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COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

Proposals concerning the establishment of a regime for the exploration and the exploitation of the Seabed

(submitted by France)

The French government has examined with great interest the various documents and proposals which have been distributed on the subject of the establishment of a regime for the exploration and the exploitation of the seabed beyond the limits of national jurisdiction, in particular the interim report of the economic and technical sub-committee (document A/AC.138/SC.2/L6, dated March 24, 1970) which includes various proposals put forward at meetings (Annexes I to VI), the report of the Secretary-General on international machinery (document A/AC.138/23, dated May 23, 1970) and the statement by President Nixon (document A/AC.138/22, dated May 25, 1970).

Following this examination, the French government wishes to submit to the Seabed Committee a first outline of its views on the structure and machinery of an international regime:

I. - General Principles

In the opinion of the French government, the regime governing the exploration and the exploitation of the resources of the sea bed must fulfil two basic requirements:

(a) Economic efficiency, since works of this nature presuppose considerable financial investments and demand undeniable technical skill;

(b) International equity, so that a share of the wealth which may be derived from the exploitation of sea bed which belongs neither to the States nor to the

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companies may contribute to the development of the most underprivileged countries, under conditions to be defined hereafter (c.f. para. IV).

These two requirements should lead to the rejection of any extreme solutions, particularly:

(a) any scheme which would lead to the appropriation pure and simple by States of more or less extensive areas of the sea bed, since this would conflict with its international character;

(b) any scheme which would lead to the takeover pure and simple by an international organization invested with considerable powers, of the exploration and exploitation of the sea bed, since this might be difficult to reconcile with the requirement of economic efficiency.

The French government has accordingly tried to find a middle way.

At the March session of the Seabed Committee in New York, the French delegation suggested that, for the international regime to be established for the exploration and exploitation of the sea bed beyond the limits of national jurisdiction, it would be desirable to establish a distinction between two types of exploitation:

- one for minerals where exploration - at the decisive stage - and exploitation require mobile equipment: this could be the case with manganese nodules scattered over the ocean bed and recoverable by dredging;

- the other for minerals where the same operations entail the use of fixed installations (as with hydrocarbons).

This distinction should normally lead to two different types of regime with different provisions.

The system for the first type (mining with mobile equipment) would take the form of simple registration with an international organization, accompanied by a declaration of the areas to be explored or exploited, and without any exclusive rights. Exploration and exploitation would be subject to the international regulations for the protection of life at sea, for respect for the freedom of the high seas, for protection against pollution of the sea, etc. The rules applicable to exploration and exploitation would be set out in a list of conditions laid down by an international convention, which would fix the period of validity of each registration with the possibility of renewal.

For the second type, exploration and exploitation rights would be exclusive and States would be granted areas, within which they would issue licences. The structure of the regime to be applied to this type is explained in the following chapters.

II. - General structure of the plan

(A) Form: First, a general convention should be drawn up (following possibly the precedent of the International Telecommunication Union), setting out the basic principles (to be defined by the legal Sub-Committee), the broad outlines of a régime (to be defined by the economic and technical sub-committee) and the structure of an organization.

Secondly, detailed international regulations should be drawn up by smaller sub-committees consisting mainly of technicians and economists, setting out all the rights, limitations and obligations, which, in all circumstances, both the organization and the States and companies, would be obliged to observe. These regulations would be open to revision, say every fifteen years.

Thirdly, from these regulations and all other international obligations affecting the sea bed (pipelines, telegraphic cables, anti-pollution measures, etc.), lists of conditions would be drawn up applicable to every operation giving rise to the granting of an area to a State for the issue of a licence to a company, it being understood that the Convention would provide for the grouping of States for the granting of areas, and for the grouping of companies for the issue of licences.

(B) Substance:

(a) Principles applicable to the regime:

(1) States shall be allotted, for a given period of time, areas within which they grant licences themselves.

(2) The granting of an area to a State shall be subject to the submission of an application from a company for a licence within that area.

(3) The law governing relations between the international community, represented by the organization, and States shall be international law exclusively; the law governing relations between States and the companies shall be partly international, partly municipal.

(4) States shall undertake to explore, and later to exploit the areas granted to them, so as to avoid a "freezing" of those areas. However, the establishment of reserves ("provisional freezing") shall not be ruled out, provided it is limited to a reasonable period and properly justified;

(5) Agreement on the sanction for the infringement by any State or company of the principles stated in paragraph 4, or of the technical provisions of the International Regulations in the first instance be sought by negotiation; only if agreement proves impossible shall some arbitral procedure be employed.

Obviously areas might be granted to groups of States, either members of an existing international organization or associated for that specific purpose. In that case, the rules set out in this document should be adopted as required.

(b) principles applicable to the organization;

(1) It would comprise first a Permanent Board to examine all applications and take decisions in simple cases; this Board would centralise all information collected, act in a supervisory capacity and be empowered to issue warnings to States in the case of any violation of the Regulations;

(2) It would comprise secondly a Conference of Plenipotentiaries, assisted by a Technical Committee, which would be responsible for taking decisions on applications presenting difficulties (in the case of competition for the same area), and for considering, and if possible settling, cases of violations.

(3) The Conference and the Committee would thus be meeting places for exchanges of views, negotiations and possible arbitration. They should be able to bring in, alongside the representatives of States, representatives of the companies, whatever their legal status (public or private).

III. - Structure of the regime

(a) Conditions for the allocation of areas and permits

In order to avoid both uncertainty over the allocation of areas, and a too unbalanced allocation that would be contrary to the interests of the international community, it is advisable that the allocation of areas and permits should be hedged round by a fairly tight ring of restrictive rules:

(a) No State may claim for a monopoly of the areas adjacent to its continental shelf;

(b) No State or group of States may on its own account claim for more than a certain number of square kilometers, either in one piece or in several, in a period of ten years, unless it has given back parts of areas in accordance with the conditions set out below (B.b.);

(c) Every company applying for a licence must have an establishment in the territory of the State applying for the corresponding area: for the purposes of the regime, the company is then regarded as having the nationality of the applicant State.

(d) Every company must produce adequate technical and financial assurances, to be guaranteed by the applicant State.

(e) Licences granted to companies by States are exclusive for one or more given substances. Only the State holding the area may issue other licences within the said area, for other substances.

(f) In the event of a discovery, the prospecting licence, subject to its restriction in scope to the size of the area concerned, shall be converted into an exploitation licence when it is duly established that the discovery can be exploited either immediately or within a reasonable time.

(B) Conditions for exploration and exploitation

(a) Whether or not there is any exploration activity, the area covered by the exploration licences granted by a State to a company shall be automatically halved every five years;

(b) If, in an area held by a State, the latter does not within three years allocate new licences for the areas given back to it, the corresponding part of the area shall be regarded as once more open to the international community and may be granted to another State;

(c) Withdrawal by a State of a licence allocated to a company shall have the same effects for the said State as described in paragraph (b).

(C) Legal relations between State and companies;

(a) The international regime established by the Regulations shall decide the general principles for the granting of licences for the exploration and the exploitation of deposits, and also related problems raised by the setting up of permanent installations, impediments to shipping and fishing, nuisances, etc...

(b) States shall apply their municipal law to companies operating in the areas granted to them, with respect to working conditions, social welfare of workers, criminal law, collection of dues and taxes, and customs control of products extracted.

IV. - Royalties

The French government considers it both legitimate and necessary that the developing countries, including the landlocked countries, should be able to profit from the exploitation of resources which form part of the common heritage of mankind.

It considers that the most appropriate method of distributing the resources, from the standpoint both of international equity and economic efficiency, is not by the assessment and direct collection by the international organization of predetermined taxes on production from deposits.

On the contrary States should levy a tax on companies holding exploitation licences in the areas allocated to them. When an exploitation licence is allocated, the State concerned should undertake both to establish and recover such a tax, and also to contribute an appreciable share of it to any international, regional or bilateral programme of assistance to the developing countries which it may select.

Execution of this undertaking will be supervised by the Permanent Board. Should a State not fulfil this voluntarily accepted obligation, the penalty would be either the refusal of any grant of new areas, or the withdrawal of areas already held, as decided by the Conference of plenipotentiaries.

V. - Powers of the organization

(a) The funds needed to operate the organization might be raised by means of a moderate tax levied on the surface area covered by exploration licences, at the time of the allocation of areas to each State;

(b) In straightforward cases, the allocation of areas would be carried out by the Board on the basis of predetermined criteria;

(c) Such automatic procedures would have to be abandoned where there were rival applicants and the granting of areas had to be done by the Conference of Plenipotentiaries or its delegated Technical Committee. Since the method of adjudication to the highest bidder is liable to lead to over-bidding, which would not be in the interests of companies from smaller States, the best course would perhaps be to try to secure amicable agreement on a balanced distribution.

The French government feels obliged to point out the desirability of harmony between States and mutual good will in this matter, so as to achieve solutions acceptable to the international community and prevent litigation and disputes which would impair the rational exploitation of an asset common to the whole of mankind.