The Production Ceiling according to the United Nations Convention on the Law of the Sea

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I. Introduction

Possible future mining of polymetallic nodules from the deep sea will be subject to general policies and specific production policies to be devised by the International Sea-Bed Authority (in the following: Authority) according to the United Nations Convention on the Law of the Sea (LOSC). It is not intended to review these policies here. Let us only note that these policies attempt specially at protecting developing countries from adverse effects on their economies resulting from mining activities in the sea, and in general they rank the interests of land-based mining activities higher than those of all consumers. This is evident from an analysis of Article 150 LOSC. Only the production policies, however, have been given an operational formulation.

The Authority has three special production policies at its disposal: (i) participation in commodity conferences (Art. 151, 1. (b)), (ii) establishment of a system of compensation or economic adjustment assistance “to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area” (Art. 151, 10.), (iii) production authorization during the so-called interim period (Art. 151, 2–4.). In effect, the latter is a production limitation. In the following, we consider the production authorization procedure only. It aims at protecting land-based mineral producers, and thus constrains the interests of the consumers, although both groups are supposed to share the rights in the resources: “All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act” (Art. 137, 2.). The differential treatment

1 A detailed analysis is given in Wolfrum [1984, pp. 480 ff.].
2 In the following, for reasons of convenience only the Article of the Convention on the Law of the Sea [UN, a] will be cited.
of traditional producers, consumers, and newcomers was found in the interest of some resource-rich nations\(^1\), not only developing countries\(^2\).

We shall concentrate on a discussion of technical problems. We do not treat the question whether it was necessary to have all the instruments quoted above at the disposal of the Authority. Only in passing we remark that a more market-oriented approach might have been more adequate to serve the benefit of mankind as a whole. For instance, if the right to engage in deep-sea mining activities in certain areas would be auctioned off, rather than being subject to complicated and partially unclear admission procedures and financial terms of contract as laid down in Art. 153, Annex III [Brockhoff, 1984], this would better serve the objectives for the following reasons:

(i) All interested parties could participate in the auction, even those who want to protect the Area from mining activities, whether for their own interests as producers or consumers, for the protection of the environment, for the temporary protection of existing production, or for any other reason.

(ii) The auction price would be just below the maximum expected benefit for that party which gets the right to exploit or protect the Area. Thus the income of the Authority would be maximized. There is no need for complicated schemes of cost accounting and audits to collect production charges, shares of net proceeds, etc. to assure the calculation of this income.

(iii) To maximize the benefit to mankind and the income of the Authority at the same time, it would not necessarily be advisable to auction off all or none of the Areas at the same time. The larger the demand for minerals relative to the supply from old sea-bed activities, land-based mines, scrap, etc., the higher will be the price for the right to mine in new Areas. The expected prices would determine the timing of the auctions.

(iv) Parties bidding in the auctions would take into account what their income from all the minerals extracted together with the nodules would be. This would help to balance disequilibria that may arise in those markets. Various metal markets are implicitly affected by regulations that are based on one metal (nickel) only, as it is scheduled at present.

(v) In order to facilitate a constant stream of income to the Authority and to avoid extra financing problems for the bidders, the auction price should not be paid in a single lump sum. Alternatively, a stream of payments could be offered by each bidder. It would not be necessary, but would

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\(^1\) See: Assessment by the Canadian Delegation, May 25, 1978, as quoted in Wolfrum [1984, p. 507, fn. 471].

\(^2\) Their interests are stressed in some texts, see for instance UN [h, p. 2].