

UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
LIMITED

A/AC.138/SC.I/L.26
14 August 1973

ENGLISH
Original: FRENCH



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

SUB-COMMITTEE I

PRELIMINARY DRAFT ARTICLES CONCERNING THE BASIC PRINCIPLES OF
THE RÉGIME OF THE INTERNATIONAL AREA OF THE SEA-BED AND THE SUBSOIL
THEREOF AND REGULATIONS FOR THE GRANTING AND ADMINISTRATION OF
LICENCES FOR THE EXPLORATION AND EXPLOITATION OF MINERALS

Submitted by Italy

Explanatory Note

The Italian delegation has examined with the greatest interest the various documents and proposals which have been submitted concerning the establishment of a régime for the exploration and exploitation of the mineral resources of the sea-bed and the subsoil thereof beyond the limits of national jurisdiction. Following that examination, it considered that it would be useful to prepare a proposal drafted in an "organic" way and dealing more particularly with the system for the granting of licences. It is the purpose of these preliminary draft articles to contribute to the study of the international régime and to efforts to find the legal discipline most appropriate to the system for the granting of licences. The Italian delegation remains convinced that such a system, either alone or possibly in conjunction with other systems, constitutes an essential instrument for the implementation of the international régime.

To attain this objective, the licensing system should function in a way that will enhance the role of the International Authority. Accordingly, the Italian proposal is guided by the following criteria:

- (a) the need to give all States, irrespective of their level of development, access to the mineral resources of the international area;

- (b) the need to prevent the emergence of monopolistic or oligopolistic situations in the international area;
- (c) the need to ensure an equitable distribution of the minerals extracted in the international area;
- (d) the need in this way to make available to the International Authority a substantial share of the output of such minerals, or its equivalent in cash, so as to make possible effective control of fluctuations in the prices of minerals or raw materials extracted on land;
- (e) the need to ensure the economic efficiency of the International Authority by means of a legal system that promotes collaboration among economic operators, States and the International Authority.

The Italian proposal is presented in two parts. These parts are reproduced below. The first, in section "A", contains preliminary draft articles on the basic principles of the régime of the international area of the sea-bed and the subsoil thereof, while the second part, in section "B", contains preliminary draft articles concerning regulations for the granting and administration of licences for the exploration and exploitation of minerals in the international area of the sea-bed and the subsoil thereof.

* *

✱

SECTION "A"

PRELIMINARY DRAFT ARTICLES ON THE BASIC PRINCIPLES OF
THE REGIME OF THE INTERNATIONAL AREA OF THE SEA-BED AND THE SUBSOIL THEREOF

Article 1

INTERNATIONAL AREA OF THE SEA-BED AND THE SUBSOIL THEREOF

- (1) The international area of the sea-bed and the subsoil thereof comprises the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction.
- (2) An International Authority shall be established for the international area of the sea-bed and the subsoil thereof, which constitute the common heritage of mankind.

Article 2

PROTECTION OF OTHER ACTIVITIES

- (1) Operations carried out in the international area of the sea-bed and the subsoil thereof shall not in any way impair the preservation of the living resources of the sea or cause any unjustifiable interference with the other uses of the high seas such as navigation, overflight, fishing, and the laying and utilization of submarine cables and pipelines.
- (2) Scientific research in the international area shall be free; however, before undertaking any research operation, the party in question shall submit its research plan to the competent organ of the International Authority.
"Scientific research" means all operations carried out by qualified persons or institutions for the purpose of obtaining data, which shall be made public and be made available to all.

Article 3

REGULATIONS CONCERNING LICENCES FOR THE EXPLORATION AND EXPLOITATION OF MINERALS

- (1) The International Authority shall be the exclusive administrator of the mineral resources of the international area's sea-bed and the subsoil thereof.
- (2) The International Authority shall issue instruments authorizing the exploration and exploitation of minerals to High Contracting Parties or to physical or juridical persons sponsored by a High Contracting Party.
- (3) A High Contracting Party which acts as patron of a physical or juridical person shall vouch for the technical and financial capabilities of the sponsored person, as well as for the application of the provisions of this Convention and measures adopted by the Authority in conformity with those provisions.

- (4) The High Contracting Party may require the sponsored person to pay a presentation fee covering the reimbursement of expenses and excluding any other payment by the sponsored person, for whatever purpose, in connexion with activities of prospecting, exploration and exploitation.
- (5) Licences for the exploration and exploitation of minerals shall be divided into three categories:
 - (a) non-exclusive prospecting licences;
 - (b) exclusive exploration licences;
 - (c) exclusive exploitation licences.
- (6) Licences shall be issued for the prospecting, exploration and exploitation of one of the following three categories of minerals:
 - (a) minerals of the sea-bed's subsoil extracted in a fluid state, such as petroleum, natural gas, sulphur, salts which can be extracted by dissolution, etc.;
 - (b) minerals situated on the surface of the sea-bed, such as manganese nodules, metal-bearing muds, etc.;
 - (c) solid minerals of the sea-bed's subsoil, such as coal, metal ores, etc.
- (7) Licences issued by the International Authority for the various categories of the minerals referred to in the preceding paragraph may totally or partially superimpose one another and may be issued to different applicants and to applicants of different nationalities. The various licensees for different categories of minerals in the same sector or in overlapping sectors shall carry out their respective activities in such a way as not to hinder unnecessarily the activities of the others.
- (8) Minerals extracted in the international area in conformity with the licences issued shall be so divided between the holder of an exclusive licence for exploitation and the International Authority as to ensure the licensee reimbursement of his operating costs and prior exploration costs, as well as compensation for his mining risk. The International Authority may require the licensee to market the output.*/

*/ Reimbursement of the costs borne by the licensee and compensation for his mining risk may be effected on a lump-sum basis.

Article 4

PROVISIONS TO PREVENT ANY OLIGOPOLISTIC SITUATIONS IN THE
INTERNATIONAL AREA OF THE SEA-BED AND THE SUBSOIL THEREOF

The International Authority may not issue to any one High Contracting Party and to the physical or juridical persons sponsored by any one High Contracting Party exploration licences for more than km² and exploitation licences for more than km².

*

*

*

SECTION "B"

PRELIMINARY DRAFT OF ARTICLES CONCERNING REGULATIONS
FOR THE GRANTING AND ADMINISTRATION OF EXPLORATION LICENCES FOR MINERALS
IN THE INTERNATIONAL ZONE OF THE SEA-BED AND ITS SUBSOIL

Article 1

NON-EXCLUSIVE PROSPECTING LICENCES

- (1) Application for a non-exclusive prospecting licence shall be made to the International Authority by a High Contracting Party or by a physical or juridical person sponsored by a High Contracting Party.
- (2) A non-exclusive prospecting licence authorizes the licensee to engage in prospecting by geophysical and geochemical methods, to take samples from the sea-bed and drill into the subsoil to a depth of not more than 300 m.
- (3) Non-exclusive prospecting licences shall be issued for a specified area.
- (4) Non-exclusive prospecting licences cannot be used in areas for which exclusive exploration or exploitation licences have been granted.
- (5) Non-exclusive prospecting licences shall be issued for a period of two years; they may be extended for successive periods of the same duration.
- (6) Non-exclusive prospecting licences shall be issued against payment - at the time the licence is granted and on each successive renewal, if any - of a fee the amount of which shall be proportionate to the area in question.
- (7) A non-exclusive prospecting licence shall not give the licensee either an exclusive right of exploration, or any right of priority in applying for an exploitation licence.

Article 2

EXCLUSIVE EXPLORATION LICENCES

- (1) Application for an exclusive exploration licence shall be made to the International Authority by a High Contracting Party or by a physical or juridical person sponsored by a High Contracting Party.
- (2) An exclusive exploration licence shall give the licensee the exclusive right to search for minerals of one of the categories mentioned in Section "A", article 3 (6), by geophysical and geochemical prospecting methods, and to drill into the subsoil without any limit as to depth.
- (3) The area covered by the exclusive search licence may not exceed:
..... km² in the case of minerals of category (a);
..... km² in the case of minerals of category (b);
..... km² in the case of minerals of category (c).

- (4) The total area covered by the exclusive search licences granted to a High Contracting Party for one of the three categories of minerals, added to the area covered by the exclusive search licences for the same category of minerals granted to physical or juridical persons sponsored by the same High Contracting Party, may in no case exceed a maximum limit. This limit will be determined by the International Authority in accordance with the principles of an equitable distribution among the High Contracting Parties.
- (5) Exclusive exploration licences for minerals of category (a) shall be granted for ... years and may be renewed, in the first instance, for ... years and, in the second instance, for ... years. Exclusive exploration licences for minerals of category (b) shall be granted for ... years and may be renewed for ... years. In no case may their validity exceed ... years. Exploration licences for minerals of category (c) shall be granted for ... years and may be renewed for ... years. In no case may their validity exceed ... years.
- (6) Renewals of exploration licences shall be conditional on fulfilment of the work programmes and on actual expenditure of the minimum amount fixed at the time the application was made.
- (7) On each renewal, the area initially covered by an exclusive exploration licence shall be reduced by ... per cent. This reduction shall not be applicable to licences covering an area of less than ... km².
- (8) The licensee may at any time give up his licence or make voluntary reductions in the area initially covered. Voluntary reductions of area shall be regarded as anticipated reductions in respect of the reductions which are mandatory at the time of renewal.
- (9) At the time of application for the licence or of request for its renewal, the licensee shall submit to the International Authority a programme of work. This programme shall give a breakdown of the exploration operations which the licensee undertakes to carry out, and the length of time he will engage in them.
- (10) A specific programme of minimum expenditure commitments shall be submitted along with the programme of work. In no case may the total amount be less than ... per km².

- (11) Non-fulfilment of the obligations contained in the programme of work, as regards either the conditions or the time-limits laid down, shall entail revocation of the licence and the payment of a sum proportionate to the minimum amount corresponding to the part of the work programme not carried out.
- (12) Exclusive exploration licences for minerals of category (a) shall be granted against payment of a "registration fee" amounting to ..., and an annual rental of ... per km² during the initial period of the licence's validity, and of ... per km² during the period of renewal. Exclusive exploration licences for minerals of category (b) shall be granted on the same terms, against payment of a "registration fee" amounting to ..., and an annual rental of ... per km² during the initial period of the licence's validity, and of ... per km² for the period of renewal. Exclusive exploration licences for minerals of category (c) shall be granted against payment of a "registration fee" amounting to ..., and an annual rental of ... per km² for the initial period of the licence's validity, and of ... per km² for the period of renewal.

Article 3

APPLICATION FOR AND GRANTING OF EXCLUSIVE EXPLORATION LICENCES

- (1) Application for an exclusive exploration licence shall be made to the International Authority by a High Contracting Party or by a physical or juridical person sponsored by a High Contracting Party.
- (2) The International Authority shall be required to make public the applications submitted to it.
- (3) During a period of six months from the date of publication of an application for an exclusive exploration licence, subsequent applications with respect to the same area or part of the same area shall be considered on an equal footing.
- (4) On the expiry of the period indicated in the preceding paragraph, the International Authority shall review the applications and assign the area applied for to the applicant who has submitted the work programme considered most appropriate for the rapid and efficacious development of the mineral resources of the area.

Article 4

EXCLUSIVE EXPLOITATION LICENCES

- (1) Application for an exclusive exploitation licence shall be made to the International Authority by a High Contracting Party or by a physical or juridical person sponsored by a High Contracting Party.
- (2) An exclusive exploitation licence shall give the licensee the exclusive right to exploit the minerals discovered.
- (3) An exclusive exploitation licence shall be granted where a discovered deposit has been accepted as exploitable in accordance with the criteria established by the International Authority and in the light of the general situation in the area (geological, logistical, economic factors, etc.).
- (4) The area covered by the exclusive exploitation licence may not exceed:
..... km² in the case of minerals of category (a);
..... km² in the case of minerals of category (b);
..... km² in the case of minerals of category (c).
- (5) The total area covered by exclusive exploitation licences granted to a High Contracting Party for one of the three categories of minerals, added to the area covered by the exclusive exploitation licences for the same category of minerals granted to physical or juridical persons sponsored by the same High Contracting Party may in no case exceed a maximum limit. This limit shall be determined by the International Authority in accordance with the principles of an equitable distribution among the High Contracting Parties.
- (6) An exclusive exploitation licence granted to a holder of an exploration licence shall not exceed the limits of the pre-existing exploration licence.
- (7) The extent of the area covered by the exploitation licence shall be fixed in a way that will permit rational exploitation of the deposit discovered.
- (8) Exploitation licences shall be valid for a period of 30 years and may be renewed only for a period of 10 years.
- (9) At the time of application for the licence or for any renewal, the licensee shall submit to the International Authority a programme of work giving a breakdown of the operations he undertakes to carry out for the exploitation of the deposit and the length of time he will engage in them.
- (10) A specific programme of the minimum investment, the total of which may in no case be less than per km², shall also be submitted along with the programme of work.

- (11) Non-fulfilment of the programme of work, as regards either the ways in which it is carried out or the time-limits laid down shall entail the revocation of the licence and the payment of an indemnity equal to the amount corresponding to the part of the programme not carried out.
- (12) Exclusive exploitation licences shall be granted against payment of a "registration fee" amounting to and an annual rental of per km².
- (13) The holder of an exclusive exploitation licence shall be entitled to make use of any installations necessary for the extraction, storage and transport of the minerals extracted, in keeping with the security standards laid down by the International Authority.

Article 5

DISTRIBUTION OF OUTPUT

- (1) The holder of an exclusive exploitation licence shall be entitled to receive annually a percentage of the minerals extracted corresponding in value to the annual operating costs of the deposit.
- (2) In addition to the percentage specified in paragraph (1) above, the holder of an exclusive exploitation licence shall be entitled to an annual percentage - not exceeding per cent - of the minerals extracted. This latter percentage shall be granted by way of reimbursement either for costs incurred as a result of operations carried out in the area covered by the initial exclusive exploration licence or for related interest charges, until such costs have been completely reimbursed.*
- (3) The holder of an exclusive exploitation licence shall also be entitled, by way of compensation for his "mining risk", to a further indemnity, which shall not exceed per cent of the minerals extracted.*
- (4) The share of the output which does not go to the licensee shall be allocated to the International Authority, which may request him to market it.

* *

*

* / In order to simplify financial calculations, reimbursement of the costs incurred by the licensee and compensation for his "mining risk" may also be determined on a lump-sum basis. In such a case, provision might be made for a minimum and maximum sum so as to take into account the geological, operating and logistical conditions of the particular deposit.