of applications pending the adoption of rules of procedure (LOS/PCN/27, Annex II, Section 1(d)). In accordance with these rules, the Special Representative of the Secretary-General for the Law of the Sea placed the envelope containing the application and the sealed and locked box in safe custody, acknowledged the receipt of the application, notified the Chairman of the Preparatory Commission and informed the Preparatory Commission of the submission (LOS/PCN/32).

With respect to efforts made by other prospective pioneer investors to solve possible conflicts concerning overlapping areas as required by paragraph 5(a) of resolution II, the Alternate Representative of Canada to the Preparatory Commission sent a letter to the Chairman of the Preparatory Commission, dated 1 September 1983, transmitting a draft "Memorandum of understanding on the settlement of conflicting claims with respect to sea-bed areas" on the basis of which those prospecting investors were conducting consultations with a view to reaching agreement (LOS/PCN/24).



UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.2
11 April 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA

Second session
Kingston, Jamaica
19 March-13 April 1984

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL
COMMISSION 1 ON THE PROGRESS OF WORK IN THAT
COMMISSION

1. Special Commission 1 is entrusted with the task of undertaking studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submitting recommendations to the Authority thereon, through the Preparatory Commission.
2. The broad topic and the purpose of the studies are defined in the above mandate and it is the understanding of the Special Commission that the recommendations will be the end results of its work. In studying the problems of developing land-based producer States, it is necessary to know, first which minerals would be produced from sea-bed sources; second, how the introduction of the minerals from this new source would affect the existing land-based sources; third, what would these effects be and which developing States would be affected; fourth, what problems or difficulties in connection with these effects, these developing States would encounter; and finally, what could be done to minimize these difficulties. This logically structured framework led to the adoption of a programme of work by the Special Commission in its first meeting of this session, immediately after the adoption of the agenda which is contained in document LOS/PCN/SCN.1/1984/CRP.1. The programme of work reflecting the above framework is contained in document LOS/PCN/SCN.1/1984/CRP.2.

3. The Special Commission held seven meetings and the Bureau of the Special Commission met four times. In addition to CRP.1 and CRP.2, the Special Commission had before it a background paper prepared by the Secretariat, LOS/PCN/SCN.1/WP.1, which presents an overview of the broad topic to be studied by the Special Commission along with some options regarding possible approaches to study the topic and pertinent statistics. Other Law of the Sea Conference documents which are of relevance to the work of the Special Commission, for example, documents A/CONF.62/L.84 and Add.1, and A/CONF.62/L.66 were also available.

4. The first two meetings of this session were devoted to a general discussion of these documents. A need was then, felt for a somewhat detailed outline of each of the six items in the programme of work in order that the delegates could get a better grasp of the work of the Special Commission. In response to this need, the Bureau, on the basis of the above documents and the exchange of views during the general discussion, proposed a list of issues that need to be dealt with by the Special Commission under the programme of work. This is contained in document LOS/PCN/SCN.1/1984/CRP.3.

5. Focussed discussion on this document and the relevant parts of WP.1 followed after the introduction of the document. In view of the broadness of the scope of the work of the Special Commission, delegations necessarily concentrated on selected items as they deemed appropriate. It was deemed more fruitful at this initial stage to have a broad-ranging discussion rather than an issue-by-issue discussion or a discussion of issues on a priority basis. This facilitated indissecting the work the Special Commission had in front of it, in refining the outline of the work and thereby in precisely defining the scope and content of the work. A valuable by-product of the broad ranging discussion was the emergence of general agreement on some of the issues that have been raised in CRP.3. For example, on the question whether the Special Commission should deal with each of the fifty or so minerals contained in polymetallic nodules or it should limit itself to the minerals which appear to be economically exploitable, there was a general agreement that the Special Commission, at this time, should concentrate on copper, nickel, cobalt and manganese, but it should keep in view the trends and developments regarding the other minerals. Similar agreement emerged about concentrating its work on polymetallic nodules, at the same time keeping in view the trends and developments regarding minerals other than polymetallic nodules, for example, polymetallic sulphides, cobalt-rich manganese crusts, etc. With regard to the question whether the Special Commission should assess the relationship between production from the Area and existing land-based production on a mineral-by-mineral basis, it was generally agreed that a mineral by mineral assessment is the most appropriate one. Furthermore, it was generally felt that the framework of assessment has to be essentially a long term one, on an on-going

basis, however, short-term and medium-term frameworks should also be kept under consideration. Similarly, on the question of whether the effects of production in the Area should be considered on a State-by-State basis, it was deemed most relevant to give consideration on a State-by-State basis.

6. In the course of the discussion, it became apparent that two things were absolutely essential to form the basis of the work of the Special Commission - a set of relevant information and data, and a methodology to process these information and data for the purpose of the Special Commission. It was also apparent that at this time, no given set of information and data and no given methodology will serve the purpose, rather, both the tasks of information collection and formulation of methodology will be an on-going process so that at the time when the Authority needs to act, it will have at its disposal an accumulated set of information and data appropriate for its purpose and a methodology properly tailored to form the basis for timely action by the Authority.

7. The attention of the Special Commission concentrated on the relevant information and data. It was immediately felt that at this time, the Special Commission is not in a position to fix the items on which information and data will be needed. This also has to be an on-going process however a start can be made. As a first step, three types of information and data have been identified to be essential: information on the minerals and their markets, production, consumption, exports, imports, direction of trade, price, etc., information on the developing land-based producer States their production, the significance of the minerals in their economies, and information on the existing international or multilateral economic measures which could be of relevance to the work of the Special Commission. Accordingly, a request is being made to the Secretariat to provide the information available in the public domain. This request is contained in document LOS/PCN/SCN.1/1984/CRP.4 and Corr.1. The Special Commission also felt that States themselves could be requested through the Secretariat to provide similar and other information and data. Accordingly, the Secretariat is being requested to transmit a circular letter to States in this regard. Finally, updating of some information contained in the Conference document L.84 can be useful and the Secretariat is requested to do so. These two latter requests are contained in document LOS/PCN/SCN.1/1984/CRP.4/Add.1 and Corr.1. On behalf of the Special Commission, I would appreciate it if the Commission could endorse and strengthen these requests and mandate the Secretariat accordingly.

8. In addition, a need was also felt for research studies on certain specific issues at an appropriate time. For example, studies on the nature and extent of controlled and free markets in the four minerals concerned, on the effects of possible substitutes, on the demand for these minerals, on estimates of costs of production from land-based sources as well as sea-bed sources, and on the identification and problems of developing States which may be potential land-based producers would be extremely useful.

9. In view of the technical nature of the work of the Special Commission a number of delegations suggested the formation of a Working Group of technical experts. However, most of the delegations felt that at this time, the Special Commission provides the appropriate forum to dissect, define and refine the scope and content of its work and the efficacy of a Working Group can be ensured only after this has been accomplished. Nevertheless, we have been able to devise a happy median - open-ended meetings of the Bureau with the participation of any interested delegation which feels it can provide the technical expertise. This device has been highly successful - one of the outcomes of this forum has been the documents CRP.4 and CRP.4/Add.1.

10. In accomplishing the task entrusted to the Special Commission, I envisage a two-pronged strategy. One is the collection and dissemination and, over time, accumulation of the necessary data and information by the Secretariat related to some of the issues outlined in CRP.3. The other is the work of the delegations themselves - delegations are going home with an expanded outline of the topic to be studied, in the form of CRP.3. During the intersessional period I would urge them to study the outline, obtain information, advice and assistance from technical experts in their countries, have some research carried out and come back in the next session, preferably with some answers or options regarding some of the issues raised in the document. In the next session we will then refine and consolidate the efforts of the two prongs which, in turn, will, hopefully, form the basis for tackling the core of the matter entrusted to the Special Commission. In this connection, I would like to urge delegations to bring to the next session relevant technical expertise to the greatest extent possible. Inclusion of technical experts in the delegations will be helpful in dealing with the matters of technical nature within the purview of the Special Commission.



UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.5
11 April 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA

Second session
Kingston, Jamaica
19 March-13 April 1984

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL
COMMISSION 2 ON THE PROGRESS OF WORK IN THAT
COMMISSION

The mandate of Special Commission 2 is to carry out the functions referred to in paragraph 12 of resolution 11 and to take all measures necessary for the early entry into effective operation of the Enterprise. This is a difficult and complex mandate and the work of the Special Commission at this session has been largely devoted to a consideration of its various elements and implications.

Special Commission 2 commenced its work with the adoption of the Programme of Work presented to it in LOS/PCN/SCN.2/1984/CRP.1, proceeding thereafter to a general exchange of views, using for this purpose, the Statement of the Chairman made at the resumed first session (LOS/PCN/SCN.2/L.1) and the background paper prepared by the Secretariat on the Mandate and Programme of Work of the Special Commission (LOS/PCN/SCN.2/WP.1).

It became clear from that initial exchange that present economic indicators called for a pragmatic approach to planning for the "early entry into effective operation of the Enterprise". Two points in particular were stressed: firstly, that while all operational options should be studied carefully, a joint venture would appear, for the present, to be the most feasible option for the Enterprise's operation; secondly, that the initial Enterprise might best be regarded as a nucleus establishment capable, however, of maturing quickly under favourable operating conditions.

The main elements in that initial exchange were synthesized in a Note by the Chairman (LOS/PCN/SCN.2/L.3), but that Note cannot now be regarded as an adequate record of all the issues that were raised at this session, since the Special Commission went on in subsequent meetings to further explore the facets of its mandate, particularly as they relate to the application of

paragraph 12 of resolution II. The Preliminary Note on the Enterprise prepared by the Secretariat of the Asian-African Legal Consultative Committee and presented at the fifth meeting has been an important stimulant in this regard, as has been the proposal of the delegation of Austria to establish a Joint Enterprise for Exploration, Research and Development in Ocean Mining (JEFERAD) (LOS/PCN/SCN.2/L.2 and Add.1).

Significant issues were raised, concerning measures to be taken in the post-registration period, that will call for close study at the next session. For example, it will be important:

- (i) To develop, from the beginning, a close co-operative relationship with the registered pioneer investors.
- (ii) To be able to judge when a sufficient level of pioneer activity has been reached that will warrant bringing paragraph 12 into operation;
- (iii) To ensure under paragraph 6 of resolution I, that the Preparatory Commission has such legal capacity as will be necessary to undertake measures contemplated under paragraph 12
- (iv) To provide for the delegation of the functions involved to an appropriate mechanism,
- (v) To clarify the scope of the exploration that would be requested of registered pioneer investors
- (vi) To establish what the most suitable type of arrangement will be for such exploration. If undertaken under a service contract for example, a draft set of contractual and accounting rules would have to be considered. Such a set will be submitted to the next session by the delegation of Brazil, and the Special Commission is indeed grateful for this "voluntary contribution". The question of the negotiation, approval and management of such arrangements has also to be addressed, as well as possible financial questions that may arise,
- (vii) To develop, at an early stage, the objectives and the mechanism for fulfilling the obligation of the registered pioneer to train personnel designated by the Commission. The training arrangements are regarded as an essential component in the preparatory process.

At its seventh and final meeting for this session, the Special Commission took up the question of priorities and its work at the next session.

The main elements of its mandate - operational and organizational planning and interim measures under resolution II are, to a large extent,

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interrelated matters. Since it is not feasible, however, to proceed on all fronts at once, the Special Commission has decided to impose an order on its Programme of Work which would give first priority to its consideration of the application of paragraph 12 of resolution II, followed by organizational and operational aspects (i.e., Items 2, 3 and 1 on the Programme of Work, in that order). Item 4 in the Programme was recognized as mostly being a distillation of the conclusions that would be reached in the course of work on Items 1, 2 and 3. As concerns Item 5, it was understood that the need for co-ordination with other bodies would be addressed as and when necessary and that requirements of an information programme on sea-bed resource development, as indicated in Item 5(b), would be identified in the course of future work.

For the next session the subjects to be addressed are:

Firstly, an examination of the issues involved in the implementation of paragraph 12 of resolution II and consideration of the preparatory measures that could be undertaken in accordance with the provisions of that paragraph;

Secondly, a consideration of the structure of the Enterprise and in particular, the structure and requirements for its start-up establishment,

Thirdly, an examination of operational options, beginning with an evaluation of the joint venture option for the initial operation of the Enterprise.

The Special Commission is therefore requesting that the Secretariat prepare the following working papers for the next session and circulate them well in advance of the session:

1. An "issue-raising" paper on all aspects of paragraph 12 of resolution II. That paper, for example, should examine in detail the provision on training and the underlying question of the legal capacity of the Preparatory Commission to enter into the various types of arrangements that may be contemplated under paragraph 12.

2. An information note on joint ventures which would also include the main developments in recent joint ventures

3. A note containing an outline of a start up establishment for the Enterprise.

These requests of the Secretariat for the next session were formulated in the context of long-term needs for detailed studies on the questions and issues involved in paragraph 12, on a Charter for the Enterprise, and on a model joint venture, with emphasis on methods of financing, management and

control of operations. In this regard, the Special Commission also sought to encourage the preparation of specialized papers and case studies of relevant national experiences by delegations and to facilitate the participation of national experts in its meetings. The Special Commission saw certain advantages in compressing its meetings into a shorter period rather than spreading them over four weeks, as long as the General Committee could resolve overlapping and other problems, in order to alleviate the difficulties of small delegations and to encourage participation by national experts. It did not, however, reach a conclusion on this matter.



UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.3
12 April 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Second session
Kingston, Jamaica
19 March - 13 April 1984

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF
SPECIAL COMMISSION 3 ON THE PROGRESS OF WORK
IN THAT COMMISSION

Special Commission 3 was entrusted with the task of preparing rules, regulations and procedures for the exploration and exploitation of the Area (Sea-bed mining code) (document LOS/PCN/27 of 3 September 1983, Annex I, sect. I, para. 1 (c) and sect. III, para. 3).

Towards the fulfilment of this mandate, the Commission held eight meetings during this session. At its second meeting of this session, the Commission adopted its final agenda as contained in document LOS/PCN/SCN.3/CRP.1/Rev.1.

The third and fourth meetings of the Commission were devoted to the consideration of its programme of work. The Commission had before it a discussion paper prepared by the Secretariat, document LOS/PCN/SCN.3/WP.1 and Annex I, containing a detailed list of issues for which the formulation of rules, regulations and procedures is required.

The Commission had also before it document LOS/PCN/WP.17, page 4 and corrigendum 1. During the discussion of the work programme some delegations were of the view that the Commission should proceed with the consideration of items in a "logical and chronological" order set out in Annex I of the Secretariat background paper. Other delegations favoured the approach that the Commission should deal with certain key issues on priority basis. Attention of the Commission was also drawn to the need of co-ordination in some cases of its deliberations with other bodies of the Preparatory Commission.

The Commission finally adopted its work programme as contained in document LOS/PCN/SCN.3/1984/CRP.2, listing the following four items in respect of which rules, regulations and procedures need to be elaborated:

- (a) exploration and exploitation,
- (b) prospecting,
- (c) scope, and
- (d) use of terms.

In adopting the work programme it was understood that the programme merely provided a general framework and would allow for the necessary flexibility. It was also understood that the rules, regulations and procedures to be elaborated in accordance with the mandate of the Commission will deal with prospecting, exploration and exploitation of polymetallic nodules. This understanding is reflected in corrigendum 1 to document LOS/PCN/SCN.3/WP.1. When considering the scope of applicability of the rules, regulations and procedures, the Commission will deal again with this matter and see whether the understanding is still valid.

During the course of the last four meetings, the Commission devoted its attention to the first two sets of issues under the main item "exploration and exploitation" as contained in Annex I to the document LOS/PCN/SCN.3/WP.1, namely the application for approval of plans of work and the content of the application.

This probably is the best place to say that the work of the Commission has been greatly facilitated by the three working papers prepared by the Secretariat, focusing on the questions that the Commission was required to address. For this I wish to express my thanks to the Special Representative of the Secretary-General and his co-operators.

In dealing with the item "application for approval of plans of work" the Commission focused its attention on such matters as the right to apply, the submission of applications and their format and applications for reserved areas. With respect to this item, the Commission had before it a discussion paper by the Secretariat, document LOS/PCN/SCN.3/WP.2.

In view of the fact that the Convention itself and resolution II clearly specify the entities entitled to apply there were no differing opinions expressed on this matter. Particular attention was given to the submission of applications by State enterprises or natural or juridical persons or group of the foregoing. Some delegations were of the opinion that these applicants should submit their applications through the sponsoring State. Others expressed the view that these applicants could submit their applications directly to the Authority. The view was also expressed that State enterprises or natural or juridical persons could submit their applications directly provided that at the same time they are sponsored by States Parties.

There seemed to be a general preference expressing the need to develop a standard model form to be filled out by each applicant.

It should be pointed out that, with regard to other matters under this item, the preliminary exchange of views was inexhaustive and it is difficult at this stage to determine the main trends.

Under the item, "content of application", the Commission discussed such issues as the information to be submitted by an applicant, the nationality of an applicant, control and sponsorship. The Commission had before it a discussion paper LOS/PCN/SCN.3/WP.3, presented by the Secretariat.

There seemed to be general agreement requiring each applicant to submit information identifying it. Much attention was given to the case of partnerships or consortia and particularly to the question whether it is necessary to establish objective criteria for assessing their nationality or the control exercised over them, or to leave these matters to the sponsoring State or States. The discussion of this matter has not been exhaustive and needs to be continued at the next session.

I would like to note also, that in respect of the two sets of issues discussed, attention of the Commission was drawn to joint ventures the Enterprise might enter into with other entities for exploration and exploitation of its areas. Questions arising with respect to the submission of applications and content of applications relating to these entities will require further attention.

For the next session the following method of work was agreed upon. The Commission will first complete discussion of the first two sets of issues, namely the application for approval of plans of work and the content of the application. Thereafter rules, regulations and procedures on these issues will be formulated while consideration of the following sets of issues on the programme of work will begin. These sets of issues contained in Part IV of Annex I to document LOS/PCN/SCN.3/WP.1 related to the payment of fee, the recording and transmittal of applications and the procedure for approval of plans of work.

As requested by the Commission the Secretariat will prepare discussion papers on these sets of issues which as far as possible, will be sent to delegations in advance of the summer session. As soon as a set of issues has been amply discussed, rules, regulations and procedures relating thereto will be elaborated.

I wish to end this report by thanking the members of the bureau for their valuable suggestions and the members of the Commission for their co-operation, understanding and active participation.



UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.4
12 April 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA

Second session

Kingston, Jamaica

19 March - 13 April 1984

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL
COMMISSION 4 ON THE PROGRESS OF WORK IN THAT
COMMISSION

1. Special Commission 4 is mandated to prepare a report with recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea to be submitted to a meeting of States Parties.
2. At the commencement of the session, the Special Commission had before it a draft agenda (LOS/PCN/SCN.4/CRP.1) and a working paper prepared by the Secretariat (LOS/PCN/SCN.4/WP.1). The working paper identifies seven main issues. It elaborates on these issues, identifies the issues in the different areas, refers to appropriate precedent, and draws attention to any interrelationship with the work of the Plenary of the Preparatory Commission. The working paper presented by the Secretariat was considered to be most useful.
3. As a first matter of business, the Special Commission adopted its provisional agenda with the addition of a further item "other matters" in order to make it broad and flexible enough to serve also for the future sessions (LOS/PCN/SCN.4/CRP.1/Rev.1).
4. The Commission thereafter considered the organization of its work. There was general agreement that the seven items listed in paragraph 3 of working paper 1 cover a substantial portion of the work programme to be dealt with by the Special Commission. Moreover, it was agreed that the list of the Commission's tasks contained in paragraph 3 of working paper 1 should include as an additional item the matter of relationship agreements, which is touched upon in Part II of working paper 1. Concurrent views were also expressed on

the need for the Commission to prepare rules for the Meeting of States Parties to be convened for the consideration of the recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea, and for the election of the members of the Tribunal. The Commission did not consider it appropriate to attempt to prepare a comprehensive list of issues and items to be included in its programme of work since as the Commission's work progresses the need may arise for the consideration of additional items. The Commission thereafter, in the light of the recommendations of the Chairman and the Bureau, decided to commence deliberations by considering the procedural rules of the Tribunal since that was the most complex and time-consuming task before the Commission. In adopting that course of action the Commission endorsed the Chairman's suggestion that, to maintain a degree of flexibility in the organization of work, it should not decide on the sequence in which the other items would be examined.

5. The Commission first heard general statements on the different aspects of the Commission's work, in the course of which reference was made to the formulation of the Headquarters Agreement and inter alia the need for certainty as to the applicable national laws of the seat of the Tribunal.

6. In the context of procedural rules, the list of items covered in the working paper was examined. The Special Commission decided that, in principle, the rules of the International Court of Justice should guide the preparation of draft rules. On the recommendation of the Chairman, it was decided that initial consideration should be given to certain issues that he identified. In respect of these, the precedent of the International Court of Justice was either not available or not wholly appropriate, having regard to the new and novel aspects of the Statute of the International Tribunal in Annex VI. Reference papers comprising the Statute and Rules of the International Court of Justice and those of the European Communities' Court were made available for use of delegations (Reference Papers 1-5) since these were considered to be the most relevant precedent.

7. An exchange of views was thereafter held on the items identified by the Chairman on the recommendation of the bureau, which were: the composition of the Tribunal and its Chambers, the different officials and the precedence that would be applied in the Tribunal and the Sea-Bed Disputes Chamber, and the manner of selection of members for the Sea-Bed Disputes Chamber.

8. Consideration was thereafter given to the questions of access of entities other than States to the Tribunal and to the Sea-Bed Disputes Chamber, and advisory opinions. In each case, before the commencement of the discussions, the Chairman identified some considerations and indicated some issues which could be relevant in respect of the items. In this regard at the request of the Special Commission extracts of the Chairman's statements were made available as Conference Room Papers (LOS/PCN/SCM.4/1984/CRP.3-5). Two additional matters which were referred to in the course of the discussions are the question of prompt release of vessels and crew (art. 292) and preliminary proceedings (art. 294). Seven meetings in all were devoted to substantive discussions.

9. The Secretariat was requested to prepare draft procedural rules for the Tribunal, taking into account the discussions during the second session. In doing so it is to use the Rules of Court of the International Court of Justice as the most appropriate guide. When preparing the draft rules, the Secretariat is also to examine the experience of the International Court of Justice so as to avoid the difficulties that had arisen in the practice of the Court on procedural matters. Furthermore, it is to be borne in mind that the draft rules should as far as possible expedite proceedings, encourage the use of the Tribunal by States and others, and minimize costs of the Tribunal and to the parties in any case.

10. The Special Commission also decided that at the resumed session in 1984 it would concentrate its attention on the draft rules prepared by the Secretariat which are to be circulated in advance of the resumed session. The Special Commission intends to utilize every possible opportunity presented to it at the resumed session for the next stage of its work, the primary focus of which is a detailed examination of the draft rules to be carried out at informal meetings on the basis of which an attempt would be made to finalize the draft rules, together with recommendations to be presented to the meeting of States Parties.