CHAPTER III

Progress of work in the Preparatory Commission during the Third Session, Kingston, Jamaica, 11 March 4 April 1985

The Third Session of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law was held in Kingston, Jamaica from March 11 to April 4, 1985. The Commission decided to hold its resumed summer session in Geneva from August 12 to September 5, 1985.

According to the Chairman of the PREPCOM, the session was marked by encouraging progress. The work of the session was conducted both in open debate and intensive private consultations.

(a) Plenary

During the Third Session in Jamaica, as in previous sessions the work of the Plenary was divided into three parts: (i) the preparation of the rules, regulations and procedures relating to the various organs of the Authority; (ii) the implementation of Resolution II; and (iii) organization of the mark of the Commission.

28. At the time of the Third Session a total of 159 States or entities were member of the Preparatory Commission. The total number of observers was 15 (grand total 174). However, the number of participants from among members was 97 and from among observers 7 (grand total 104).

(i) **Authority**

As it was stated earlier, at the previous meeting held in Geneva in 1984, the plenary on the Authority had completed the first reading of rules 1-82 out of 111 of the draft rules of procedure of the Assembly which have been prepared by the Secretariat.

At the Third Jamaica Session the Plenary held 11 informal meetings on the Authority and provisionally adopted without amendments rules 83-85, 93-95, 98, 100-107, 110. Rules 91 and 92 were provisionally adopted with certain reservations.

In the light of the examination of the draft rules of procedures of the Assembly which is to be "the supreme organ of the Authority," a revised draft was prepared which indicated those rules which had been provisionally adopted and those which required further examination.

In the course of the second reading, the Plenary on the Authority continued "rule-by-rule" examination of the revised draft. However, the Plenary did not examine the draft rules, considered as "hard-core issues".

**Hard-Core Issues**

The draft rules dealing with the issues of observers and that of subsidiary organs were considered by the Plenary as "two hard-core issues".

(1) **Observers**

There were two categories of problems with
regard to the question of observers. On the one hand there was the position which proposed that States which are signatories to the Convention should be accorded the right of full participation in the work of the Assembly but will not be able to participate in decision-making.

On the other hand there was position which suggested that no distinction should be made between states signatories and states which have not signed the Convention. It suggested that all states should be able to participate fully in the work of the Assembly.

In support of the first position it was argued that signatory States have already given an indication of their intent to ratify, or at least have accepted the principles of the Convention and it is likely that they will ratify and become members. On the other hand the supporter of the second position contended that after the closing of the signing period, States are on equal footing and are all eligible to become parties, and it does not really matter whether they have signed the Convention or not, because a State which has not signed the Convention might accede to it even before a State which has signed it. Thus the distinction between signatories or non-signatories become unimportant.

During the consultations carried out by the Chairman suggestions were made that liberation movements and international organizations which are
subjects of international law should have a higher status than is accorded to them in rule 95 of the draft rules of procedure of the Assembly.

During the consultation of the Chairman there was broad agreement that observers should be accorded meaningful participation in order to promote the universal character of the Convention.

Thus the Plenary had to deal with two main issues. First it had to decide which observers are going to be accorded a higher status and secondly it had to define the meaningful participation.

(2) Subsidiary Organs

The next hard core issue related to subsidiary organs.

On the hard core issue of subsidiary organs there were four positions. According to the first position the Assembly should have main committees. This would follow the normal structure of any large international organization. There was suggestion that the organization of the Preparatory Commission could be the model for the future Assembly.

Those who supported the second position argued that there is no need for the Assembly to have main committees. The structure of other organizations like the UN and the PREPCOM should not be just imitated, because the nature of the work of these organization is different from the work of the Assembly.
There was a third viewpoint which stated that it was too early to take a position on whether there should be main committees or not.

There was yet a fourth viewpoint which argued that there was no need for the Preparatory Commission to make a recommendation on this matter, it should be left to the Assembly of the Authority.

The matter remained unsettled, because there was no view which could form the basis of a compromise.

(ii) The Implementation of Resolution II

According to the "understanding on the procedure for conflict Resolution among the First Group of Applicants" agreed upon by the parties on September 4, 1984 during the 1984 summer meeting in Geneva, on 17 December 1984, the four applicants, namely, France, India, Japan and the Soviet Union met in Geneva to exchange lists of co-ordinates of the areas claimed by them to ascertain if there were any overlaps. They discovered that overlaps did exist between the application areas of Japan and the Soviet Union and between those of France and the Soviet Union. In the case of India, there was no overlap in the area identified as its application area is in the Indian Ocean.

Further consultations beginning on 11 January 1985 in Paris and subsequently in Tokyo and Moscow with a view to resolving the respective overlaps, showed that while it was possible to resolve provisionally the conflict between Japan and the
Soviet Union, the overlap between France and the Soviet Union created practical problems for the two countries to find a solution.

The consultations undertaken by the Chairman of the PREPCOM during the Jamaica session in 1985 in continuation of the exercise of his good offices indicated that more time is required for consideration and reflection before a solution can be finally arrived at.

Therefore, in Jamaica, it was suggested by the Chairman that after all efforts have been exhausted with respect to the issue of overlapping claims, the matter would be placed before the Commission so that it can deal with the practical problems arising as a result of the Geneva understanding and then it should continue consideration of the rules for the registration of pioneer investors.

It may be stated here that according to the statement made by the Chairman of the PREPCOM on the concluding day of Jamaica Session, the request for an additional mine site for the Eastern Group which was forwarded at the last meeting of the Commission, as well as matters related to the implementation of paragraph 1(a)(iii) of Resolution II which after a

30. For more information see: Statement made by the Chairman of the Preparatory Commission, LOS/PCN/L.19, 3 April 1985.

31. Para 1(a)(iii) of Resolution II provides for developing states to become pioneer investors and among others, sets January 1, 1985, deadline for expending US dollars 30 million in pioneer activities.
lengthy discussion in Geneva in 1984 was deferred to the Third Jamaica Session) were to be dealt with later.

**Continued Opposition to the "Provisional Understanding"**

At the Jamaica Session, on behalf of the Group of Eastern European socialist countries, the representative of Czechoslovakia introduced a revised draft resolution affirming that the "Provisional understanding Regarding Deep Sea-Bed matters" concluded by a number of countries on August 3, 1984 was incompatible with the United Nations Convention on the Law of the Sea and was "wholly illegal".

The resolution was to be dealt with at a later date.\(^\text{32}\).

It would not be out of context to add here that in a statement by the Chairman of the Group of 77 delivered on 11 March 1985, the opposition of the developing countries to "alternative regimes based on national legislation" was also reiterated.

**(b) Special Commission 1**

Working papers before the Special Commission 1 during Jamaica Session included one dealing with the question of identifying those land-based producer states likely to be most seriously affected by the production of minerals to be derived from the Area, and another on possible approach to the measurement

\(^{32}\) United Nations Press Release, SEA/616, 8 April 1985, p.6
of potential effect. The third paper before the Commission contained information on existing international or multilateral economic measures which could be of relevance to its work, as well as separate proposals by Pakistan and Zimbabwe regarding remedial measures.

At the Third Session the Special Commission 1 held ten meetings and the open-ended Bureau of the Special Commission held four meetings and substantial progress was made in the areas of: (a) identifying developing land-based producer states which are likely to be most seriously affected by Sea-Bed production, (b) identifying possible effect of Sea-Bed production on developing land-based producer states, and (c) investigating possible remedial measures.

One of the most significant achievements during the above session was a better understanding of the nature and content of the studies that can be carried out in the next few years before the Authority comes into being, and of the studies that can be more effectively pursued by the Authority and its appropriate organs in due course in view of the relatively long period that may be required before Sea-Bed production materializes. 33

During the deliberations of the Commission it was generally agreed that the criteria that may be used for identification of developing land-based

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33. Statement to the Plenary by the Chairman of Special Commission 1 on the Progress of Work in that Commission, LOS/PCN/L.18, 2 April 1985, pp.1-2.
producer states likely to be most seriously affected by Sea-Bed production, would be based on the degree of dependence of particular developing land-based producer states on the contribution of one or more of the four mineral commodities concerned e.g. copper, nickel, cobalt and manganese, to their export earnings or to their economies before Sea-Bed production of the mineral commodities occurs.

The deliberations on the possible effects of Sea-Bed production on developing land-based producer states focussed on the adverse effects on export earnings or economies of such states. 34

With regard to possible remedial measures, 35 it was felt that while existing measures could go a long way in mitigating the problems of developing land-based producer states, there was still a great need for additional measures, especially to help them to make necessary economic adjustment. 36

With respect to additional measures, the general approach aiming at minimizing the dependence of a developing state on a single resource sector included diversification of the economy, structural adjustment, economic infrastructure building etc. In addition to that, among others, the role of technical assistance including training of personnel of developing countries, was also emphasized.

34. Ibid, p.23.
35. The Special Commission is mandated to undertake studies on the establishment of a compensation fund.
For the Special Commission's future meetings the following programme of work was envisaged: (a) the conclusion of deliberations on the concrete formulation of the criteria for the identification of developing states concerned; (b) preparation of an outline to study in-depth possible-effects on developing states concerned; and (c) formulation of certain guidelines that need to be taken into account by the Authority in devising any remedial or assistance measure.

At the conclusion of the Third Session of the Preparatory Commission, Special Commission 1 requested the Secretariat to collect and disseminate data on recycling of copper, nickel, cobalt, and manganese. In response to this request the Secretariat prepared a paper dealing primarily with recycling of copper which was submitted to the Geneva Meeting.

(c) Special Commission 2(Enterprise)

At the Third Session of the PREPCOM in Jamaica, the Special Commission 2 had before it three working

37. Statement to the Plenary by the Chairman of Special Commission 1 on the Progress of Work in that Commission, n.32, p.5

38. Due to the lack of available data on recycling of cobalt and manganese and scarcity of data on recycling of nickel. See: Basic Data and Information of Relevance to the Work of Special Commission 1, Recycling of Copper, Nickel, Cobalt and Manganese, LOS/PCN/SCN.1/WP.2/Add.4, 6 August 1985
papers: (1) "Project profile of a deep sea-bed mining operation by the Enterprise"; (2) "Development of an ad hoc expert core group for the Enterprise to assist the preparatory Commission"; 39 and "Training needs and requirements of the Enterprise".

The above working papers which were characterized "technically complex and interrelated" were the subject of general discussions supplemented by several colloquia, organized by the Secretariat at the request of the Bureau to clarify technical questions and to facilitate discussion in the Special Commission itself. However, the Commission could not exhaust its examination of these three working papers during Jamaica session.

(i) Assumptions

The working paper dealing with "Project profile of a deep sea-bed mining operation by the Enterprise" has made a number of key "assumptions" in order to present a project profile. These assumptions relate to:

(i) availability of enough raw materials to sustain a 20-year operation;

(ii) markets for the four metals;

39. With regard to the Working Paper on "Development of an ad hoc expert core for the Enterprise to assist the Preparatory Commission" during the Third Session in Jamaica the Special Commission 2 pointed out that it needed a detailed discussion on the question of establishing an expert group for facilitating Preparatory work before any conclusion can be reached.
(iii) adequate on-land facilities and services;

(iv) leased transport except for one specially designed vessel for dual use owned by the Enterprise whereby fuel oil and other supplies and consumables are carried in one direction while nodules are transported back in the other direction;

(v) marketing by the Enterprise with marketing costs amounting to 1 per cent of total sales; and

(vi) requisite skilled manpower and finance are available to the Enterprise. ⁴⁰

The availability of markets; especially as regards prices for the outputs, likely interest rates for leasing purposes, economical processing and technological improvements were cited by various delegations at the Third Session as being crucial assumptions for establish the economic viability of a project. ⁴¹

It is expected that these assumptions regarding the economic viability of mining operations by the Enterprise will be closely scrutinized so as to clarify the possible pre-conditions for establishing the economic viability of sea-bed mining. In this connection at the Jamaica session (1985) the delegation

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⁴¹ See: Project Profile of a Deep Sea-Bed Mining Operation by the Enterprise (Addendum), LOS/PCN/SCN.2/WP.6/Add.1, 18 June 1985, p.2
of Australia proposed to submit at the Geneva meeting (1985) an analytical study which was expected to address questions pertinent to the examination of assumptions. Moreover, at the Jamaica session, in his report to the Plenary, the Chairman of Special Commission 2 stated that the Commission intended at its Geneva meeting to reach a working consensus on the assumptions to be used. It was also stated by the Chairman that in order to facilitate the work of the Special Commission, the Secretariat was requested to prepare as soon as possible an analytical summary of the views expressed so far on the question of assumptions. The preparation of the project profite paper marked a new phase in the work of the Preparatory Commission. It provided basis for more concrete discussion of a mining operation as compared to the somewhat philosophical and idealistic discussions that had taken place at previous meetings. It indicated the various steps in the establishment of a sea-bed mining operation, spanning a period of 14 years, before full-scale commercial production could begin.

(ii) Training

Training for the purpose of ensuring "that the Enterprise is able to carry out activities in the Area in such a manner as to keep pace with States and other entities" is a major part of the mandate of and a priority for Special Commission 2 under paragraph 12 of Resolution II. Taking into account the above fact, as well as the need to reach some concrete understanding

42. Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission, LOS/PCN/L.20, 2 April 1985, p.2
both on the requirements of the Preparatory Commission for designating personnel for training, and on the nature and scope of the training obligations of the registered pioneer investor, the Special Commission 2 has requested the Secretariat to enter into correspondence with the four member States of the Commission who are applicants for pioneer investor status, as well as with other delegations, who would be able to provide relevant information in view of their experience in planning large-scale mineral development projects. It may be mentioned that at the third session of the PREPCOM it was decided that the working paper on Training needs and requirements of the Enterprise should be taken up again at the next meeting.

(d) Special Commission 3 (Sea-Bed Mining Code)

At the Third Session of the PREPCOM, which was held in Kingston, Jamaica, the Special Commission 3 held 11 meetings. The Commission began for the first time considering draft regulations prepared by the Secretariat dealing with the use of terms, scope, prospecting and procedure for submission and approval of plans of work for exploration and exploitation. It accepted document LOS/PCN/SCN.3/WP.6 (Draft regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area - Working Paper prepared by the Secretariat) as the basis for its discussion.

43. Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission, LOS/PCN/L.25, 3 September, 1985, pp.2-3
In addition to these meetings, the Chairman also held two informal consultations on the question of whether the approval of a plan of work should be a one-stage procedure (i.e. submission of one application for the designation of areas as well as for the approval of plans of work) or a two-stage procedure (i.e. designation of an area followed by the submission of a plan of work).

The Draft Regulations prepared by the Secretariat consists of four parts and one annex as follows:

- Part I Introduction
- Part II Prospecting
- Part III Applications for approval of plans of work
- Part IV Processing of applications

**Annex.** Relevant draft regulations structured to show the application for designation and allocation of areas and the application for approval of a plan of work as two separate processes.

During this session, in the course of article-by-article review of the "Draft Regulations" discussions were held on Articles 1 to 11 inclusive and on Articles 16 to 23 inclusive in the working paper. The Commission completed first reading of the provisions on the scope and prospecting towards the end of the session and began the consideration of regulations on nationality of applicant, sponsorship and control by the sponsoring State. It was *inter alia* pointed out that the Code was a regulatory, not a constitutional documents. Although the Code might be comprehensive and could be
read independently from the Convention, it was not legally independent from the Convention.

It was also decided to concentrate, first of all, on Draft Regulations for the exploration and exploitation of polymetallic nodules only.

With respect to the term "prospecting", the main issue was the degree of control by the Authority. It was stated in that connection that the Convention treated prospecting quite differently from exploration and exploitation as it was not defined as an activity in the Area. Under the Convention, prospecting was to be encouraged, and it was therefore to be left to be uninhibited, provided a prospector notified the Authority of its intention to engage in prospecting and undertook to abide by the conditions in the Convention on training programmes in connection with marine science and technology and by the conditions in the Convention (Article 145) with regard to the protection of the marine environment. The Authority's control was limited and had to remain limited to the verification of those undertakings.

44. In the working paper prepared by the Secretariat "Prospecting", means the taking of geophysical, geochemical, oceanographic, or atmospheric measurements, the collecting of rock, sediment, and mineral samples from the superficial layers of the sea-bed, and establishing maps of data and sample locations, provided that such activities do not significantly alter the surface or sub-surface of the sea-bed or significantly affect the environment or remove an appreciable quantity of material, for the purpose of evaluating the exploitability of the resources of a specific area. See: Doc.LOS/PCN/SCN.3/WP.6, 15 March 1985, p.8.
Another point of view stressed the need for the Authority to maintain greater control over the prospecting activities. It favoured an application by the prospector for the purpose of obtaining permission to prospect.

The third trend which emerged from the discussion recognized the freedom of prospecting, but counterbalanced that freedom by allowing the Authority to assess fully the efforts of a prospector. Regular reporting could help achieve that.\(^45\)

(e) Special Commission 4 (Sea-Bed Tribunal)

During the Third Session of the PREPCOM, the Special Commission 4 continued an article-by-article examination of the Draft Rules of the International Tribunal for the Law of the Sea submitted by the Secretariat at the 1984 Summer meeting.

The Special Commission examined articles 47 to 89 of the Draft Rules of the Tribunal.

In the course of the examination of sub-section 2 (Articles 46 to 51) on the "Representation of Parties" attention was focussed on the question of privileges, immunities and facilities of agents, counsel, advocates, witnesses and experts of parties before the Tribunal.\(^46\)

\(^{45}\) For more information see: Statement to the Plenary by the Chairman of Special Commission 3 on the Progress of work in that Commission, LOS/PCN/L.16, 2 April 1985.

\(^{46}\) The Convention on the Law of the Sea does not have specific provisions on the question.
There was widespread agreement in the Special Commission that it did not appear to be possible to deal with the privileges, immunities and facilities in the Rules of the Tribunal and it was decided that the matter would have to be discussed at a later stage of work. However the Secretariat was requested to provide information on the legal foundation and the current practice of the International Court of Justice and other international courts with regard to these privileges, immunities and facilities. At this session the Commission also considered matters such as preliminary procedures intended to safeguard coastal States exercise of resource right in the exclusive economic zone against abuse by vexatious litigation, official language of the Tribunal, provision of information by international organizations and provisional measures to protect parties rights and to prevent damage to the marine environment.

The Secretariat had also provided supplementary draft rules dealing with applications to the Tribunal for prompt release of vessels and crews which is mandated by an innovative provision of the Convention.

47. For more information see: Statement to the Plenary by the Chairman of Special Commission 4 on the Progress of work in that Commission, LOS/PCN/L.17, 2 April 1985; See also: United Nations Press Release, SEA/616, 8 April 1985, pp.4-5

48. See: Law of the Sea Bulletin, No.6, October 1985, p.73