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Statement of Ambassador Kenneth Rattray (Jamaica), Rapporteur-General of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, presenting, on behalf of the Chairman of the Preparatory Commission, the Final Report of the Preparatory Commission (LOS/PCN/153)

1. I have the honour, in the absence of the Chairman of the Preparatory Commission, to present to the Assembly in accordance with paragraph 11 of resolution I of the Third United Nations Conference on the Law of the Sea the Final Report of the Preparatory Commission for the International Seabed Authority and the International Tribunal for the Law of the Sea.
2. This Report, as required by the aforesaid paragraph 11, excludes the recommendations of the Preparatory Commission regarding the practical arrangements for the establishment of the International Tribunal for the Law of the Sea.
3. The Report of the Preparatory Commission is contained in document LOS/PCN/153 consisting of thirteen volumes which represent a comprehensive documentation of the work of the Preparatory Commission during its sessions from 1983 to 1994. The Report is structured on the basis of the institutional framework of the Preparatory Commission which consisted of:
  - (a) The Plenary including the General Committee;
  - (b) Special Commission 1;
  - (c) Special Commission 2;
  - (d) Special Commission 3; and
  - (e) Special Commission 4.

4. As I have indicated, for the purposes of this Report, we are not concerned with Special Commission 4 whose area of responsibility related to the Tribunal.

5. The areas of responsibility of the various organs of the Authority were as follows:

(a) The functions of the Plenary included the implementation of resolution II of the Third United Nations Conference on the Law of the Sea, governing preparatory investment in pioneer activities relating to polymetallic nodules, as well as preparing draft rules of procedure of the organs of the Authority, making recommendations concerning the relationship between the Authority and various entities and preparing rules, regulations and procedures on the administrative, financial and budgetary matters pertaining to the various organs of the Authority. The General Committee acted on behalf of the Preparatory Commission as the executive organ for the administration of resolution II. In connection with the discharge of its responsibilities relating to the implementation of resolution II, the Preparatory Commission, at its ninth session, established the Training Panel;

(b) Special Commission 1 was charged with undertaking 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 international seabed area with a view to minimizing their difficulties and helping them to make the necessary economic adjustments. It was also required to prepare studies on the establishment of a compensation fund, and to submit recommendations to the Authority thereon;

(c) Special Commission 2 was charged with the adoption of all measures necessary for the early entry into effective operation of the Enterprise - the mining arm of the Authority;

(d) Special Commission 3 was charged with the preparation of rules, regulations and procedures for the exploration and exploitation of the Area the seabed mining code.

6. The Report on the work of the Plenary, including the General Committee and the Training Panel, is contained in volumes I to V of document LOS/PCN/153.

I. Highlights of the Report on the work of the Plenary  
and the General Committee

Implementation of resolution II

7. A description of the work of the Preparatory Commission on the implementation of resolution II is to be found at paragraphs 12 to 68 of document LOS/PCN/130, at pages 13 to 23 of volume I.

8. The Preparatory Commission first addressed and established the rules for the registration of pioneer investors and in particular was able to resolve the difficult issue of overlapping claims which were found to exist in the North-east Pacific between France, Japan and the Soviet Union. The resolution of this issue reached in proposals which became known as the Arusha

Understanding paved the way for the registration of the first group of applicants as pioneer investors. The understandings and the statement on the implementation of resolution II are particularly to be found in document LOS/PCN/L.8 at pages 5 to 7 of volume II and in the annex to document LOS/PCN/L.41/Rev.1 at pages 32 to 36 of volume II. The essential basis of the solution provided by the Understanding in order to resolve the conflicts arising from overlapping claims of the first set of pioneer investors and to protect the areas reserved for the Authority were:

(a) To provide for a system whereby there could be voluntary relinquishment in advance of portions of the applicants area simultaneously, with its registration as pioneer investor; and

(b) For these early applicants with overlapping claims, namely, France, Japan and the USSR, to self-allocate to themselves certain portions of the area and to jointly contribute portions of the area as part of the area to be reserved for the Authority.

9. As an integral part of these understandings it was provided that notwithstanding the provisions of paragraph 12 (a) (i) of resolution II, the first group of applicants will assist the Preparatory Commission and the Authority in the exploration of a mine site for the first operation of the Enterprise and in preparing a plan of work in respect of such a mine site. The conditions and extent of this assistance were to be discussed and agreed to following registration, applying *mutatis mutandis* the provisions of paragraph 7 (c) of resolution II.

10. It was also provided that the treatment to be accorded to potential applicants in respect of their applications shall be similar to the treatment given to the first group of applicants provided that potential applicants assume similar obligations to those of the first group of applicants and submit their applications before the entry into force of the United Nations Convention on the Law of the Sea.

11. A Group of Technical Experts was appointed to examine the applications from pioneer investors and to make its recommendations to the General Committee, which was entrusted with the responsibility to act on behalf of the Preparatory Commission as its executive organ for the registration of pioneer investors.

12. For the purpose of the implementation of the obligations of registered pioneer investors and their certifying States, an understanding was reached in 1990, the details of which are fully reflected in document LOS/PCN/L.87, Annex, which is to be found at pages 107 to 109 of volume II. A general description of the understanding is also to be found at paragraphs 39 to 51 of document LOS/PCN/130 in volume I, pages 18 to 20.

13. Essentially, the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States involved:

(a) An undertaking by the four pioneer investors, France, Japan, the Soviet Union and India, to provide training free of cost in conformity with the training programme approved by the Preparatory Commission, taking into account the recommendations of the Group of

Technical Experts (para. 2 of document LOS/PCN/L.87, Annex: vol. II, p. 107);

(b) An undertaking by France, Japan and the Soviet Union to carry out free of cost the preparatory work on stage 1 of the plan of work for exploration in the area reserved for the Authority; upon completion of stage 1 and review of the results obtained, and taking into account the decisions of any pioneer investor to undertake stage 2 of the plan of exploration in the areas allocated to it, to agree to the implementation of stage 2 of the exploration plan on terms and conditions to be agreed in accordance with resolution II of paragraph 12 (a) (i) of resolution II (paras. 7-9 of document LOS/PCN/L.87, Annex: vol. II, p. 108);

(c) An agreement to waive the payment of US\$1 million per annum as from the date of registration of the three pioneer investors once they have satisfactorily complied with their obligations for training and exploration (para. 10 of document LOS/PCN/L.87, annex: vol. II, p. 108);

(d) An agreement by India to undertake a programme of exploration of one mine site for the Enterprise in the area reserved for the Authority in the Indian Ocean and the waiving of India's obligation to pay the annual fee of US\$1 million as part of the overall understanding" (para. 11 of document LOS/PCN/L.87, Annex: vol. II, pp. 108-109);

(e) An undertaking by the four registered pioneer investors to perform their obligations prescribed in the Convention relating to transfer of technology and to agree that training in the use of all available technology was to constitute a substantial component of the training programme (para. 3 of document LOS/PCN/L.87, Annex: vol. II, p. 107);

(f) An undertaking to agree to the amount of periodic expenditures for exploration in consultation with the Preparatory Commission (para. 4 of document LOS/PCN/L.87, Annex: vol. II, p. 107);

(g) An agreement that the four certifying States would provide, in accordance with paragraph 12 (b) (ii) of resolution II, annual reports on the pioneer activities carried out by them or their entities in their respective pioneer areas (para. 5 of document LOS/PCN/L.87, Annex: vol. II, p. 107);

(h) A requirement for each pioneer investor to submit a comprehensive annual report on the type of activities undertaken by it and details of expenditures incurred during that year, as well as a list of the data and information gathered as a result of these activities (para. 13 of document LOS/PCN/L.87, Annex: vol. II, p. 109);

(i) An agreement that the Group of Technical Experts would review, within three months of the sixtieth instrument of ratification of the Convention, an assessment of the time when commercial production might be expected to commence; and that if as a result of such review and assessment the Group of Technical Experts concluded that commercial production would not take place for an extended period of time, the Preparatory Commission would recommend that the annual fixed fee payable under Annex III, article 13, paragraph 3, be waived for a relevant period (para. 12 of document LOS/PCN/L.87, Annex.: vol. II, p. 109);

(j) An affirmation that in accordance with resolution II, paragraph 7 (b), the Authority shall take into account the provisions of this understanding when negotiating the financial terms of contract and in doing so take into consideration the early registration and satisfactory performance by each of the four registered pioneer investors of their respective obligations under this understanding (para. 15 of document LOS/PCN/L.87, Annex: vol. II, p. 109);

(k) An agreement (taking into account paragraph 19 (e) of the statement on the implementation of resolution II which provided for similar treatment to be given to potential applicants as that given to the first group of applicants, provided they assume similar obligations and submit their applications before the entry into force of the Convention) to enter into arrangements similar to those contained in this understanding with any other registered pioneer investor or applicant (para. 17 of document LOS/PCN/L.87, Annex: vol. II, p. 109).

14. During the life of the Preparatory Commission seven pioneer investors were registered, namely:

- (a) India on 17 August 1987;
- (b) Infremer/Afernod (France) on 17 December 1987;
- (c) Dord (Japan) on 17 December 1987;
- (d) Yuzhmoregeologiya (USSR) on 17 December 1987;
- (e) China Ocean Mineral Resources Research and Development Association (COMRA) (1991);
- (f) Interoceanmetal Joint Organization (IOM) (Bulgaria, Cuba, Czech and Slovak Republic, Poland and USSR) (1991); and
- (g) Republic of Korea (1994).

15. The report on the status of the implementation of the obligations of the registered pioneer investors under resolution II and the related understandings prepared by the Secretariat is contained in document LOS/PCN/145 of 23 September 1994, to be found at pages 203 to 218 of volume I of the Report.

## II. Draft rules of Procedure of the organs of the Authority

16. The Plenary was also concerned with the preparation of the draft rules of procedure of the organs of the Authority. In this regard the Plenary prepared:

- (a) Draft rules of procedure of the Assembly of the Authority (LOS/PCN/WP.20/Rev.3) (vol. V, pp. 3-31); in this regard it is to be noted that the Assembly

has now adopted its own rules of procedure;

(b) Draft rules of procedure of the Council of the International Seabed Authority (LOS/PCN/WP.26/Rev.3) (vol. V, pp. 32-57);

(c) Draft rules of procedure of the Legal and Technical Commission (LOS/PCN/WP.31/Rev.3) (vol. V, pp. 58-74);

(d) Draft rules of procedure of the Economic Planning Commission (LOS/PCN/WP.36/Rev.2) (vol. V, pp. 75-91).

17. A description of the work of the Preparatory Commission in respect of those matters relating to the draft rules of procedure of the various organs of the Authority is to be found at paragraphs 70 to 138 of document LOS/PCN/130 (vol. I, pp. 23-33).

III. Draft agreements concerning the relationship of the Authority with the United Nations, the host country and the Parties to the Convention on the Law of the Sea

18. The Plenary was also concerned with the preparation of the following draft agreements:

(a) Headquarters Agreement between the Government of Jamaica and the International Seabed Authority (LOS/PCN/WP.47/Rev.2) (vol. V, pp. 97-125);

(b) Draft Relationship Agreement between the International Seabed Authority and the United Nations (LOS/PCN/WP.50/Rev.3) (vol. V, pp. 142-149); and

(c). Draft Protocol on the Privileges and Immunities of the International Seabed Authority (LOS/PCN/WP.49/Rev.2) (vol. V, pp. 126-141).

19. A description of the work of the Preparatory Commission in respect of these three agreements is to be found at paragraphs 139 to 152 of document LOS/PCN/130 (vol. I, pp. 33-35).

IV. Report of the work of Special Commission 1

Special Commission 1

20. Special Commission 1, it is recalled, was concerned with undertaking 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 submitting recommendations to the International Seabed Authority thereon.

21. The report of Special Commission 1 is contained in volumes VI to IX. I invite particular attention to the consolidated provisional final report presented by the Chairman of Special Commission 1, Ambassador Hasjim Jhalal of Indonesia at pages 5 to 33 of volume VI.

V. Report on the work of Special Commission 2

Special Commission 2

22. Special Commission 2, it will be recalled, was charged with the responsibility of taking all necessary measures for the early entry into effective operation of the Enterprise and of carrying out the functions referred to in paragraph 12 of resolution II.

23. The report of Special Commission 2 is contained in volumes X to XI. I invite special attention to the consolidated provisional final report presented by the Chairman of Special Commission 2, Ambassador Lennox Ballah of Trinidad and Tobago, which is to be found in volume X at pages 8 to 28.

VI. Report on the work of Special Commission 3

Special Commission 3

24. Special Commission 3 was entrusted with the task of preparing rules, regulations and procedures for the exploration and exploitation of the deep seabed area - commonly referred to as the preparation of the mining code.

25. The report of Special Commission 3 is to be found in volumes XII and XIII. I invite special attention to the consolidated provisional final report presented by its Chairman, which is to be found at pages 310 to 323 of Volume XIII.

VII. Agreement relating to the Implementation of Part XI  
of the United Nations Convention on the Law of the  
Sea

26. In the light of the Agreement adopted by the General Assembly on 28 July 1994 relating to the implementation of Part XI of the Convention, the Preparatory Commission decided to recommend to the Authority that the recommendations contained in its Report should be adjusted so as to be in conformity with this Agreement.