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Second Session

LEGAL ASPECTS OF THE QUESTION OF THE RESERVATION EXCLUSIVELY FOR PEACEFUL PURPOSES OF THE SEA-BED AND THE OCEAN FLOOR, AND THE SUBSOIL THEREOF UNDERLYING THE HIGH SEAS BEYOND THE LIMITS OF PRESENT NATIONAL JURISDICTION, AND THE USES OF THEIR RESOURCES IN THE INTERESTS OF MANKIND

Study prepared by the Secretariat

PART III. ALTERNATIVE LEGAL REGIMES WHICH MIGHT BE APPLIED IN THE FUTURE TO THE SEA-BED AND THE OCEAN FLOOR, AND THE SUBSOIL THEREOF, UNDERLYING THE HIGH SEAS BEYOND THE LIMITS OF PRESENT NATIONAL JURISDICTION

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Introduction

1. The previous part of this study examined legal principles and rules presently applicable to the sea-bed and the ocean floor beyond the limits of national jurisdiction. This part of the study is concerned with possible régimes which may theoretically be envisaged and which might be applied at some point in the future by agreement between States. These possible régimes are indicated in broad outline under three headings: first, alternative régimes involving some extension of State sovereignty to areas presently beyond the limits of national jurisdiction; second, freedom of exploration and exploitation and scientific investigation; and, third, some form of international control. These régimes are not necessarily mutually exclusive and any solution eventually adopted might incorporate some elements from all of them in an attempt to provide the régime most appropriate, from economic, technical and other points of view, for the exploration and exploitation of the natural resources of the sea-bed in the interests of mankind. In the course of arriving at such a solution the question of a definition of the sea-bed and the ocean floor underlying the high seas beyond the limits of present national jurisdiction will arise. The existing law on this question and problems arising in connexion therewith are dealt with in the first part of this study.1/

2. After outlining the régimes mentioned above,2/ consideration will be given in the present study to the possible legal status of installations on the high seas beyond the limits of national jurisdiction. Reference will also be made to reservation of the ocean floor exclusively for peaceful purposes. Finally, the question of the prevention of pollution will be considered.

1/ A/AC.135/19.

2/ For a general discussion of régimes which might be applied, see Francis Christy, A Social Scientist writes on Economic Criteria for Rules Governing Exploitation of Deep Sea Minerals, The International Lawyer, January 1968, pp. 224-242; Alexander, The Law of the Sea, Proceedings of the first Conference, 1966, and the second Conference, 1967. See also document E/4449/Add.1, pp. 91-94.

A. Alternative Régimes involving some extension of State sovereignty to areas presently beyond the limits of national jurisdiction

(i) Division of the Ocean Floor

3. One possibility which may theoretically arise is that of an agreement between the international community as a whole to divide up the sea-bed and the ocean floor beyond the limits of present national jurisdiction, each country whether or not it is maritime or landlocked, being allocated a certain portion, so that no part of the sea-bed and ocean floor remained outside the jurisdiction of any country. The jurisdiction exercised by a country might be that of exclusive jurisdiction or sovereign rights for the purpose of exploiting or licensing the exploitation of the natural resources of the ocean floor and subsoil allocated to that country.

4. Such a suggestion appears, however, to give rise to a number of fundamental and possibly insuperable difficulties. It presupposes the consent and agreement of the entire international community, embodied in some formal instrument, such as a treaty. It would be exceptionally difficult to determine and establish the criterion according to which the division is to be made. Which part and how much of the ocean floor is to be allocated to particular States would doubtless be a fertile source of controversy.

(ii) Extension of Jurisdiction by the Coastal State

5. Another theoretical possibility is that the Coastal State could extend its jurisdiction over the sea-bed and ocean floor beyond the present limits of national jurisdiction, as far as technology progressively permits, without regard to the principle of adjacency contained in article 1 of the 1958 Convention on the Continental Shelf. Such a situation would lead eventually to a division of the ocean floor among coastal States. The coastal State would exercise sovereign rights for the purpose of exploration and exploitation of the natural resources of the ocean floor or for the licensing thereof. If the jurisdiction of coastal States is to be extended as far as the median lines, article 6 of the

Convention on the Continental Shelf 1958 might provide an analogy for determining where the boundary line is to be drawn.3/

6. However, it is unlikely that the above suggestion would be viable or acceptable. In particular, land-locked States would be precluded from participating in the benefits of the exploitation of the ocean floor. Disproportionately large areas might also be allocated to countries with extensive coastlines or to small and virtually uninhabited islands which are not in a position to explore or exploit the areas concerned in the interests of mankind.

(iii) Occupation

7. A further theoretical possibility would be to regard the ocean floor and sea-bed beyond the limits of national jurisdiction as res nullius and susceptible

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3/ Article 6 of the Convention on the Continental Shelf 1958 states:

"1. Where the same continental shelf is adjacent to the territories of two or more states whose coasts are opposite each other, the boundary of the continental shelf appertaining to such states shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured.

"2. Where the same continental shelf is adjacent to the territories of two adjacent states, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured.

"3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land."

of occupation.[4] Under these circumstances the principle of acquisition of territory in international law would be applicable.[5] Of the various modes of acquisition of territory, such as cession, occupation, accretion, subjugation and prescription, the one most relevant to the ocean floor would be that of occupation. In this connexion there are a number of well-known cases, such as the Island of Palmas,[6] Clipperton Island,[7] Eastern Greenland,[8] Minquiers and Ecrehos[9] and the case concerning the Temple of Preah Vihear[10] where the principles regulating the acquisition of territory by occupation were discussed in detail.

8. A number of difficulties would have to be overcome if this principle were applied to the ocean floor beyond the limits of present national jurisdiction. It would be necessary to define what constitutes effective occupation in this context. There would also be the issue of deciding the extent and size of the area claimed to be occupied by a State. It may be noted that such a régime would be more favourable to those countries that possessed the most developed techniques for exploiting the ocean floor, unless adequate technical assistance were provided to the developing countries or agreement were reached on allocation of the benefits between the exploiting State and the international community as a whole.

B. Freedom of Exploration and Exploitation and scientific investigation beyond the limits of present national jurisdiction

9. A further possibility would be recognition of a right to freedom of exploration and exploitation of the natural resources of the ocean floor and scientific investigation beyond the limits of present national jurisdiction.

4/ A number of representatives in the First Committee noted and commented upon this possibility. See document A/AC.135/1, page 4, para. (b) and page 25, para. 12; A/C.1/PV.1515, pp. 37-40; A/C.1/PV.1529, p. 78-80; A/C.1/PV.1525, p. 32.

5/ See R.Y. Jennings, Acquisition of Territory in International Law, 1963.

6/ Island of Palmas award, Annual Digest, 1927-1928.

7/ Clipperton Island Award, Annual Digest, 1931-1932, Case No. 50.

8/ P.C.I.J. Reports, Series A/B, No. 53.

9/ I.C.J. Reports, 1953.

10/ I.C.J. Reports, 1962.

In this context, it is quite possible that the legal principles recently formulated and developed to regulate the activities of governments in outer space may be helpful for establishing legal principles to be applied to the sea-bed and ocean floor.

10. The two principal instruments embodying the law applicable to outer space are:

(1) Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space;[11/]

(2) Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.[12/]

It may be suggested that one method of establishing a legal régime for the ocean floor beyond the limits of national jurisdiction would, if it is generally acceptable, be similar to the procedure adopted with respect to outer space, namely:

(1) A Declaration formulating the general principles to be applied;

(2) Subsequently, a Treaty, regulating in a more detailed and binding manner, activities of States on the sea-bed and ocean floor and sea-bed beyond the limits of national jurisdiction.

11. It may be noted that modern technology has brought about the recognition of the fact that, in the case of certain natural resources, particularly oil and gas, there are various requirements which are essential to rational exploitation, such as proper spacing of wells, balanced withdrawals from different parts of a pool or deposit and proper methods of maintaining gas pressures. These requirements may sometimes mean that the exploitation of a pool or deposit should be undertaken as a whole, if waste and other unfortunate consequences are to be avoided. While in the continental shelf these problems are left for solution by the coastal State or coastal States, it would probably be necessary to lay down clear principles concerning them if rights on the ocean floor are to be acquired by freedom of exploration and exploitation.

11/ General Assembly resolution 1962 (XVIII) of 13 December 1963.

12/ General Assembly resolution 2222 (XXI) of 19 December 1966.

12. Apart from these questions, which are peculiar to the bed of the sea, there may be other general principles of law or principles applied in instruments relating to outer space and to Antarctica (though the situations in those areas differ in some respects from that of the bed of the sea) which may be helpful. In particular, the following points, mutatis mutandis, taken from the Declaration and Treaty on outer space, might be considered:

(1) It may be agreed that the freedom would extend to exploration and exploitation of the natural resources and to scientific investigation of the ocean floor. However, such activity would not give rise to or serve as a basis for national appropriation by claim of soveriegnty, by means of use or occupation or by any other means. This would be similar to the provisions in article II of the Space Treaty and article IV of the Antarctica Treaty.[13/]

(2) Comparable to article I of the Outer Space Treaty,[14/] the exploration and use of the ocean floor beyond the limits of national jurisdiction would be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development and would be the province of all mankind. The ocean floor beyond the limits of national jurisdiction would be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there would be free access to all

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13/ Article II of the Space Treaty provides: "Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means."

Article IV (2) of the Antarctica Treaty provides: "No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force."

14/ "The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind.

"Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies.

"There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation."

areas of this part of the ocean floor. There would also be freedom of scientific investigation on the ocean floor beyond the limits of present national jurisdiction and States would facilitate and encourage international co-operation in such investigation.

(3) Like article III of the Outer Space Treaty,[15/] States would carry on activities in the exploration and use of the ocean floor, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding.

(4) The principle may also be applied[16/] that States shall bear international responsibility for national activities on the ocean floor beyond the limits of national jurisdiction, whether such activities are carried on by governmental agencies or by non-governmental entities and for assuring that national activities are carried out in conformity with the provisions of international law. The activities of non-governmental entities on the ocean floor beyond the limits of national jurisdiction, would require authorization and continuing supervision by the State.

15/ "States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding."

16/ "States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty. When activities are carried on in outer Space, including the moon and other celestial bodies, by an international organization, responsibility for compliance with this Treaty shall be borne both by the international organization, and by the States Parties to the Treaty participating in such organization.

(5) Appropriate provision should also be made for liability for damage. In this connexion at least two possibilities may be envisaged. First, the kind of provision contained in article VII of the Space Treaty[17] where it is provided that a State is internationally liable for damage resulting from its exploitation or exploration by its natural or juridical persons. Another possibility would be some provision comparable to that contained in articles 27-29 of the High Seas Convention and article II of the 1884 Convention concerning the Protection of Submarine Cables. Article II of the 1884 Convention provides that the breaking or injury of a submarine cable, done wilfully or through culpable negligence, will be a punishable offence and that the person responsible for the damage shall bear the cost of the repairs.

(6) A State would retain jurisdiction and control over its nationals and installations established by that State or its natural or juridical persons, on the ocean floor beyond the limits of national jurisdiction.[18]

(7) In the exploration and use of the ocean floor beyond the limits of national jurisdiction, States would be guided by the principle of co-operation and mutual assistance and would conduct all their activities on the ocean floor,

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17/ "Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the moon and other celestial bodies, and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts on the Earth, in air space or in outer space, including the moon and other celestial bodies."

18/ Article VIII of the Treaty on Outer Space provides:

"A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body. Ownership of objects launched into outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the Earth. Such objects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State, which shall, upon request, furnish identifying data prior to their return."

with due regard to the corresponding interests of all States. States would pursue studies of the ocean floor and conduct exploration so as to avoid harmful contamination and also adverse changes in the environment of the earth and where necessary, would adopt appropriate measures for this purpose. If a State has reason to believe that an activity or experiment planned by it or its nationals on the ocean floor would cause potentially harmful interference with activities of other States in the peaceful exploration and use of the ocean floor, it would undertake appropriate international consultations before proceeding with any such activity or experiment. A State which has reason to believe that an activity or an experiment planned by another State on the ocean floor would cause potentially harmful interference with activities in the peaceful exploration and use of the ocean floor, could request consultation concerning the activity or experiment.19/

(8) In order to promote international co-operation in the peaceful exploration and use of the ocean floor, States conducting activities on the ocean floor, would agree to inform the Secretary-General of the

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19/ Article IX of the Treaty on Outer Space provides:

"In the exploration and use of outer space, including the moon and other celestial bodies, States Parties to the Treaty shall be guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space, including the moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty. States Parties to the Treaty shall pursue studies of them so as to avoid their harmful contamination and also adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter and, where necessary, shall adopt appropriate measures for this purpose. If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space, including the moon and other celestial bodies, it shall undertake appropriate international consultations before proceeding with any such activity or experiment. A State Party to the Treaty which has reason to believe that an activity or experiment planned by another State Party in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities in the peaceful exploration and use of outer space, including the moon and other celestial bodies, may request consultation concerning the activity or experiment."

United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations and results of such activities. On receiving the said information, the Secretary-General would be prepared to disseminate it immediately and effectively.[20/]

C. International Control

13. The application of a number of the principles discussed above might also be considered in connexion with proposals for some form of internationalization of the ocean floor beyond the limits of present national jurisdiction. Such proposals may assume an extensive variety of forms. On the one hand, there may be envisaged an International Organization with exclusive power to exploit or to regulate and control exploitation of the ocean floor beyond the limits of national jurisdiction. On the other hand, there may be proposals suggesting a minimum of international regulation. In between these two extremes, there are a large number of other permutations which might be put forward. However, only two possibilities will be dealt with in more detail at the present time, namely some form of international registration and the possibility of establishing an international Organization for the sea-bed and ocean floor. It may be noted that a number of existing international organizations, such as UNESCO, IMCO, IAEA, FAO, WHO and IOC are concerned with various aspects of the sea-bed and the ocean floor.

20/ Article XI of the Treaty on Outer Space provides:

"In order to promote international co-operation in the peaceful exploration and use of outer space, States Parties to the Treaty conducting activities in outer space, including the moon and other celestial bodies, agree to inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations and results of such activities. On receiving the said information, the Secretary-General of the United Nations should be prepared to disseminate it immediately and effectively."

(i) An International Registry Office

14. A system of international registration might be combined with freedom of exploration and exploitation of natural resources of the ocean floor as considered in paragraphs 9-12 above. Presumably, as under most legal systems concerning the exploitation of natural resources, there would be different terms and conditions for licences to explore and licences to exploit.

15. An international registry office would be a means of ensuring protection and security of title and would provide a measure of international regulation in the exploitation of the ocean floor. It might also provide a means of securing certain of the profits for the international community as a whole. The registry office might also be concerned in the delimitation of claims and the boundaries between them, in accordance with principles which could be laid down. Further, such an office could apply any rules which might be laid down to ensure rational exploitation of pools or deposits of natural resources.

16. It would be appropriate for registrations with such an international office to be made by States, either on their own behalf or on behalf of legal or natural persons. It might also occur that States would wish to undertake the exploration or exploitation of the sea-bed by means of joint enterprises, in which case they could register their claims jointly.

17. The rights to be acquired by registration might be limited with respect to purpose, duration, area, and time within which to undertake development. Acquisition of such rights might also be made contingent upon the acceptance of certain regulations in accordance with which the exploration or exploitation would be conducted.

(ii) An International Organization

18. A number of suggestions have been made to the effect that an international organization ought to be established in order to regulate the exploitation of the sea-bed and ocean floor beyond the limits of national jurisdiction.

19. This suggestion is not a new one. It was put forward in the International Law Commission during the debates on the continental shelf as early as 1951 when Mr. Spiropoulos suggested:[21]

21/ Yearbook of the International Law Commission, 1951, vol. I, p. 304.

"However, he must repeat that the best solution would be the establishment of an international board for the protection of the resources of the sea. That board might be, in some sort, a specialized agency. Such a course would enable the Commission to achieve its purpose, and he asked the members to give it careful consideration."

20. Further reference was made during the same session of the International Law Commission when Mr. Hudson made the following statement:[22/]

"In some circles it is thought that the exploitation of the natural resources of submarine areas should be entrusted, not to coastal States, but to agencies of the international community generally. In present circumstances, such internationalization would meet with insurmountable practical difficulties, however, and would not ensure the effective exploitation of the natural resources, which is necessary to meet the needs of mankind. Continental shelves exist in many parts of the world; exploitation will have to be undertaken in very diverse conditions, and it seems impracticable at present to rely upon international agencies to conduct the exploitation."

21. The question was again discussed in 1953[23/] and the fourth Report of the Rapporteur on the Régime of the High Seas contained the following paragraph:[24/]

"46. 2. The Governments of the Netherlands, Sweden and the United Kingdom, like the Commission, expressly reject the idea of the internationalization of the continental shelf. Gidel and Azcarraga are of the same opinion, which is also shared by Lord Asquith of Bishopstone. Paul de la Pradelle, who had shown himself a fervent advocate of internationalization at the International Law Association Conference in Copenhagen, at the Lucerne Conference merely recommended the establishment of international control over exploitation, i.e. 'international supervision of the direct exploitation by, or exploitation under concession from, the coastal State'. Eustiathiades expressed the same view. The idea of international control had also been advocated in the reply of the Netherlands.

"47. The Commission might perhaps consider proposing the establishment of an international organ responsible for controlling the development of the exploitation of submarine areas and giving advisory opinions on the subject, in order thereby to promote the most efficient use in the general interest. A provision to this effect has been inserted in the comments."

22/ Yearbook of the International Law Commission, 1951, vol. I, p. 407.

23/ Ibid., 1953, vol. I, pp. 112-115.

24/ Ibid., vol. II, p. 40.

22. At the session of the International Law Commission in 1955 the following text was put forward and subsequently withdrawn by Mr. Scelle:[25]

> "An international administrative authority set up within the framework of the United Nations shall be competent to deal with any application from natural or juridical persons, supported by one or more governments, with a view to prospecting, investigating and exploiting the resources of the bed and subsoil of the high seas. This authority shall consider whether such application is justified and whether effect can be given to it. It may grant an international concession for this purpose, the utilization of which it will regulate, taking into consideration, if it thinks fit, the opinion of committees of experts and jurists appointed to report on applications for concessions. The Commission's decisions shall be subject to ratification by the Economic and Social Council. Their validity may be disputed before the International Court of Justice or before a special tribunal on the grounds of illegality or misuse of power."

23. In its final commentary in 1956, on article 68, the International Law Commission stated:[26]

> "Although for the reasons stated, as well as for practical considerations, the Commission was unable to endorse the idea of internationalization of the submarine areas comprised in the concept of the continental shelf, it did not discard the possibility of setting up an international body for scientific research and assistance with a view to promoting their most efficient use in the general interest. It is possible that some such body may one day be set up within the framework of an existing international organization."

25/ Yearbook of the International Law Commission, 1955, vol. I, p. 10.

26/ Yearbook of the International Law Commission, 1956, vol. II, p. 298.

24. During the Law of the Sea Conference in 1958, a reference to internationalization was made by the representative of Monaco.[27/]

25. In the light of modern technological developments, there is once again discussion concerning the possibility of establishing some form of international régime for the sea-bed and subsoil. However, the important distinction between the current discussion and that conducted between 1950-1958 is that the present discussion relates to an international régime for the sea-bed and ocean floor beyond the limits of national jurisdiction.

26. In the debates in the First Committee and the replies of Governments to the Secretary-General, reference was made to the possibility of establishing some form of international organization.[28/]

27. A detailed reference was made by the representative of Malta during the First Committee discussion of the item at the twenty-second session of the General Assembly:[29/]

27/ Official Records, Conference on the Law of the Sea, 1958, Vol. VI, p. 18: "It should be borne in mind, however, that the International Law Commission did not exclude the possibility of internationalization of the exploitation of the natural resources of the continental shelf at some time in the future. Speaking in the Sixth Committee of the General Assembly during its eleventh session, Mr. François, General Rapporteur of the International Law Commission, had mentioned the fact that the possible establishment of an international office of the sea had been considered by the Commission; and a reference to the same question was made in paragraph 9 of the International Law Commission's commentary on article 68. Such an organization, set up in conformity with articles 55 and 59 of the United Nations Charter and comprising in its membership - apart from representatives of interested States - those of UNESCO, the World Health Organization (WHO), the Food and Agriculture Organization (FAO), and other specialized agencies, would help governments in the adoption of decisions fully consistent with the law of the sea. His delegation warmly supported the suggestion that such an organization should be created and was prepared to submit a resolution to that effect which, if adopted, could be annexed to the final act of the Conference."

28/ Documents A/C.1/PV.1530, p. 22; A/AC.135/1/Add.6, p. 4; A/AC.1/PV.1526, p. 38; A/AC.1/PV.1525, pp. 41-42; A/AC.135/1, p. 3; A/AC.135/1, p. 4; A/AC.1/PV.1527, p. 52; A/AC.135/1, p. 20; A/AC.135/SR.8, p. 5.

29/ Document A/C.1/PV.1516, p. 2.

"From what I said this morning, I think it is clear that there can be no doubt that an effective international régime over the sea-bed and the ocean floor beyond a clearly defined national jurisdiction is the only alternative by which we can hope to avoid the escalating tensions that will be inevitable if the present situation is allowed to continue. It is the only alternative by which we can hope to escape the immense hazards of a permanent impairment of the marine environment. It is, finally, the only alternative that gives assurance that the immense resources on and under the ocean floor will be exploited with harm to none and benefit to all.

"Finally, a properly established international régime contains all the necessary elements which should make it acceptable to all of us here: rich and poor countries, strong and weak, coastal and land-locked States. Through an international régime all can receive assurance that at least the deep sea floor will be used exclusively for peaceful purposes and that there will be orderly exploitation of its resources."

28. The representative of Malta adverted to the possibility of establishing an international organization under the aegis of the United Nations or an organization independent of the United Nations.30/

29. The question arises of the structure and the powers which might be exercised by such an international organization. If such a proposal should command general support, the following tentative possibilities may be considered as one alternative for an organization or agency which would either form a part of or be affiliated with the United Nations.

(1) The membership of such an organization would be as universal as possible, including both maritime and non-maritime states.

(2) The constitutive treaty establishing the organization would limit the sphere of its competence to activities on the ocean floor and sea-bed and in the subsoil beyond the present limits of national jurisdiction. The basic principles to be applied in regard to exploration and exploitation of this area would be laid down. The application of these principles to concrete cases might be a subject for the competence of the organization.

(3) The organization would have the power to adopt resolutions and recommendations addressed to its members. It might also be given the power of drafting conventions which would be submitted to member States for ratification. There is also a question whether the organization should have the power, like some of the specialized agencies, to adopt

30/ Document A/AC.1/PV.1515, p. 68.

regulations which would become binding upon the members unless objected to within a specified period. Such regulations might be a useful means of applying the general principles and rules laid down in the treaty.

(4) The organization should remain in close touch with the activities of existing international organizations, such as IMCO, UNESCO, IAEA, WHO, FAO and IOC, which are already engaged in activities connected with the ocean floor. It should be able to make recommendations about such activities either to those organizations themselves or for consideration by the United Nations in connexion with its functions of co-ordinating the activities of the specialized agencies. Additional functions and powers might perhaps be given to the new organization by means of agreements concluded between it and existing organizations.

(5) The organization would have authority to grant licences to States, either individually or collectively, to explore and exploit the natural resources of the sea-bed and subsoil beyond the limits of national jurisdiction.31/ Such licences would be granted in accordance with the

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31/ See the detailed proposals put forward by the representative of the Netherlands, document A/AC.135/1, pp. 23-25:

"III. A double-concession system for exploitation outside the area referred to under I, so that the United Nations would give 'concessions' to States which would act as a sort of 'administering authority' in respect of any exploitation concession they might grant to enterprises; the 'Government take' of the United Nations is intended for aid to developing countries."

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"6. In principle, the United Nations concession would be granted to a State on condition:

"(a) That exploitation is undertaken within a reasonably short time by the State itself (if a State enterprise is involved) or through a bona fide concessionary (exploitation obligation) and,

"(b) That the State is able and willing to exercise effective jurisdiction and control in administrative, technical and social matters connected with the exploitation.

"7. The United Nations concession could be rescinded (i.e., control could be assumed by the United Nations or transferred by the United Nations to some other State) if the concession conditions were not fulfilled. The United Nations would be authorized to carry out inspections for the purpose. No such rescission could be issued until (if the concessionary State so desired) an advisory opinion had been sought from the International Court of Justice, which would then be binding on both parties under the terms of the concession.

"8. Provision would have to be made in the United Nations concession conditions for a fixed percentage of the 'Government take' (royalties plus taxes) to be paid by the concessionary State (possibly in the form of an annual lump-sum) into a United Nations fund for aid to developing countries."

principles and rules laid down in the constitutive instrument. The grant of a licence would entail the acquisition of certain rights which would be recognized by all other members, and might possibly be made contingent upon the acceptance of regulations or other conditions laid down by the organization. The question arises whether the organization should be given competence to deal with any possible disputes or conflicts which might arise in connexion with licences.

(6) If the organization is granted competence to make regulations, they might deal with such matters as the prevention of pollution, the protection of installations, non-interference with the freedom of the high seas and the requirements of rational exploitation.

(7) The organization should be given adequate financial resources to deal successfully with the functions assigned to it. It could perhaps be financed through flat fees charged for the issuance of the various types of licences. This method, however, might not produce the necessary revenue, and would probably not leave any funds over for useful world economic development. An alternative method would be to put the organization's revenues on a royalty basis, so that they would remain in proportion with the benefits derived from exploitation. If this were done, the organization would need powers of detailed regulation and supervision which would ensure that it would receive its proper share of the proceeds.

D. Legal Régime of installations on the high seas beyond the limits of present national jurisdiction

30. Whatever legal régime may be applied in the future to the ocean floor beyond the limits of national jurisdiction, consideration will have to be given to the legal principles and regulations concerning installations established in the area.

31. In this context it may be helpful to consider article 5 of the 1958 Geneva Convention on the Continental Shelf, which provides:

> "1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.
>
> "2. Subject to the provision of paragraphs 1 and 6 of this article, the coastal state is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.
>
> "3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installation and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.
>
> "4. Such installations and devices, though under the jurisdiction of the coastal state, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimination of the territorial sea of the coastal state.
>
> "5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.
>
> "6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.
>
> "7. The coastal state is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents."

32. With respect to the principle of "unjustifiable interference" which is contained in article 5 (1) the following comment by the International Law Commission[32/] is relevant:

32/ Yearbook of the International Law Commission, 1956, vol. II, pp. 299-300.

...

"... Paragraph 1 of this article lays down that the exploration of the continental shelf must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea. It will be noted, however, that what the article prohibits is not any kind of interference, but only unjustifiable interference. The manner and the significance of that qualification were the subject of prolonged discussion in the Commission. The progressive development of international law, which takes place against the background of established rules, must often result in the modification of those rules by reference to new interests or needs. The extent of that modification must be determined by the relative importance of the needs and interest involved. To lay down, therefore, that the exploration and exploitation of the continental shelf must never result in any interference whatsoever with navigation and fishing might result in many cases in rendering somewhat nominal both the sovereign rights of exploration and exploitation and the very purpose of the articles as adopted. The case is clearly one of assessment of the relative importance of the interests involved. Interference, even if substantial, with navigation and fishing might, in some cases, be justified. On the other hand, interference even on an insignificant scale would be unjustified if unrelated to reasonably conceived requirements of exploration and exploitation of the continental shelf. While, in the first instance, the coastal State must be the judge of the reasonableness - or the justification - of the measures adopted, in case of dispute the matter must be settled on the basis of article 73, which governs the settlement of all disputes regarding the interpretation or application of the articles."

33. The International Law Commission also noted in its Commentary that it had adopted a more vigorous attitude with respect to the question of interference with "recognized sea lanes essential to international navigation".[33/]

34. With regard to the general legal status of installations, the Commission, after stating that installations do not possess the status of islands, nor are

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33/ See Yearbook of the International Law Commission, 1956, vol. II, p. 300. "While, generally, the Commission by formulating the test of unjustifiable interference, thought it advisable to eliminate any semblance of rigidity in adapting the existing principle of the freedom of the sea to what is essentially a novel situation, it thought it desirable to rule out expressly any right of interference with navigation in certain areas of the sea. These areas are defined in paragraph 5 of this article as narrow channels or recognized sea lanes essential to international navigation. They are understood to include straits in the ordinary sense of the word. The importance of these areas for the purpose of international navigation is such as to preclude, in conformity with the tests of equivalence and relative importance of the interests involved, the construction of installations or the maintenance of safety zones therein, even if such installations or zones are necessary for the exploration of the continental shelf."

entitled to territorial waters, nor are relevant for the delimitation of territorial waters, stated that:[34]

> "On the other hand, the installations are under the jurisdiction of the coastal State for the purpose of maitaining order and of the civil and criminal competence of its courts."

35. It may be suggested that, although article 5 of the Convention on the Continental Shelf cannot be applied automatically to regulate installations beyond the continental shelf, the following principles may perhaps be extrapolated and be considered in connexion with installations situated on the high seas beyond the continental shelf:

(a) The installations or other devices should not interfere unjustifiably or unreasonably with navigation, fishing, conservation or scientific research.

(b) The question arises whether safety zones might be established around such installations or other devices and within these zones the necessary measures might be taken for the protection of the installations or devices. Another possibility would be to dispense with safety zones and make provision for the protection of installations comparable to the provision of articles 27-29 of the High Seas Convention which deal with the protection of submarine cables.

(c) Such installations would not possess the status of islands, would not have any territorial sea of their own and would not affect the delimitation of the territorial sea.

(d) Due notice would be required of the construction of any such installations and permanent means for giving warning of their presence be maintained. Any installations which are abandoned or disused should be entirely removed.

(e) Such installations and other devices would remain under the jurisdiction of the State which constructed them.

Most of the above principles constitute a specific application of the more general concept of "reasonableness". A State must not exercise a right in such a manner that it gives rise to excessive or unwarrantable interference with the exercise of its right by another State. It may be noted that in connexion with

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34/ Yearbook of the International Law Commission, 1956, vol. II, pp. 299-300.

installations attention will also have to be given to the need for the adoption of safety regulations.[35]

E. Reservation of the Sea-bed and Ocean Floor exclusively for Peaceful Uses

36. An appreciable number of representatives in the First Committee and a number of States in their replies to General Assembly resolution 2340 (XXII), have emphasized that it would be desirable if the sea-bed and ocean floor were used for peaceful purposes. This view has been expressed by Australia,[36] Austria,[37] Belgium,[38] Canada,[39] Chile,[40] China,[41] Czechoslovakia,[42] Greece,[43] Iceland,[44]

35/ See the statement of the representative of Norway, A/AC.135/1, pp. 44-46:

> "The safety aspects and the aspects connected with the pollution of the sea, the air and the subsoil itself raise serious problems of a political, legal and economic nature. For example, the drilling for oil and gas at sea is for several reasons a highly dangerous activity. In addition to the risks inherent in all types of marine activities, serious additional dangers are connected with oil drilling... It is reasonable to assume that the problems connected with the safety aspects and the pollution aspects will not diminish but increase considerably with drilling activities on the deeper ocean floors. The exploitation of other mineral resources contained in the subsoil of the ocean floor may entail the same or similar dangers. The Government of Norway has found these safety aspects so vital and serious that by Royal Decree of 25 August 1967 it has promulgated detailed regulations relating to safe practices in exploration for and exploitation of the natural resources of the sea-bed and subsoil of its continental shelf."

See also document E/4487/Annex XI, paras. 151 and 152 and document A/AC.135/11, pp. 103-106.

36/ A/AC.135/SR.7, p. 9; for a summary of the views expressed by representatives, see document A/AC.135/12, section VI.

37/ A/AC.135/SR.6, p. 7.

38/ A/AC.135/1, p. 26.

39/ A/C.1/PV.1529, p. 75.

40/ A/C.1/PV.1526, p. 32.

41/ A/C.1/PV.1525, pp. 33-35.

42/ A/AC.135/SR.7, p. 5.

43/ A/AC.135/1/Add.7, p. 2.

44/ A/AC.135/1/Add.8, p. 2.

India,[45] Japan,[46] Liberia,[47] Malta,[48] Mexico,[49] Norway,[50] Poland,[51] Romania,[52] Somalia,[53] Sudan,[54] Sweden,[55] Tunisia,[56] Union of Soviet Socialist Republics,[57] United Arab Republic,[58] and Yugoslavia.[59]

37. In this connexion, a number of representatives drew attention to the provisions of the Treaty on Antarctica, 1959, and the Treaty on the Activities of States in the Exploration and Use of Outer Space, 1966.[60] With respect to the Antarctica Treaty, 1959, article 1 provides:[61]

> "1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, inter alia, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres, as well as the testing of any type of weapon.
>
> "2. The present Treaty shall not prevent the use of military personnel or equipment for scientific or for any other peaceful purpose."

45/ A/C.1/PV.1530, p. 6.
46/ A/AC.135/1/Add.3, p. 2.
47/ A/C.1/PV.1528, p. 26.
48/ A/C.1/PV.1515, p. 36.
49/ A/AC.135/1, p. 3.
50/ A/AC.135/1, p. 41.
51/ A/AC.135/SR.6, p. 9.
52/ A/AC.135/SR.6, p. 5.
53/ A/C.1/PV.1525, p. 44.
54/ A/AC.135/1, p. 4.
55/ A/AC.135/1, p. 19.
56/ A/AC.1/PV.1529, p. 12.
57/ A/C.1/PV.1525, p. 16.
58/ A/C.1/PV.1528, p. 56.
59/ A/C.1/PV.1529, p. 63.
60/ See documents A/AC.135/1, pp. 26, 41; A/C.1/PV.1530, p. 6; A/AC.135/1, p. 41; A/AC.135/SR.6, p. 5; A/C.1/PV.1528, p. 21; A/AC.135/SR.5, p. 4; A/C.1/PV.1543, p. 21; A/AC.135/1, p. 26; A/C.1/PV.1526, p. 32; A/C.1/PV.1526, p. 37; A/AC.135/SR.3, p. 6.
61/ Treaty on Antarctica, signed in Washington, 1 December 1959, article 1.

38. The other articles of the Antarctica Treaty which may be relevant in this context are articles V and VII. Article V (i) provides that:

> "Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited."

Article VII of the Treaty deals with inspection. In particular, paragraphs 2, 3 and 4 of article VII may be noted:

> "2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access at any time to any or all areas of Antarctica.
>
> "3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated in accordance with paragraph 1 of this Article.
>
> "4. Aerial observation may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers."

39. In the case of the Treaty on Outer Space,[62/] articles IV and XII may be pertinent to any future régime to ensure that the sea-bed and the ocean floor are used for peaceful purposes. Article IV provides for the peaceful use of the moon and other celestial bodies and imposes an obligation on States not to place weapons of mass destruction in orbit. It reads:

> "States parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.
>
> "The moon and other celestial bodies shall be used by all States parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited."

62/ Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, December 1966.

40. It may be noted that a number of representatives stated that it would be desirable to prohibit the establishment of military installations and the placing of weapons of mass destruction on the sea-bed and the ocean floor.[63] If agreement were to be reached on some form of demilitarization for the ocean floor and sea-bed then article XII of the Outer Space Treaty might be relevant. This article provides:

> "All stations, installation, equipment and space vehicles on the moon and other celestial bodies shall be open to representatives of other States parties to the Treaty on a basis of reciprocity. Such representatives shall give reasonable advance notice of a projected visit, in order that appropriate consultations may be held and that maximum precautions may be taken to assure safety and to avoid interference with normal operations in the facility to be visited."

41. The whole question of the peaceful uses of the sea-bed and the ocean floor is merely a facet of the broader question of disarmament and the question may be considered by the appropriate organs concerned with disarmament. In this connexion the representative of Italy stated:[64]

> "We think that the most appropriate body for the examination and study of arms control measures is the Eighteen-Nation Committee on Disarmament at Geneva and that any study of the military problems raised by the Maltese proposals should be referred to that body for advice."

F. Prevention of Pollution

42. Although, on both a national and international level, regulations have been adopted to prevent the pollution of the high seas by the discharge of oil and the dumping of radioactive waste, the view has been expressed that more rigorous and stringent measures will be necessary in the future.

43. The representative of Malta stated in the First Committee:[65]

> "It is true that a complementary treaty, the 1958 Geneva Convention on the High Seas prescribes in article 25:

63/ A/AC.135/1, p. 41; A/C.1/PV.1526, p. 32.

64/ A/C.1/PV.1528, pp. 19-20; see also A/AC.135/SR.7, p. 9; A/AC.135/1, p. 34; A/C.1/PV.1525, pp. 28-30; A/C.1/PV.1524, p. 13.

65/ A/C.1/PV.1515, pp. 48 and 52.

"'Every State shall take measures to prevent the pollution of the seas from the dumping of radio-active waste, taking into account any standards and regulations that may be formulated by the competent international organization.'

"But, apart from the fact that by no means all States have ratified the Convention on the High Seas, the problem by its very nature is hardly susceptible to a satisfactory solution in the present legal context...

"In any case, I have found no evidence that any legally binding international instrument setting limits to and rules for the disposal of radio-active waste materials into the deep sea is in force at the present time, nor does there appear to be in operation any effective international system of ascertaining scientifically and systematically, on a world-wide basis, damage to the marine environment caused by present waste disposal practices."

44. The representative of Malta also referred to a number of recommendations put forward by a panel of experts to the IAEA.66/

45. A number of other representatives also drew attention to the growing problem of pollution and expressed the view that it would require more detailed regulation in the future.67/

66/ A/C.1/PV.1515, pp. 48-51, inter alia, the experts suggested:

"(8) All authorities setting up disposal sites in the sea should provide to a suitable international authority information necessary to maintain an adequate register of radio-active waste disposal into the sea;

"(9) The IAEA should maintain this register and should receive:

(a) notice of the licensing requirements of all sea-disposal areas set up by national authorities...

(b) annual reports on the state of such site...

(c) the monitoring programme and all relevant scientific findings;

"(10) The IAEA should provide for any necessary standardization of monitoring techniques." (Security Series No. 5, p. 78)

67/ A/C.1/PV.1528, pp. 8-10; A/C.1/PV.1544, p. 7; A/C.1/PV.1529, p. 77; A/C.1/PV.1529, p. 17; A/C.1/PV.1524, p. 21; A/C.1/PV.1528, p. 26; A/AC.135/1/Add.6, p. 3; A/C.1/PV.1544, p. 7; A/C.1/PV.1529, p. 2; A/C.1/PV.1525, p. 7; A/AC.135/1/Add.2, p. 8; A/C.1/PV.1528, p. 28; A/AC.135/1, p. 45; A/C.1/PV.1528, p. 53. A/AC.135/SR.7, p. 4. For summary of the views expressed, see document A/AC.135/12, section VIII.

46. In the report of the Secretary-General to the forty-fifth session of the Economic and Social Council,[68] the Secretary-General proposes that:[69]

> "The General Assembly calls upon States Members of the United Nations system of organizations to participate actively in the joint undertaking of the organizations concerned and that, in keeping with the progress of scientific research related to marine pollution, they take steps towards adopting, in addition to the international Convention for the Prevention of Pollution of the Sea by Oil, 1954, such effective international agreements on prevention and control of marine pollution as may appear necessary."

47. In summary it may be suggested that:

(1) It is likely that the problem of pollution of the high seas will be exacerbated with the exploitation of the sea-bed beyond the limits of national jurisdiction and the increasing use of nuclear energy.

(2) In order to deal with this problem, more rigorous and detailed measures, on both a national and international level, may be required to be included in any future legal régime for the sea-bed and ocean floor.

(3) Further co-ordination may also be desirable between existing international organizations such as IMCO, IAEA, UNESCO, FAO and ICC[70] concerned with this problem.

68/ Document E/4487, see in particular paragraphs 278-285 which deal with international action relating to the prevention of the pollution of the sea; annex CI, paragraphs 142-152, which deals with the activities of IMCO connected with the uses of the sea and its resources and annex XIV which is concerned with international co-ordination in the field of marine pollution prevention.

69/ Ibid., paragraph 282.

70/ A/C.1/PV.1529, pp. 41-42.