

COMMISSION OF THE EUROPEAN COMMUNITIES

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Need for a common position for the Third United Nations Conference
on the Law of the Sea,
with particular reference to exploitation of the sea-bed

(Commission Communication to the Council)

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1. Introduction

1.1. The European Community's high degree of dependence (around 75%) for the supply of mineral non-energy raw materials to its industry is a real and serious problem (1).

Since, by the force of circumstances, the Community will not be self-sufficient even after enlargement, it is essential to secure access to external sources of supply and because of the concentration of certain sensitive mineral resources in a few countries, it is necessary to diversify those sources.

The exploitation of the sea-bed is a potential source of supply for the Community (2) (see Annex I). Up to now, research and development has been mainly concerned with the exploration and exploitation of the deposits of polymetallic nodules; however, the recent discovery in international waters in the Pacific of considerable deposits of sulphides of metals such as zinc, copper, iron, lead, silver, etc. near to volcanic faults at a depth of 2 500 m, shows that other resources still remain to be discovered on the floor of the sea-bed and subsequently underneath (3): the bedrock beneath the deep ocean basins contains large concentrations of metals such as nickel, copper,

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- (1) The Commission first analyzed this question in its Communication to the Council entitled "the Community's supplies of raw materials" (COM(75)50 of 5 February 1975); the matter has also been discussed at numerous meetings of various European Parliament committees on the basis of documents drawn up by Mrs L. MOREAU.
 - (2) European Parliament Resolution of 9 April 1981 on economic aspects of the exploitation of the sea-bed.
 - (3) In the field of biological resources, reference should be made to the International Convention on the Conservation of Antarctic Marine Living Resources (drawn up by fourteen nations), which has been open for signing since 11 September 1980.

molybdenum, cobalt, zinc, lead, mercury, chromium, platinum, gold and silver, as well as a small fraction (in the region of 2%) of the total subsea petroleum potential (1).

The mining of polymetallic nodules will generate production of nickel and copper and of considerable quantities of two sensitive raw materials - manganese and cobalt; this will require new technology specific to this type of mining, which is being developed with the financial and technical participation of European industry.

The exploitation of the sea-bed is worthwhile primarily in the ocean areas lying beyond the limits of national jurisdiction (the zone that has been declared the "common heritage of mankind") and should in principle and above all for the purposes of site delimitation, be governed by international rules which are currently being drafted under the Third United Nations Conference on the Law of the Sea (in particular in part XI of the draft Convention (2)). It must be borne in mind that the Convention will bind many generations and will apply to known and as yet unknown raw materials.

The present draft Convention on the Law of the Sea does not guarantee future sea-bed operators access to the International Area under conditions likely to encourage them to develop the Area and its resources in an orderly and safe fashion.

- 1.2. The Commission considers that the development of marine mineral resources must be in the mutual interest of the industrialized and developing countries. The draft Convention on the Law of the Sea does not go far enough towards meeting that objective.

(1) U.J.S. GOVERNMENT - World Mineral Supplies Assessment and Perspective - Developments in economic geology, 3, Elsevier 1976, pp. 227 and 237).

(2) The Draft Convention departs from the principle enunciated by Grotius in 1609, namely that the exploitation of the seas is free, since the coastal States will be authorized to exercise control over living and mineral resources both in the 200-mile exclusive economic zone and beyond 200 miles on the continental shelf, and also since exploitation of the seabed should be subject to a body of rules.

Nor would an international regime that discouraged rather than encouraged the exploitation of the sea-bed be in the interest of the developing countries which do not have appreciable raw material resources; they should be able to benefit financially from the operation while ensuring that they themselves have access to the raw materials in question under reasonable economic conditions for their own development requirements.

The international regime must therefore make an effective contribution to the development of the developing countries whether they be mineral consumers or producers, coastal or landlocked states:

- (i) Their industrialization of the consumer developing countries must not be slowed down by an artificial reduction in the world supply of certain minerals. That is why the Commission is not in favour of the quantitative limitation of marine production and only accepts on an exceptional basis and in a spirit of compromise, the limitation introduced for nickel. Likewise, it would warn against the indirect limitation that could result from excessive taxation of marine production or from an excessively cumbersome and interventionist administrative structure.
- (ii) The developing country producers of copper, cobalt and manganese must be protected against the unfair effects which marine production could have on their development possibilities: the aid for economic adjustment provided for in Article 151 § 4 of the draft Convention should be funded from the proceeds of nodule production. (mainly)
- (iii) The landlocked or poorest developing countries, which would be prevented by their geographical or economic situation from taking part directly in the development of the sea-bed, should mainly benefit from these proceeds: if they were assured of this contribution towards the financing of the projects necessary for their development, these countries would not be "the poor relations" of the Law of the Sea. This would be the case if the exploitation of the sea-bed were hindered or delayed for non-economic reasons.

1.3. If the Community's external economic policy, notably vis-à-vis the developing countries, is to be consistent, the Community must adopt a clear position on the need to arrive at an agreement embodying the guidelines set out above; there are two main reasons for this:

- (i) the absence of such an agreement would be seen as a sign of a few industrialized countries desire to grab this wealth despite its having been declared the "common heritage of mankind";
- (ii) far from merely being concerned to improve its own supplies, the Community is promoting mining projects as a motive force for economic development in the developing countries. At a regional and land-based level, the second Lomé Convention introduced a mining cooperation policy framed with a view to mutual advantage. It is that view which must be confirmed in an exercise that involves all the developing countries and non-land-based mineral resources.

While favouring the adoption of an international treaty, the Community must also secure some improvement in a number of clauses in part XI of the Convention that are liable to discourage future marine operators either as a result of restrictive declarations of principle or by imposing excessive technical and financial constraints.

2. Conditions governing the implementation of sea-bed exploitation

2.1. The general objectives of the Third United Nations Conference on the Law of the Sea with regard to the exploitation of the deep sea-bed were laid down in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil thereof (1).

Paragraph 9 of that Declaration stipulates that the international regime to be established "will provide for the orderly and safe development and rational management of the Area and its resources and for expanding opportunities in the use thereof, and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal".

(1) Resolution 2749 (XXV) adopted unanimously (including by the United States) by the General Assembly on 17 December 1970

2.2. Production limitation clause

Since 1973 certain land-based producers have been concerned about the effect of sea-bed exploitation on their economies; they fear that the increased supply brought about by the marketing of the metals extracted from the nodules will cause a substantial drop in prices.

That is why the producers in question, brought together by Canada, have succeeded in having a production limitation clause inserted in the draft Convention; the clause stipulates that all or part of the growth in nickel consumption calculated from a reference date linked to the commencement of initial commercial production could be covered by the marine producers (1).

2.3. The production limitation clause raises difficulties of principle.

It seeks to protect the developing countries whose economies are heavily dependent on mineral production against unfair adverse effects caused by the competition from the exploitation of the sea-bed.

The Community has always been aware of the importance for a number of developing countries of exports of their commodities, both mineral and agricultural; frequently, those exports earn the bulk of the foreign currency they need for their development. As a result, global Community policy on commodities should be based on a body of objectives and instruments, notably stabilization of commodity prices and development of the developing countries' natural resources in the light of the growing interdependence of the economies of the industrialized and developing countries.

It is important that the exploitation of the sea-bed should not operate to the detriment of land-based workings in the developing countries: if that were not the case, it would be necessary to implement the measures provided for in Article 151(4) of the draft Convention.

(1) The production limitation clause calculated on the basis of nickel will protect the land-based producers of that metal but not the producers of cobalt or manganese (see Table I).

In any event, the future marine operators should be induced to put their products on the market gradually in line with the growth of demand (particularly in the case of cobalt and manganese) to prevent prices collapsing.

- 2.4. It should also be remembered that the production limitation clause, restrictive as it may be as regards the number of different operators having access to the international Area, will nevertheless make it possible to bring into operation some five exploitation sites in 1990, if that is the year when commercial exploitation first get under way assuming 3% annual growth of nickel consumption from 1979, 10 sites in 2000 and 19 sites in 2010.

It would appear that some five or six sites would be needed to cover the main industrialized countries, present demand for cobalt and manganese, which they consider to be sensitive metals (see Table I).

- 2.5. The Commission hopes that European industry will be able to play an active role in the exploitation of the sea-bed.

Up to now, the consortia interested in exploitation have largely been formed around US companies and only one consortium includes two European companies from different countries. When the development programmes currently in progress are concluded, an assessment will have to be made of whether it is worthwhile and possible to use Community instruments to encourage European firms to come together.

3. Position of the Community at the Conference on the Law of the Sea

- 3.1. Because of the uncertainty as to the date of implementation of the decision-making process envisaged by the draft UN Convention, the managers of companies have turned to their respective governments to obtain certain guarantees via the enactment of provisional national legislation governing the exploration and exploitation of sea-bed mineral resources.
- 3.2. However, a majority of Community companies continue to favour in the present circumstances the conclusion of an international Convention under the aegis of the United Nations but on condition that certain improvements are incorporated in the draft Convention given the considerable industrial risks involved, to avoid binding dirigistic

rules and the establishment of a cumbersome and expensive bureaucracy retaining a wide margin of discretion.

It is important that improvements are made in the draft Convention in order to give certain assurances to those whose task it will be to get commercial exploitation of the sea-bed started.

For the time being, the legal uncertainty resulting from the Law of the Sea Conference negotiations and depressed metal prices have led certain consortia to slow down their research and development work considerably.

3.3. Apart from positions on fisheries, pollution and a number of trade issues, the Community has rarely been able to make its weight felt by putting forward common positions.

This has sometime led the Group of 77 to negotiate solely with the United States and the USSR to resolve certain particularly difficult questions in a select group (for example, the method by which the Council of the Authority will take decisions).

When the time comes, the Community should defend, constructively and dynamically, a common position aimed at bringing together the various positions which would allow the Conference to be continued and concluded.

Accordingly, the common position should be established on the basis of the guidelines set out in section 3.4. below.

3.4. The Community could propose the following guidelines:

- reaffirm acceptance of the creation of an international regime governing the Area and its resources, as provided for in Resolution 2749 (XXV) of the General Assembly;
- declare that the development of marine mineral resources must be in the mutual interest of the industrialized and developing countries: to that end, an international regime is necessary. The regime must, on one hand, permit the progressive but real entry into production of the sea-bed, and on the other hand, guarantee an effective contribution for the development of developing countries, whether they be mineral consumers or producers, coastal or land-locked States. The Community would stress in particular the need to provide

for effective aid for those developing countries whose development might be affected by the exploitation of the sea-bed and for the land-locked or poorest developing countries which would be prevented by their geographical or economic situation from participating directly in the exploitation of the sea-bed;

- declare that the International Sea-Bed Authority should be organized on a functional and progressive basis, in proportion to the number of sites in operation; the Authority should concentrate its activities on the application of operating rules for the exploitation of the sea-bed (including the rules for the protection of the marine environment provided for in Article 145 of the draft Convention) and on the arrangements for the equitable redistribution among the developing countries of the profits resulting from that exploitation. The operating costs of the Authority must be much lower than the initial UN estimates (Doc. A/CONF.62/L 65 of 18 February 1981);
- propose in order to meet the objectives of Article 9 of Declaration 2749 (XXV) the amendment of a number of clauses in part XI of the draft Convention, these being clauses that tend to discourage future marine operators either by restrictive declarations of principle or by imposing on them technical and financial constraints that are unreasonable compared with the conditions imposed for similar land investment operations (1):

a) Resources policy

For many years now, Community undertakings have been playing an important role in the work being done to achieve a better understanding of the potential of the international Area but, at the same time, also of the difficulties inherent in this new type of operation. It is important that this effort be continued and that the above undertakings should therefore be guaranteed access to the resources of the sea-bed on a non-discriminatory basis and under economic conditions.

(1) The amendments referred to here cannot affect the provisions relating to the risks and ecological efforts of exploitation on the natural resources of the area.

Certain principles relating to activities in the Area, defined by the draft Convention, should be amended to give all production sources an equal chance in order not to give excessive protection to the land-based producers.

The sea-bed production limitation formula in the draft Convention (described on page 5) raises difficulties of principle; it seems acceptable only as a protection for the developing countries whose economies are heavily dependent on mineral production, against unfair adverse effects caused by the competition from the exploitation of the sea-bed. (1)

At the same time, sea-bed operators must be given a guarantee that the level of production allocated to them can be maintained throughout the period of the contract.

b) Transfer of technology

In the present draft Convention, the term "technology" has not been made sufficiently clear; it will be necessary to give an improved definition so as to clearly map out the obligations of the operators.

The Member States and the Community proposed clauses at the Conference in 1978 for the transfer of technology under fair and reasonable commercial conditions with the objective of enabling the Enterprise to establish itself on a stable financial and technical basis. That exceptional proposal can in no way constitute a precedent for other negotiations in progress on the same subject.

On the other hand, it is difficult to accept the provisions envisaged in the draft Convention with regard to:

- the transfer of technology supplied by a third party, since the provisions in question would imply high additional costs for the contracting party as a result of disputes and delays;

(1) The production limitation formula combines a production ceiling protecting the land-based producers and a production floor allocated sometimes entirely to the sea-bed producers.

- the obligatory transfer of technology to the developing countries, which goes beyond the basic principle. These countries can obtain the necessary technology through joint ventures either with the Enterprise or with operators sponsored by a State. It is therefore a desirable development that specific provisions should be envisaged in the draft Convention to permit the establishment of joint ventures between developing and developed countries on reserves sites, which would encourage not only the transfer of technology to the developing countries but also their involvement in the exploitation of the sea-bed from the outset. A system of financial incentives similar to that envisaged for the establishment of joint ventures between a contracting party and the Enterprise could be looked into (for example by reducing the financial charges imposed on the operators).

c) Financial clauses of the contracts

It is to be feared that the financial charges envisaged in the draft Convention will discourage private investors (1); it has been confirmed that those charges are much higher than those envisaged by developing countries interested in the installation of mining operations on their territory.

It is necessary to reduce the levy rates and impose high charges only when profitability conditions are more favourable.

It seems necessary that after the initial phase, the operating costs of the Authority, the additional investment of the Enterprise as well as its operating costs should not be covered by levies on the operators, given that the desired aim is to optimize the disposable income for the developing countries (in particular the land-locked and the producer countries).

(1) The necessary investment for the exploitation of one mining site, producing 3 million tonnes of dry nodules per year, will be of the order of 1-1.5 billion dollars.

d) Voting procedures in the Council

The formulas provided for in the draft Convention seem to represent a reasonable solution to a highly complex problem.

The conditions governing the operation of the Legal and Technical Commission (which has to approve the work plans of future operators) still have to be specified in such a way as to guarantee the fairness and absolute impartiality of the said Commission in its work. A time limit should be placed on its evaluation. In addition, an arbitration procedure should be worked out to enable a future operator to defend his case if no decision or a negative decision is taken by the Commission.

e) Review Conference

It seems strange that the Review Conference provided for in Article 155 of the draft Convention should be able to amend this text on the basis of a two-thirds majority when consensus is the principle currently applied for the negotiations in progress.

In any event, the Review Conference should not be able to call into question the possibilities offered by this Convention of access for states and their nationals to the exploitation of the sea-bed.

4. Conclusions

The next (and what ought to be the final) session of the Third United Nations Conference on the Law of the Sea will be held in New York from 8 March to 30 April.

It is important that when renegotiations begin at that session of part XI of the draft Convention the Community should be in a position to defend its interests by playing an active role, while ensuring that the conditions are fulfilled for a fair redistribution to the developing countries of profits derived from exploitation of the sea-bed.

Consequently, the Council is requested:

- to adopt a common position on the basis of the guidelines set out in section 3.4. of this paper.

Annexes: Annex 1 : The Community's interest in exploitation of the sea-bed

Table I : Data on the four metals obtained from the polymetallic nodules

1. The Community's interest in exploitation of the sea-bed

1.1. The exploitation of the sea-bed is justified by the presence on the ocean floor of manganese nodules (polymetallic nodules) a few centimeters in diameter; these will be recovered by collectors working at depths of up to more than 5 000 m. The nodules are rich in manganese (content around 29%), nickel (1.3%), copper (1.2%) and cobalt (0.24%) (see table I).

A comparison with the land-based reserves estimated by the US-Bureau of Mines covering the same metals demonstrates the potential importance of these nodules.

	<u>Land-based reserves</u> ¹⁾	<u>Reserves contained in the nodules¹⁾</u>
	(in millions of tonnes of metal)	
Cobalt	1.5	60
Copper	498	240
Manganese	5 440 (gross weight)	6 000
Nickel	54	290

The main deposits of nodules known at present are located in the Pacific.

1.2. Although the presence of manganese nodules on the ocean bed has been known of for over a century, it was not until 1960 or thereabouts that more detailed studies began to be made of the deposits and processing technology. As from 1974 various international consortia were established bringing together firms from the United States, Japan, Canada, the United Kingdom, Belgium, the Netherlands, Germany and Italy. France and Japan have also undertaken independent national programmes.

1) United Nations - Department of International Economic and Social Affairs - Sea-bed mineral resource development: recent activities of international consortia - document ST/ESA/107 - New York 1980

The Republic has taken an interest in the mining of nodules since they constitute a rich ore comprising a number of commercially interesting metals, including two sensitive raw materials:

- manganese, land-based deposits of which are found in only a limited number of countries (mainly the USSR and South Africa, but also Gabon and Brazil),
- cobalt, the two main producers of which are Zaire and Zambia.

The mining of the poly metallic nodules is of potential interest not only to the industrialized countries but also to many developing countries which have to import many raw materials in order to ensure their industrialization and for which a supply of raw materials at an interesting price is crucial.

Data on the four metals obtained from the polymetallic nodules

	Cobalt (Co)	Copper (Cu)	Manganese (Mn)	Nickel (Ni)
<u>land-based production</u>	<u>1980</u> West: 26 100 t of metal of which: 19 500 t in Africa	<u>1979</u> Mine production of ores in '000t of Cu content West 6 136 Eastern-bloc countries 1 818 World prod. 7 954	<u>1978</u> Mine production of ores in '000 t of Mn content World prod. 8 729	<u>1979</u> Mine production of ores in '000 of Ni content West 487 Eastern-bloc countries 209 World prod. 696
<u>Consumption</u>	<u>1980</u> Overall estimate of some 20 000 t for the West	<u>1979</u> in '000 t of Cu content West 7 591 Eastern-bloc countries 2 291 World consumpt. 9 882	<u>1977</u> Ore equivalent in '000 t of Mn content EEC (Nine) approx. 1 540 USA 1 381	<u>1979</u> in '000 t of Ni content West 595 Eastern-bloc countries 188 World consumpt. 783
<u>Community dependence</u>	Ores 100% Metal - approx. 95%	Ores 93.5% Metal 63 %	Ores 100%	Ores 100% (New Caledonia outside EEC) Metal 88%
Content of the nodules ^{x)}	0.24%	1.2%	29%	1.3%
Percentage of the metals recovered ^{x)} from the nodules	90%	95%	85%	95%
Production of metal extracted ^{x)} from the nodules produced by a site yielding 3 million t of dry nodules per annum	5 900 t	31 000 t	670 000 t	33 500 t
Number of sites that would cover the total consumpt. of				
- the Community	approx. 3	approx. 76	approx. 2.3	approx. 5.5
- the United States	approx. 1.5	approx. 72	approx. 2.0	approx. 5.5

x) Figures supplies by an international consortium