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DRAFTING COMMITTEE

RESOLUTIONS OF THE
THIRD UNITED NATIONS CONFERENCE
ON THE LAW OF THE SEA*

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82-16125

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

The Third United Nations Conference on the Law of the Sea,

Having adopted the Convention on the Law of the Sea which provides for the establishment of the International Sea-Bed Authority and the International Tribunal for the Law of the Sea,

Having decided to take all possible measures to ensure the entry into effective operation without undue delay of the Authority and the Tribunal and to make the necessary arrangements for the commencement of their functions,

Having decided that a Preparatory Commission should be established for the fulfilment of these purposes,

Decides as follows:

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.

2. 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.

3. The Commission shall elect its Chairman and other officers.

4. The Rules of Procedure of the Third United Nations Conference on the Law of the Sea shall apply mutatis mutandis to the adoption of the rules of procedure of the Commission.

5. The Commission shall:

(a) prepare the provisional agenda for the first session of the Assembly and of the Council and, as appropriate, make recommendations relating to items thereon;

(b) prepare draft rules of procedure of the Assembly and of the Council;

(c) make recommendations concerning the budget for the first financial period of the Authority;

(d) make recommendations concerning the relationship between the Authority and the United Nations and other international organizations;

2. Calls upon the developing countries to establish programmes for the promotion of technical co-operation among themselves in the field of marine science, technology and ocean service development;

3. Urges the industrialized countries to assist the developing countries in the preparation and implementation of their marine science, technology and ocean service development programmes;

4. Recommends that the World Bank, the regional banks, the United Nations Development Programme, the United Nations Financing System for Science and Technology and other multilateral funding agencies augment and co-ordinate their operations for the provision of funds to developing countries for the preparation and implementation of major programmes of assistance in strengthening their marine science, technology and ocean services;

5. Recommends that all competent international organizations within the United Nations system expand programmes within their respective fields of competence for assistance to developing countries in the field of marine science technology and ocean services and co-ordinate their efforts on a system-wide basis in the implementation of such programmes, paying particular attention to the special needs of the developing countries, whether coastal, land-locked or geographically disadvantaged;

6. Requests the Secretary-General of the United Nations to transmit this resolution to the General Assembly at its thirty-seventh session.

(e) make recommendations concerning the Secretariat of the Authority in accordance with the relevant provisions of the Convention;

(f) undertake studies, as necessary, concerning the establishment of the headquarters of the Authority, and make recommendations relating thereto;

(g) prepare draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions, including draft regulations concerning the financial management and the internal administration of the Authority;

(h) exercise the powers and functions assigned to it by resolution II of the Conference relating to preparatory investment;

(i) undertake 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 submit recommendations to the Authority thereon.

6. The Commission shall have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as set forth in this resolution.

7. The Commission may establish such subsidiary bodies as are necessary for the exercise of its functions and shall determine their functions and rules of procedure. It may also make use, as appropriate, of outside sources of expertise in accordance with United Nations practice to facilitate the work of bodies so established.

8. The Commission shall establish a special commission for the Enterprise and entrust to it the functions referred to in paragraph 11 of resolution II of the Conference relating to preparatory investment. The special commission shall take all measures necessary for the early entry into effective operation of the Enterprise.

9. The Commission shall establish a special commission on the problems which would be encountered by developing land-based producers likely to be most seriously affected by the production of the Area and entrust to it the functions referred to in paragraph 5 (i).

10. The Commission shall prepare a report containing recommendations for submission to the meeting of the States Parties to be convened in accordance with Annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

11. The Commission shall prepare a final report on all matters within its mandate, except as provided in paragraph 10, for the presentation to the Assembly at its first session. Any action which may be taken on the basis of the report must be in conformity with the provisions of the Convention concerning the powers and functions entrusted to the respective organs of the Authority.

12. The Commission shall meet at the seat of the Authority if facilities are available; it shall meet as often as necessary for the expeditious exercise of its functions.

13. The Commission shall remain in existence until the conclusion of the first session of the Assembly, at which time its property and records shall be transferred to the Authority.

14. The expenses of the Commission shall be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations.

15. The Secretary-General of the United Nations shall make available to the Commission such secretariat services as may be required.

16. The Secretary-General of the United Nations shall bring this resolution, in particular paragraphs 14 and 15, to the attention of the General Assembly for necessary action.

RESOLUTION II
GOVERNING PREPARATORY INVESTMENT IN
PIONEER ACTIVITIES RELATING TO POLYMETALLIC NODULES

The Third United Nations Conference on the Law of the Sea,

Having this day adopted the Convention on the Law of the Sea (the "Convention"),

Having this day also established by resolution the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea (the "Commission") and directed it to prepare such draft rules, regulations and procedures as it deems necessary to enable the Authority to commence its functions, as well as to make recommendations for the early entry into effective operation of the Enterprise,

Desirous of making provision for investments by States and other entities made in a manner compatible with the international régime set forth in Part XI of the Convention and the annexes relating thereto, prior to the entry into force of the Convention,

Recognizing the need to ensure that the Enterprise will be provided with the funds, technology and expertise necessary to enable it to keep pace with the States and other entities referred to in the preceding paragraph, with respect to activities in the Area,

Decides as follows:

1. For the purposes of this resolution:

(a) "pioneer investor" refers to:

- (i) France, Japan, India and the Union of Soviet Socialist Republics, or a State enterprise of each of those States or one natural or juridical person which possesses the nationality of or is effectively controlled by each of those States, or their nationals, provided that the State concerned sign the Convention and the State or State enterprise or natural or juridical person has expended, prior to 1 January 1983, an amount equivalent to at least \$US 30 million (United States dollars calculated in constant dollars relative to 1982) in pioneer activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in paragraph 3 (a);
- (ii) four entities, whose components being natural or juridical persons 1/ possess the nationality of, or are effectively

1/ For their identity and composition see "Sea-bed mineral resource development: recent activities of the International Consortia" and addendum, published by the Department of International Economic and Social Affairs of the United Nations (ST/ESA/107).

controlled by, one or more of the following States: Belgium, Canada, the Federal Republic of Germany, Italy, Japan, Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America or their nationals, provided that the certifying State or States sign the Convention and the entity concerned has expended, prior to 1 January 1983, the levels of expenditure and for the purpose stated in subparagraph (i);

- (iii) any developing State signatory of the Convention or any State entity or natural or juridical person which possesses the nationality of such State or is effectively controlled by it or its nationals, or any group of the foregoing which, prior to 1 January 1985, has expended the levels of expenditure and for the purpose stated in subparagraph (i);

The rights of the pioneer investor may devolve upon its successor in interest.

(b) "pioneer activities" means undertakings, commitments of resources, investigations, findings, research, engineering development, and other activities relevant to the identification, discovery, and systematic analysis and evaluation of polymetallic nodules and to the determination of the technical and economic feasibility of exploitation. Pioneer activities include:

- (i) any at-sea observation and evaluation activity which has as its objective the establishment and documentation of:
 - a the nature, shape, concentration, location and grade of polymetallic nodules;
 - b the environmental, technical, and other appropriate factors which must be taken into account prior to exploitation;
- (ii) the taking from the deep sea-bed of polymetallic nodules with a view to the designing, fabricating, and testing of equipment which is intended to be used in the exploitation of polymetallic nodules;

(c) "certifying State" means a signatory of the Convention standing in the same relation to a pioneer investor as would a sponsoring State pursuant to Annex III, article 4, of the Convention and which certifies the level of investment specified in subparagraph (a);

(d) "polymetallic nodules" means one of the resources of the Area, consisting of any deposit or accretion on or just below the surface of the deep sea-bed consisting of nodules which contain manganese, nickel, cobalt and copper;

(e) "pioneer area" means an area allocated by the Commission to a pioneer investor for pioneer activities pursuant to this resolution. A pioneer area shall not exceed 150,000 square kilometres. The pioneer investor shall relinquish portions of the pioneer area to revert to the international Area, in accordance with the following schedule:

- (i) 20 per cent of the area allocated by the end of the third year from the date of the allocation;
- (ii) an additional 10 per cent of the area allocated by the end of the fifth year from the date of the allocation;
- (iii) an additional 20 per cent of the area allocated or such larger amount as would exceed the exploitation area decided upon by the Authority in its rules, regulations and procedures, after eight years from the date of the allocation of the area or the date of the award of a production authorization, whichever is earlier.

(f) "Area", "Authority", "activities in the Area" and "resources" shall have the meanings assigned to those terms under the Convention.

2. As soon as the Preparatory Commission begins to function, any State signatory of the Convention may apply to the Commission on its own behalf or on behalf of any State enterprise or entity or natural or juridical person specified in paragraph 1(a), for registration as a pioneer investor. The Commission shall register the applicant as a pioneer investor if the application:

(a) in the case of a State signatory, is accompanied by a statement certifying the level of expenditure made in accordance with paragraph 1(a), and, in all other cases, a certificate concerning such level of expenditure issued by a certifying State or States; and

(b) is in conformity with the other provisions of this resolution, including paragraph 5.

3. (a) Every application shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The application shall indicate the co-ordinates of the area, defining the total area and dividing it into two parts of equal estimated commercial value and contain all the data available to the applicant with respect to both parts of the area. Such data shall include, inter alia, information relating to mapping, sampling, the density of nodules and the composition of metals in them. In dealing with such data, the Commission and its staff shall act in accordance with the relevant provisions of the Convention and its Annexes concerning the confidentiality of data.

(b) Within 45 days of receiving the data required by subparagraph (a), the Commission shall designate the part of the area to be reserved in accordance with the Convention for the conduct of activities by the Authority through the Enterprise or in association with developing States. The other part of the area shall be allocated to the pioneer investor as a pioneer area.

4. No pioneer investor may be registered in respect of more than one pioneer area. In the case of a pioneer investor which is made up of two or more components, none of such components may apply to be registered as a pioneer investor in its own right or under paragraph 1 (a) (iii).

5. (a) Any State signatory which is a prospective certifying State shall ensure, before making applications to the Preparatory Commission under paragraph 2, that areas in respect of which applications are made do not overlap with one another or with areas previously allocated as pioneer areas. The States concerned shall keep the Commission currently and fully informed of any efforts to resolve conflicts with respect to overlapping claims and the results thereof.

(b) Certifying States shall, prior to the entry into force of the Convention, ensure that pioneer activities are conducted in a manner compatible with it.

(c) In carrying out the conflict resolution procedure required under subparagraph (a), the prospective certifying States, including all potential claimants, shall resolve their conflicts by negotiations within a reasonable period. If such conflicts have not been resolved by 1 March 1983, the prospective certifying States shall arrange for the submission of all such claims to binding arbitration in accordance with UNCITRAL Arbitration Rules to commence not later than 1 May 1983 and to be completed by 1 December 1984. If one of the States concerned does not wish to participate in the arbitration, it shall arrange for a juridical person of its nationality to represent it in the arbitration. The arbitration tribunal may, for good cause, extend the deadline for the making of the award for one or more 30-day periods.

(d) In determining the issue as to which applicant involved in a conflict shall be awarded all or part of each area in conflict, the arbitral tribunal shall find a solution which is fair and equitable, having regard, with respect to each applicant involved in the conflict, to the following factors:

- (i) deposit of the relevant co-ordinates with the prospective certifying State or States not later than the date of adoption of the Final Act or 1 January 1983, whichever is earlier;
- (ii) the continuity and extent of past activities relevant to each area in conflict and the application area of which it is a part;
- (iii) the date on which each pioneer investor concerned or predecessor in interest or component organization thereof commenced activities at sea in the application area;
- (iv) the financial cost of activities measured in constant dollars relevant to each area in conflict and to the application area of which it is a part; and
- (v) the time when activities were carried out and the quality of activities.

6. A pioneer investor registered pursuant to this resolution shall, as from the date of such registration, have the exclusive right to carry out pioneer activities in the pioneer area allocated to him.

7. (a) Every applicant for registration as a pioneer investor shall pay to the Commission a fee of \$US 250,000. When the pioneer investor applies to the Authority for a plan of work for exploration and exploitation the fee referred to in Annex III, article 13, paragraph 2, shall be \$US 250,000.

(b) Every registered pioneer investor shall pay an annual fixed fee of \$US 1 million commencing from the date of the allocation of the pioneer area. The payments shall be made by the pioneer investor to the Authority upon the approval of his plan of work for exploration and exploitation. The financial arrangements undertaken pursuant to such plan of work shall be adjusted to take account of the payments made pursuant to this paragraph.

(c) Every registered pioneer investor shall agree to incur periodic expenditures, with respect to the pioneer area allocated to it, until approval of its plan of work pursuant to paragraph 8, of an amount to be determined by the Commission. The amount should be reasonably related to the size of the pioneer area and the expenditures which would be expected of a bona fide operator who intends to bring the area into commercial production within a reasonable time.

8. (a) Within six months of the entry into force of the Convention and certification by the Commission in accordance with paragraph 11 hereof of compliance with the provisions of this resolution, the pioneer investor so registered shall apply to the Authority for a plan of work for exploration and exploitation, in accordance with the Convention. The plan of work in respect of such application shall comply with and be governed by the relevant provisions of the Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial requirements and the undertakings concerning the transfer of technology. Accordingly, the Authority shall approve such application.

(b) When an application is made by an entity other than a State, pursuant to subparagraph (a), the certifying State or States shall be deemed to be the sponsoring State for the purposes of Annex III, article 4, of the Convention, and shall thereupon assume such obligations.

(c) No plan of work for exploration and exploitation shall be approved unless the certifying State is a party to the Convention. In the case of the entities referred to in paragraph 1 (a) (ii), the plan of work for exploration and exploitation shall not be approved unless all the States whose natural or juridical persons comprise those entities are parties to the Convention. If any such State fails to ratify the Convention within six months after it has received a notification from the Authority that an application by it, or sponsored by it, is pending, its status as a pioneer investor or certifying State as the case may be, shall terminate, unless the Council, by a majority of three fourths of its members present and voting decides to postpone the terminal date by a period not exceeding six months.

9. (a) In the allocation of production authorization, in accordance with article 151 of the Convention and Annex III, article 7, the pioneer investors who have obtained approval of plans of work for exploration and exploitation, shall have priority over all applicants other than the Enterprise which shall be entitled to production authorization for two mine sites including that referred to in article 151, paragraph 5. After each of the pioneer investors has obtained production authorization for its first mine site, the priority for the Enterprise contained in Annex III, article 7, paragraph 6, shall apply.

(b) Production authorizations shall be issued to each pioneer investor within 30 days of the date on which the pioneer investor notifies the Authority that it will commence commercial production within five years. If a pioneer investor is unable to begin production within the period of five years for reasons beyond its control, it shall apply to the Legal and Technical Commission for an extension of time. The said Commission shall grant such extension of time, for a period not exceeding five years and not subject to further extension, if it is satisfied that the pioneer investor cannot begin on an economically viable basis at the time originally planned. Nothing in this subparagraph shall prevent the Enterprise or any other pioneer applicant, who has notified the Authority that it will commence commercial production within five years, from being given a priority over any applicant who has obtained an extension of time under this subparagraph.

(c) If, upon being given notice, pursuant to subparagraph (b), that the Authority determines that the commencement of commercial production within five years would exceed the production ceiling in article 151, paragraphs 2 to 7, the applicant shall hold a priority over any other applicant for the award of the next production authorization allowed by the production ceiling.

(d) In the event that two or more pioneer investors apply for production authorizations to begin commercial production at the same time and article 151, paragraph 3, would not permit all such production to commence simultaneously, the Authority shall notify the pioneer investors concerned. Within three months of such notification, they shall decide whether and, if so, to what extent they wish to apportion the allowable tonnage among themselves.

(e) If, pursuant to subparagraph (d), they decide not to apportion the available production among themselves they shall agree on an order of priority for production authorizations and all subsequent applications for production authorizations will be granted after those referred to in this subparagraph have been approved.

(f) If, pursuant to subparagraph (d), they decide to apportion the available production among themselves, the Authority shall award each of them a production authorization for such lesser quantity as they have agreed. In each such case the stated production requirements of the applicant will be approved and their full production will be allowed as soon as the production ceiling admits of additional capacity sufficient for the applicants involved in the competition. All subsequent applications for production authorizations will only be granted after the requirements of this subparagraph have been met and the applicant is no longer subject to the reduction of production provided for in this subparagraph.

(g) If the parties fail to reach agreement within the stated time period, the matter shall be decided immediately by the in accordance with the criteria set forth in Annex III, article 7, paragraphs 3 and 5.

10. (a) Any rights acquired by entities, natural or juridical persons which possess the nationality of or are effectively controlled by a State or States whose status as certifying State has been terminated, shall lapse unless the pioneer investor alters its nationality and sponsorship within six months of the date of such termination, as provided for in subparagraph (c).

(b) A pioneer investor may alter its nationality and sponsorship from that prevailing at the time of its registration as a pioneer investor to that of any State party to the Convention which has effective control over the pioneer investor in terms of paragraph 1 (a).

(c) Alterations of nationality and sponsorship pursuant to this paragraph shall not affect any right or priority conferred on a pioneer investor pursuant to paragraphs 6 and 8 of this resolution.

11. The Commission shall:

(a) provide pioneer investors with the certificates of compliance with the provisions of this resolution referred to in paragraph 8 hereof; and

(b) incorporate in its final report provided for in paragraph 11 of resolution 1 of the Conference, details of all registrations of pioneer investors and allocation of pioneer areas pursuant to this resolution.

12. In order to ensure that the Enterprise is able to carry out activities in the Area in such a manner as to remain in step with States and other entities:

(a) every registered pioneer investor shall:

(i) carry out exploration at the request of the Commission in the area reserved pursuant to paragraph 3 of this resolution in connection with its application for activities by the Authority through the Enterprise or in association with developing States, on the basis that the costs so incurred plus interest thereon at the rate of 10 per cent per annum shall be reimbursed;

(ii) provide training at all levels for personnel designated by the Commission;

(iii) undertake prior to the entry into force of the Convention, to perform the obligations prescribed in the provisions of the Convention relating to transfer of technology;

(b) every certifying State shall:

(i) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the provisions of the Convention, upon its entry into force; and

(ii) report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons.

13. The Authority and its organs shall recognize and honour the rights and obligations arising from this resolution and the decisions of the Preparatory Commission taken pursuant to it.

14. Without prejudice to paragraph 13, this resolution shall have effect until the entry into force of the Convention.

15. Nothing in this resolution shall derogate from the provisions of Annex III, article 6, paragraph 3 (c), of the Convention.

RESOLUTION III

The Third United Nations Conference on the Law of the Sea,

Having regard to the Convention on the Law of the Sea,

Bearing in mind the Charter of the United Nations, in particular Article 73,

1. Declares that:

(a) In the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development.

(b) Where a dispute exists between States over the sovereignty of a territory to which this resolution applies, in respect of which the United Nations has recommended specific means of settlement, there shall be consultations between the parties to that dispute regarding the exercise of the rights referred to in subparagraph (a). In such consultations the interests of the people of the territory concerned shall be a fundamental consideration. Any exercise of those rights shall take into account the relevant resolutions of the United Nations and shall be without prejudice to the position of any party to the dispute. The States concerned shall make every effort to enter into provisional arrangements of a practical nature and shall not jeopardize or hamper the reaching of a final settlement of the dispute.

2. Requests the Secretary-General of the United Nations to bring this resolution to the attention of all Members of the United Nations and the other participants in the Conference, as well as the principal organs of the United Nations, and to request their compliance with it.

RESOLUTION IV

The Third United Nations Conference on the Law of the Sea,

Bearing in mind that national liberation movements have been invited to participate in the Conference as observers in accordance with rule 62 of its rules of procedure,

Decides that the national liberation movements, which have been participating in the Third United Nations Conference on the Law of the Sea, shall be entitled to sign the Final Act of the Conference, in their capacity as observers.
