

# **Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/C.1/SR.12**

## **Summary records of meetings of the First Committee 12<sup>th</sup> meeting**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume II (Summary Records of Meetings of the First, Second and Third Committees, Second Session)*

## 12th meeting

Wednesday, 7 August 1974, at 10.40 a.m.

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

### Economic implications of sea-bed mineral development (continued)\*

1. Mr. LIND (Sweden) said that the analysis contained in the material that the Committee had before it was complex and was based on data and predictions that could not be accurate in all cases. Although some delegations had questioned certain figures and conclusions in that material, his own delegation did not consider that that could be taken as diminishing the value of the studies and presentations; and it believed that the conclusion could safely be drawn that any future exploitation of the sea-bed might entail at least the risk of having harmful effects on the economies of certain States, especially those of developing countries that were producers of such resources, since the latter could be expected to suffer the most. The Committee must accordingly consider the question of adopting measures to offset those harmful effects. Since the world community would doubtless share the benefits of the area, it should also, in the view of his delegation, take upon itself the responsibility for applying the measures necessary to prevent any harmful effects on developing countries, particularly in the case of countries deriving a major proportion of their export earnings from the minerals that were likely to be produced from nodules. For that reason, his delegation believed that the convention which the Conference was drafting should include provisions on appropriate ways of controlling the exploitation of resources in the area, and regulations designed to prevent, or at least minimize, adverse effects on the exports of developing countries. In that connexion, it should be recalled that Sweden lent its full support to the idea expressed in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction<sup>1</sup> that particular consideration be given to the interests and needs of the developing countries in sharing the benefits derived from exploitation of the area. It was clearly a complicated task to balance the interests of States which were producers and those which were consumers of minerals that were likely to be derived from future large-scale exploitation of nodules from the deep ocean floor. His delegation did not believe that the new law of the sea should include exact stipulations as to the nature of any regulation of output from the area; the texts of the convention should allow the Authority sufficient flexibility to ensure that its choice between such possible measures could be adapted to the specific conditions of each case. Thus, in line with its basic approach towards the Authority, the Swedish delegation considered that it should be given far-reaching powers which would be the most rational way of managing the area. Furthermore, it was to be hoped that the Authority would maintain close contact with other international organizations having responsibilities for questions related to world trade in primary products, such as the United Nations Conference on Trade and Development (UNCTAD).

2. Mr. BOATEN (Ghana) recalled the directives that had been given to the Secretary-General in General Assembly resolution 2750 A (XXV), in order to draw attention to the nature of that mandate and to indicate the origins from which the form and content of his report had been derived. Those directives drew their inspiration essentially from the Declaration of Principles, which provided that care should be taken to ensure

that the exploitation of the sea-bed beyond the limits of national jurisdiction would not adversely affect the well-being of the developing countries as a whole.

3. The divergence in assessments based on the same fundamental facts was confusing. Moreover, there were so many unknown factors and variables in the data that had been presented to the Committee that the future picture was very difficult to conceive. It was still in the dark about facts such as the potential production of land-based minerals of the kind to be produced in the sea-bed over the next decade, the volume of known land-based minerals still waiting to be exploited, what national plans existed for expanding the production of land-based minerals, and at what rate the land-based resources currently exploited were being exhausted. Complex issues were involved which did not lend themselves to easy and quick study, but the convention that was being elaborated could not await the solution of those complex issues. There was urgent need for a convention to regulate the exploration and exploitation of the sea-bed beyond the limits of national jurisdiction, which had been proclaimed the common heritage of mankind, before a state of anarchy was reached in the area, with consequent potential danger to world peace and stability.

4. Contrary to what had been maintained at the seminar, it was now known that the price of a product did not necessarily depend on its cost of production, of which the costs of the raw materials were only a small part. The fact of the matter was that the sole object of the entrepreneur was to maximize his profit. Further, it was a fact that the price of a particular product could depend on a number of factors, external and internal. As a result the producer of raw materials sold his products cheaply, but, like the producer of products other than raw materials, he bought the finished product at a high price.

5. Faced with the uncertainties associated with the effects of the exploitation of the sea-bed beyond national jurisdiction, on the economies of developing countries which were land-based mineral producers, his delegation thought that the only solution was to create effective machinery with adequate powers to act, in case of need, to avert any adverse consequences, with due consideration for the economies of developing countries which were not exporters of land-based resources. Should no occasion arise to use those wide powers, no harm would have been done; if the opportunity did arise, the precautions would have been useful.

6. Mr. THOMAS (Trinidad and Tobago) said that in the material that the Committee had before it, and in the opinions that had been expressed, there were a number of divergent views regarding substance and projections, the conditions and possible scale of the exploitation, the present technological capacity of the companies and studies on probable exploitation dates and the probable expenditure involved. He identified four main features in the Secretary-General's report: the limited character of the information on which the projections of exploitation and their possible economic consequences were based; the fact that the projections were short-term (to 1985); the difficulty of making an approximately accurate analysis, owing to the fact that available information was not always objective; lastly, the provisional and general nature of its conclusions. An over-all feature of the report was the general uncertainty regarding the periods covered by the projections. He understood the factors responsible for that, and he found the report on the whole satisfactory as it could be extremely

\*Resumed from the 10th meeting.

<sup>1</sup>General Assembly resolution 2749 (XXV).

useful as a general guide. In deciding the position it would adopt, his delegation had tried to project its thinking beyond 1985; it had always maintained the Conference should plan for posterity and not only for the immediate future.

7. Although his delegation accepted the statement in the report of the Secretary-General and from other sources that manganese nodules were the sea-bed minerals which were most likely to be exploited in the near future, it did not reject other possibilities of commercial exploitation of the sea-bed as technology progressed. As a result of exploration carried out it was known that concentrations of manganese nodules were found mainly in the Pacific and Indian Oceans. It was also known that, from the technological point of view, it was possible to exploit them commercially and that the commercial exploitation of manganese nodules could affect the present prices of their component metals—nickel, copper, cobalt and manganese—now supplied from land-based sources, thereby causing losses which could in some cases be substantial. The projections showed that there might be an appreciable drop in prices, especially in the case of manganese and cobalt. Any such drop would have two immediate effects: a reduction in the export earnings of producing countries, or an irrational depletion of their resources, and a fall in the prices of the metals concerned, which would benefit countries that were consumers of raw materials or finished products made from those metals. The cogency of that argument depended on the theory of supply and demand. Whatever the merits of that theory, it was valid only when the other variables remained constant, i.e., it was a dependent variable. On the other hand his delegation was concerned by the situation of the developing countries; the developing countries that would suffer from increased production totalled 14—i.e., a minority—which meant that the majority of developing countries would benefit. It had been maintained that any attempt to check a fall in prices for the benefit of a few countries would be unjust. The same countries—a minority of industrial countries—that were advancing that argument, had traditionally been profiting at the expense of the majority. It was paradoxical therefore that those very countries were advancing that argument in the “interest” of the majority of developing countries. Whose interests were they really championing? What conclusions could be drawn from that?

8. The Group of 77, composed of developing countries, had arisen from the need to remedy the imbalances and injustices of international trade and the trade practices of which they had always been the victims; the fact that some countries were seeking to speed up their own development at the expense of members of the Group was at a variance with its basic concept and constituted a reversion to the traditional practices of the industrialized countries. The developing countries were striving for industrial development, but not on the basis of the exploitation of the Group's members or at their expense. No group, even if it constituted a majority, should seek to benefit unduly at the expense of others from the resources to be derived from the international sea-bed area.

9. A rational system of exploitation was required aimed at reducing price fluctuations to a minimum, stabilizing the economies of those few developing countries and at the same time increasing the potential of the area for the benefit of all mankind, especially the developing countries, in order to accelerate their industrial and economic development. A system in which it was the multinational companies that had the power to exploit, and production was left to the free play of market forces was not the answer, for it would continue to enrich the few at the expense of the majority. For the developing countries, the resources of the international sea-bed area might provide the last opportunity for collective exploitation; they must not let that opportunity slip. There was only one way to make use of those resources for the benefit of the majority: by managing, developing and supervising all aspects of their exploitation so as to ensure equal benefits for all the developing countries and

not only for the few; if they lost that opportunity, only a minority would benefit.

10. The report of the Secretary-General suggested compensatory and preventive measures, which were not mutually exclusive but complementary, to remedy the present situation in which the immediate interests of a few developing countries appeared to conflict with those of the majority. The proposed solutions would protect the economies of the producing developing countries and provide an orderly system of development of the resources of the area in the interest of the whole international community.

11. The Conference should seek to evolve a system which constituted a just and proper balance that would protect first the few developing countries whose economies were largely dependent on metals that could be mined from the sea-bed and secondly, accelerate the economic and industrial development of all developing countries on the basis of the equitable use of the resources of the international sea-bed area. That approach was complex and difficult but the difficulties were not necessarily insuperable. What was needed was collective effort, political will and a global enterprise beyond the capacity of any existing organization or company, a strong and broadly based organization representing the interests of all in which justice and equity could be achieved.

12. Mr. TURQUET DE BEAUREGARD (France) said that although France was one of the principal producers of nickel and possessed considerable mineral reserves in New Caledonia it supported the exploitation of sea-bed nodules, since it was aware that terrestrial reserves were limited and their exploitation was becoming increasingly difficult; in fact, it was necessary to assume that the whole of mankind needed mineral raw materials and that it was impossible to do without the resources of the sea-bed, the exploitation of which would benefit all countries of the world.

13. The system to be devised for the exploitation of the sea-bed must ensure that such activities were carried out with maximum efficiency. Since the commencement of exploitation would engender price fluctuations, the most suitable method would be a progressive exploitation of the sea-bed; in any case, the stabilization of the prices of raw materials must be a matter of constant concern to the international community. France, for its part, had proposed in the United Nations General Assembly that the problem should be studied on a broad front and that, initially, price changes should be kept under some kind of supervision in order to avoid harming either the mineral producing countries or the consumer countries.

14. The current Conference should avoid establishing a system that protected countries possessing mineral resources in raw form, to the detriment of the group of countries whose economic life was dependent upon access to raw materials, which should be used for the benefit of the whole of mankind.

15. Mr. DE SOTO (Peru) said that the Secretary-General's report on sea-bed mineral development was divided into three chapters: the first, a review of sea-bed mining activities, was a study that had proved to be difficult, since the few enterprises that were in a position to undertake exploitation did not supply the necessary information; the second chapter, concerning the probable impact of nodule mining, was of a speculative nature, precisely because of the difficulty of obtaining information. On the other hand, it should be pointed out that, while it appeared possible to forecast that only manganese nodules were likely to be exploited in the foreseeable future not all sea-bed mining possibilities were yet known with certainty.

16. The third chapter of the report dealt with the basic problem, namely the promoting of the rational development of nodule resources. In that connexion, he recalled that his country had been one of the sponsors of General Assembly resolution 2750 A (XXV), which established the objective of identifying the problems arising from the production of certain

minerals and examining the impact they would have on the economic well-being of the developing countries, in particular on prices of mineral exports on the world market.

17. In that respect, there was no need for the convention to provide for the protection of the mineral consumer countries, since they could only benefit from the exploitation of the seabed. The problem would seem to lie in the fact that exploitation designed to favour the developing countries would have unfavourable repercussions on certain developed countries.

18. Referring to the discussions held on the subject, he said he disagreed with the view that sea-bed mineral exploitation would affect only a small minority of countries and would not adversely affect the developing countries that produced minerals. It should be borne in mind that the studies referred only to manganese nodules and took no account of the other possibilities for exploitation. Furthermore, it was not a question of legislating for a few years but of formulating a lasting convention and, while it was in force, the technology of manganese nodule exploitation might develop in such a way as to be cheaper than land-based exploitation.

19. His delegation was not convinced by those arguments which maintained that adverse effects would result from providing the Authority with effective means of combating the possible adverse effects of sea-bed mineral exploitation; in that respect, he felt that powerful machinery was needed to solve the problems that might be faced by the developing countries that produced minerals.

20. His delegation supported the inclusion in the convention of a provision that would enable the Authority to take whatever measures were required, including the control, reduction or suspension of production, or the fixing of prices for products obtained by sea-bed exploitation, whenever it considered that such exploitation might adversely affect the developing countries.

21. Mr. ZEGERS (Chile) said that the Committee had to determine the economic consequences of the extraction of minerals from the sea-bed. In 1968, when the sea-bed Committee had first met it had already been evident that the extraction of minerals from the sea-bed would probably have adverse effects on countries producing land-based minerals. The Committee had decided that one of the regulatory principles of the exploitation of the sea-bed should be that those effects should be foreseen and minimized.<sup>2</sup> That principle was contained in the Declaration of Principles and UNCTAD had also recognized it in resolution 51 (III).<sup>3</sup> The Secretary-General had prepared a report on the question in response to the request made in General Assembly resolution 2750 (XXV).<sup>4</sup>

22. Consequently, since the extraction of minerals from the sea-bed could have adverse economic effects the Committee must determine their nature and scope. The discussion had concentrated on the exploitation of manganese nodules, because that might almost be considered to have started, despite the moratorium laid down in General Assembly resolution 2574 D (XXIV). However, manganese nodules were not the only mineral deposits which could be exploited. The possible extraction of hydrocarbons from the ocean basin must also be considered, as well as the exploitation of metal-bearing sludge and of the many mineral deposits in the sea-bed, which could produce fantastic yields. Consequently, practically all mineral-producing developing countries could suffer adverse effects from the exploitation of the mineral resources of the sea-bed.

23. According to the Secretary-General's report, the exploitation of manganese nodules would be prejudicial to several

countries which were producers of the minerals that could be extracted from those nodules, namely copper, nickel, cobalt and manganese, but would affect some more seriously than others. Apparently over 30 countries would be more or less seriously affected.

24. In that connexion, it should be remembered that potential resources of the nodules seemed to be enough to supply the needs of all mankind, without any exploitation of land-based sources. Moreover, firms from industrialized countries had been exploring the nodules and already possessed highly-developed extraction methods, let alone future possibilities offered by the fantastic progress of technology. One great Power also had a project which, if carried out, would enable it to grant exploitation licences outside any control by the international community.

25. In order to determine the nature and scope of the economic effects of the exploitation of manganese nodules, the Committee could base its work on the UNCTAD study and that of the Secretary-General, which were condensed in document A/CONF.62/C.1/L.2. According to the UNCTAD secretariat, the extraction of minerals from manganese nodules would adversely affect the world market prices of copper, cobalt and nickel, all the main producers of which were developing countries. The Secretary-General said that prejudice would be caused in the short term to producers of cobalt and nickel and in the long term to producers of copper.

26. UNCTAD estimated that by 1980, the losses suffered by the countries producing those metals could equal the total income of the Authority, i.e. that its cost would be borne completely by the developing countries. The Secretary-General's report did not contain specific figures, but its conclusions were the same as those of the UNCTAD report.

27. Two ways of dealing with that situation had been proposed, one of a compensatory and the other of a preventive nature. The former had been rejected because it had been considered impracticable, since the Authority's income would not cover the compensation. Four types of preventive measures had been proposed: the first was that the Authority should control production, but both UNCTAD and the Secretary-General had shown the advisability of adopting a flexible attitude in that respect, in view of the constantly changing situation. A second proposal was based on general commodity agreements; that was an interesting proposal, but long-term in nature. Another method would be to fix minimum prices and lastly, there was the complementary criterion consisting in regulating production in accordance with increasing demand for the minerals affected, especially nickel. Whatever method was adopted, and it might be possible to adopt a combination of all four, the exploitation must obviously be regulated, in order to safeguard regions which the developing countries would be able to exploit later on when they had access to more advanced technology. All the relevant studies agreed that no incentives should be offered for the exploitation of the sea-bed deposits.

28. In his summing-up of the situation made to an unofficial meeting of the Committee on 1 August, the Chairman had said that it was necessary first to determine the extent of the possible adverse effects and then to decide what measures the international community should adopt, bearing in mind the need to avoid paralysing production. He had added that the Authority should be given adequate powers to that end, and should possess a technical body which would keep the matter under constant review. The Chilean delegation requested that the Chairman's summing-up be reproduced in a summary record.

29. It was very important that the Committee should prepare draft articles on that subject.

*Mr. Iguchi (Japan), Vice-Chairman, took the Chair.*

30. Mr. FINCHAM (South Africa) said that one of the features of the Conference had been its educational effect, as had

<sup>2</sup>Official Records of the General Assembly, Twenty-third Session, document A/7230.

<sup>3</sup>See *Proceedings of the United Nations Conference on Trade and Development, Third Session*, vol. I: (United Nations Publication, Sales No. E.73.II.D.4), annex I.

<sup>4</sup>Document A/AC.138/36, 28 May 1971.

already been observed in the Committee, and one of the issues in which the educational process had played a significant part was that currently under discussion. One aspect that had struck his delegation was that all the projections and forecasts concerning the possible effects of sea-bed mining were short-term and based on a fairly large number of assumptions, as had been repeatedly stressed by the experts. As the representative of Peru had remarked, the Conference must not think in terms of 1975, 1990 or the end of the century, but of the long term. If success were achieved in preparing a convention, its writ would run for generations to come, when the existing political and economic picture would have become very different. His delegation had reached the conclusion that the Conference did not have sufficient information at its disposal on the subject for it to know what was going to happen over the long term, and it could expect to see no more than a small part of the picture. The Authority to be established must have the powers to tackle not only the problems that could be currently foreseen, but also those problems which could arise one or two generations later; and it must also have the necessary flexibility to solve them. There were grounds for assuming that sea-bed mining activities would have deleterious effects on the economies of producers of some land-based metals, and the Authority must be enabled to react flexibly and effectively to the threats as and when they arose, through commodity agreements, price-fixing, stock-piling or the use of compensatory devices—in other words, all the techniques which the economists knew or might conceive. The fundamental objective was to find a means of combining the extensive powers which the Authority would need under a constitution that would ensure that it remained dedicated to the real long-term objectives for which it had been created. In other words, the Conference must devise the means of ensuring that the Authority would be strong enough and that it would, at the same time, be obliged to concentrate on its work, while resisting the temptation to allow a possible majority to change its basic aims and induce it to intervene in political affairs, which it had not been established to handle. That was the dilemma to which his delegation wished to draw attention.

*Mr. Engo (United Republic of Cameroon) resumed the Chair.*

31. Mrs. MANN BORGESSE (International Ocean Institute), speaking at the invitation of the Chairman, said that as a result of current trends in delimiting national jurisdiction it might be anticipated that a substantial part of the manganese nodules of the abyss would either pass under national jurisdiction or could be claimed by coastal States. Consequently, prospective exploiters of manganese nodules could, in many cases, have the choice of exploitation either in the international sea-bed area or in areas under national jurisdiction. Thus, if a licensing or service contract system of exploitation was adopted, the proposed International Sea-Bed Authority would not be able freely to determine royalty provisions nor would it be able to adopt effective arrangements to ensure that mineral output from the sea-bed would not result in prices that were inequitable to land-based producers.

32. In the view of the International Ocean Institute, the only realistic instrument for putting into practice the concept of the common heritage of mankind was the enterprise system. In existing conditions, however, it seemed unlikely that the enterprise could raise the necessary capital and obtain the necessary technological capacity to compete successfully with industrial consortia exploiting manganese nodules within the areas under national jurisdiction.

33. In those circumstances, her organization considered that, in the light of technological advances, the most appropriate solution would be the establishment of an international ocean space Authority—a system which would fulfil functions beneficial to all States.

34. Mr. ROMANOV (Union of Soviet Socialist Republics) said that the statement which had been read out by the representative of the International Ocean Institute and distributed to members of the Committee was full of references to matters which had nothing to do with the item under discussion. Moreover, it included a proposal, which was completely out of order and contrary to the provisions in the rules of procedure concerning statements by non-governmental organizations. He therefore requested that the references by that representative to matters not relevant to the subject under discussion should be omitted from the record, that her proposal should be rejected and that henceforth all statements by representatives of non-governmental organizations should be submitted in advance to the Chairman, who would decide whether it was in order for them to be read out.

35. The CHAIRMAN said that he had invited the representative of the International Ocean Institute to speak in accordance with rule 65 of the rules of procedure. However, the statement by that representative had not been in conformity with paragraph 3 of that rule and consequently the parts of that statement which were not connected with the item under discussion would be omitted from the record. Moreover, no consideration would be given to the proposal in the text of the statement which had been distributed.

36. Mr. LOOMES (Australia) expressed his appreciation of the Secretary-General's report on the economic implications of sea-bed mineral development in the international area. Despite the difficult problems inherent in making statistical and economic forecasts when important data were not available, the Secretary-General's report was to be commended.

37. The real issue at hand was to determine what measures were necessary when adverse implications occurred. In that connexion, the Secretary-General's comment, appearing in document A/CONF.62/25, about the flexibility necessary for the régime to adapt itself to the changing economic order was particularly appropriate. Part of the task of the Conference was therefore to create as an element in the machinery to be established, an organ which would be responsible for the surveillance of economic implications arising from sea-bed production and for recommending to the Authority measures appropriate to deal with those implications. Time would be better spent on setting out the broad guidelines of the powers and functions of the proposed organ rather than specifying measures to deal with problems which might arise, since that would inhibit the objectivity of the organ in question. He therefore wished to make some comments on the establishment of what could be called a commission, whose powers and functions should be set out in the convention. The commission would be composed of experts and should represent the interests of producers including land-based producers and consumers of resources exploited from the sea-bed. It should have powers to recommend to the Council measures appropriate to deal with any adverse implications which might occur as a result of sea-bed exploitation. Its terms of reference might be as follows: "The commission should maintain continuous surveillance of local market conditions relating to the materials of the sea-bed area and should recommend appropriate measures consistent with the interests and needs of producers and consumers".

*The meeting rose at 1.20 p.m.*