UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.138/18
28 August 1969

ORIGINAL: ENGLISH

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

REPORT OF THE LEGAL SUB-COMMITTEE

(covering its March and August sessions)

1. At its first meeting, held on 6 February 1969, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction decided to establish a Legal Sub-Committee and a Technical and Economic Sub-Committee, both as sub-committees of the whole.

2. Also at its first meeting the Committee elected the following officers of the Legal Sub-Committee:

Chairman	Ambassador Reynaldo Galindo Pohl (El Salvador)
Vice-Chairman	Mr. Alexander Yankov (Bulgaria)
Rapporteur	Mr. Halim Badawi (United Arab Republic)

3. At its fourth meeting, held on 10 March 1969, the Committee approved the proposal on organization of work (A/AC.138/8) submitted by the Chairman. The following items were accordingly assigned to the Legal Sub-Committee:

"(i) Operative paragraph 2 (a) of resolution 2467 A (XXIII) - To study the elaboration of legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, having regard to the economic and other requirements which such a regime should satisfy in order to meet the interests of humanity as a whole.

"(ii) Legal implication of:

(a) all other questions mentioned in the terms of reference of the Committee as contained in resolution 2467 A (XXIII); and

(b) the reports submitted by the Secretary-General pursuant to resolutions 2467 B, C, and D (XXIII) and 2414 (XXIII)".

It was agreed that the Sub-Committees would be free to determine their order of business. It was also agreed to request each Sub-Committee to prepare and adopt its report, containing its recommendations, for submission to the main Committee.

4. At its first meeting, held on 12 March 1969 the Legal Sub-Committee adopted the agenda for the session (A/AC.138/SC.1/2).

5. On the basis of a note by the Chairman (A/AC.138/SC.1/1) and proposals submitted by various delegations, the Sub-Committee adopted at its third meeting on 14 March 1969 the following programme of work (A/AC.138/SC.1/3):

"Operative paragraph 2 (a) of resolution 2467 A (XXIII) - 'To study the elaboration of legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, having regard to the economic and other requirements which such a regime should satisfy in order to meet the interests of humanity as a whole.'

"A. To study in the context of appropriate provisions of resolution 2467 A (XXIII) the elaboration of legal principles relating to:

(1) legal status;

(2) applicability of international law, including the United Nations Charter;

(3) reservation exclusively for peaceful purposes;

(4) use of the resources for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of developing countries;

(5) freedom of scientific research and exploration;

(6) reasonable regard to the interests of other States in their exercise of the freedoms of the high seas;

(7) question of pollution and other hazards, and obligations and liability of States involved in the exploration, use and exploitation;

(8) other questions;

(9) synthesis.

"B. Norms."

6. In adopting its programme of work, the Sub-Committee requested the Chairman to draw up a statement containing the understanding reached by the Sub-Committee with respect to the inclusion in the programme of work of certain additional items. At the tenth meeting the Chairman read out the statement requested of him, which was as follows:

> "During the discussion of the programme of work, on the basis of document A/AC.138/SC.1/1, some delegations proposed that references to certain subjects should be added to the programme.
>
> "At its third meeting the Sub-Committee requested that I should, after appropriate consultations, make a statement concerning those subjects which had not been specifically mentioned in the programme.
>
> "Having carried out the appropriate consultations, I am in a position to state the consensus of the Sub-Committee as follows: subjects mentioned in the report of the Ad Hoc Committee and matters which appear in the draft resolutions which were submitted to the First Committee and which were passed on to the Sea-Bed Committee as background material may be discussed by any delegations wishing to do so, and the Sub-Committee will give them due consideration.
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> "The programme, with its division by subjects, is not restrictive in nature, does not interpret General Assembly resolution 2467 A (XXIII) and makes no prejudgement concerning the positions delegations may adopt on questions of substance.
>
> "With the consent of the Sub-Committee, I shall request the Secretariat and the Rapporteur to include this statement in the summary record of today's meeting and in the report of the Sub-Committee, respectively."

7. As requested by the Chairman of the main Committee, the Legal Sub-Committee gave consideration to General Assembly resolutions 2478 (XXIII) and 2292 (XXII) which required the Committee to consider dispensing with summary records. In view of the delicate nature of its work and the heavy responsibilities which it entailed for the delegations concerned, the Sub-Committee decided not to dispense with summary records.

8. Following consultations with the Chairman of the main Committee, the Sub-Committee at its eleventh meeting decided to present a single report to the Committee, covering the results of its deliberations during its March and August sessions.

9. In the debates during the March session reference was made to the draft resolutions and amendments submitted to the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor or to the First Committee at the twenty-third session of the General Assembly. The text of the draft resolutions and amendments were contained in the annex to a working paper prepared by the Secretariat, entitled "Proposals and views relating to the adoption of principles" (A/AC.138/7). A draft resolution suggested by the delegation of Malta (A/AC.138/11) was also referred to in the debates.

10. The Legal Sub-Committee met between 12 and 26 March 1969 at United Nations Headquarters in New York. It held eleven meetings; it met again between 11 and 28 August 1969 during which period it held eighteen additional meetings.

11. At the close of the March session some delegations felt that a very important feature of the debate had been the widespread support for an early statement of basic principles. It was however emphasized that such a declaration should be a comprehensive and well-balanced one, taking into consideration the position of all members. The view was expressed that since the differences between the proposed principles were not so great, efforts to reach agreement should continue. For this purpose, it was suggested that the proponents of each set of principles should establish a working group before the summer session of the Committee and try to arrive at an agreed formulation of basic principles; the consultations could take place under the direction of the Chairman of the Sub-Committee. The main Committee agreed at its sixth meeting, held on 28 March 1969, that the Chairman of the Legal Sub-Committee would hold informal consultations with delegations with a view to reaching agreement on legal principles before the session scheduled for August. Such consultations took place during the months of June and July. In the absence of the Sub-Committee's Chairman and Vice-Chairman, Mr. Felipe Vega Gomez of the Mission of El Salvador and later Mr. Dimitar T. Kostov of the Mission of Bulgaria presided over the consultation meetings. An informal drafting group consisting of the representatives of Brazil, India, Libya, Norway, the Union of Soviet Socialist Republics and the United States of America held several meetings to consider the formulations proposed on all items of the programme of work adopted on 14 March 1969. It produced a paper entitled "Report of the Informal Drafting Group on the Formulations proposed under the Programme of Work (A/AC.138/SC.1/3)", document A/AC.138/SC.1/4, which is annexed to this report.

12. At its twelfth meeting, commencing the August session, the Sub-Committee adopted the agenda for the session (A/AC.138/SC.1/5). At the same meeting it also adopted the following programme of work (A/AC.138/SC.1/6) which had been suggested by the acting Chairman, Mr. A. Yankov:

1. Consideration of the "Report of the Informal Drafting Group on the formulations proposed under the programme of work (A/AC.138/SC.1/3)", document A/AC.138/SC.1/4

2. Consideration of the legal aspects of the report submitted by the Secretary-General pursuant to resolution 2467 C (XXIII) regarding international machinery (A/AC.138/12 and Add.1)

3. Consideration of the legal aspects of a long-term and expanded programme of oceanic exploration and research (note by the Secretary-General, document A/AC.138/14 and Corr.1)

4. Consideration of the report of the Legal Sub-Committee to the Committee for the 1969 period of its work.

13. The Sub-Committee, having approved its programme of work, agreed that the report of the Informal Drafting Group would constitute the basis for the discussion concerning the formulation of principles.

14. The subjects discussed by the Sub-Committee at both sessions will be dealt with in the next paragraphs of this report under the relevant items of the report of the Informal Drafting Group since, with the exception of the introductory part of the programme of work of the March session (operative paragraph 2 (a) of resolution 2467 A (XXIII)), all items dealt with therein coincide with the nine items of the programme of work for the March session.

> Operative paragraph 2 (a) of resolution 2467 A (XXIII) - "To study the elaboration of legal principles and the norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, having regard to the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole."

15. Some delegations felt that at that stage of the Sub-Committee's work only basic principles should be considered as they would serve as a foundation for a more substantial structure to be elaborated upon later; initially, only those

basic principles which give rise to lesser difficulties might be drafted. It was suggested that the principles should be few, broad and flexible as the Committee was dealing with an area not yet comprehensively regulated, and which some considered undefined, the possible uses of which could not yet be foreseen. On the other hand it was stressed principles should be comprehensive and well-balanced in order to embody the aspirations of all members of the international community and avoid ambiguities which would later give rise to conflicts. It was underlined that clarity should not be sacrificed to brevity. It was generally recognized that in any case, in the elaboration of principles particular consideration should be given to the special needs and interests of developing countries.

16. The view was expressed that from a practical viewpoint it was necessary that the adoption of principles by the General Assembly should have unanimous support or at least the support of a substantial majority, including that of the principal maritime Powers and of States having special maritime interests. A view was expressed that the declaration to be adopted by the General Assembly in the exercise of its powers under Article 13, paragraph 1.a of the Charter, would possess binding force. Some delegations opposed this view. It was also suggested that some or all of the principles to be contained in the General Assembly declaration or recommendation should be eventually given form in an international convention.

17. It was also pointed out that it would be unwise to send a statement of principles to the General Assembly before the real and legitimate differences of opinion still existing were duly overcome as such statement should be one which gives satisfaction to all nations.

18. One of the suggestions that were made was that the same procedure followed with respect to outer space might be followed by the Sub-Committee: a limited number of basic principles could at an early date be recommended for adoption by the General Assembly, while awaiting agreement on a fuller declaration of principles which would eventually provide the basis for an international treaty or treaties. On the other hand, it was suggested that it was desirable to have a meaningful and comprehensive declaration. It was also suggested that once an agreement on principles has been reached elaboration of such principles into precise legal rules shall proceed without delay.

A. To study in the context of appropriate provisions of resolution 2467 A (XXIII) the elaboration of legal principles relating to:

(1) Legal status

(a) General discussion

19. According to many delegations both concepts of res nullius and res communis were of little practical value for the determination of the legal status of the area of the sea-bed and ocean floor beyond the limits of national jurisdiction. It was also pointed out that the occupation and national lake theories were legally untenable and politically unacceptable.

20. It was suggested that the notion of the "common heritage of mankind" would provide the basis for specific principles concerning the area; accordingly all the rules and principles for activities in the sea-bed should be based on that notion. Its elements and consequences were: the notion of trust and trustees; indivisibility of the heritage; the regulation of the use of that heritage by the international community and the most appropriate equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries; freedom of access and use by all interested; and the principle of peaceful use.

21. The same view held that the concept of "common heritage of mankind" implies an international machinery for the regulation and management of the sea-bed and ocean floor beyond the limits of national jurisdiction on behalf of the international community. A suggestion was put forward that, for purposes of exploration and exploitation, the area (of the sea-bed and ocean floor beyond national jurisdiction) be deemed to have been vested in the United Nations for the benefit of mankind as a whole.

22. Certain delegations expressed the view that the new legal order should be governed by the "good of mankind" or "the common interest of mankind", these phrases being preferred to the word "heritage" which might give rise to difficulties in the formulation of legal norms.

23. On the other hand, some delegations stated that the concept of "common heritage of mankind" was contrary to existing norms and principles of international law. It was also stated that it was devoid of legal content and that its discussion was not practically useful. Another view was that it was also open to various interpretations and that it cannot be understood until its implications were spelled out. But it was also pointed out that before their adoption all legal concepts are devoid of legal content and that therefore that argument was irrelevant.

24. Some delegations considered that a practical solution based on international law would be provided by the provisions of the Convention on the High Seas according to which the high seas were open to all nations on equal terms and no State could validly purport to subject any part of them to its sovereignty.

25. Reference was also made to the principle that "no State may claim or exercise sovereign rights over any part of this area, and no part of it is subject to national appropriation by claim of sovereignty, by use or by occupation, or by any other means". This principle was recognized in the Antarctica and Outer Space treaties in regard to their respective fields and according to existing rules of international law would not preclude any nation from exploring or exploiting these areas. Therefore, it was contended, there should similarly be a clear distinction between non-appropriation of the sea-bed on the one hand and exploitation or use of it on the other.

26. It was however pointed out that acceptance of the non-appropriation principle would be of no practical value if it were linked with an unqualified concept of freedom of exploration and exploitation, since it would only benefit the very few countries which have the capability of exploiting the sea-bed resources, without due compensation to the international community as a whole and the developing countries in particular.

27. The view was expressed that pending the establishment of an international régime the exploration and exploitation of the resources could be continued without being accompanied by any claim of national sovereignty over that area. This view was contested.

(b) Consideration of the report of the Informal Drafting Group

28. The Sub-Committee examined each of the eight elements listed under the item and the respective explanations included in the report. Some delegations held the view that only general principles should be included in a draft declaration: corollaries or detailed formulations inevitably gave rise to divergencies and impeded obtaining the necessary support for a draft declaration. However it was pointed out that a more comprehensive declaration was needed in order to safeguard the interest of mankind. Other delegations considered most of the elements listed as necessary to delineate the legal status of the sea-bed.

29. With regard to the concept of "common heritage of mankind" arguments for or against it were reiterated. It was said that this expression lacked legal content, was imprecise, and being novel could not be interpreted on any generally accepted basis. It was argued on the other hand that once it had been enshrined in a declaration the concept would have universal validity as had been the case with the similar expression "province of all mankind" used in the outer space treaty. It was argued as regards the expression "province of all mankind" in the outer space treaty that it does not refer to outer space or the moon but to the exploration and use of outer space and the moon. Furthermore, new technology and problems required the development of new concepts. It was further argued that that concept was the basis on which a formulation of a declaration of principles should be elaborated. It was suggested that the concept that the area belongs to humanity as a whole is the basis for the prohibition of the exercise or claim of sovereignty and of all forms of appropriation. Some delegations doubted whether a general concept was required or desirable at that stage of the Sub-Committee's deliberations since the particular features of the régime for the area would have first to be weighed and agreed upon; such process of analysis and agreement logically preceded the question whether there is any general concept by which all the aspects of the legal status of the area may be summarized.

30. It was proposed that the concept of "common heritage of mankind" should be mentioned in the operative part of the declaration. Some delegations felt that the concept might be accepted as a synthesis of the particular principles agreed upon. It was also suggested that the concept could be included in the preambular part of a draft declaration of principles.

31. Elements (ii), (iii), (iv) and (v) were dealt with together since they were closely interrelated. While the principle of non-appropriation and the prohibition of the exercise of sovereignty over the area were found generally acceptable, some delegations expressed the view that this acceptance would be conditional upon the general agreement on a declaration of principles. Certain doubts were expressed on the references to jurisdiction and property. Various formulations were put forward amending the wording of these four elements or eliminating ideas which appeared to be superfluous or unsuitable; one of these formulations was a synthesis of the four elements.

32. Elements (vi) and (viii) were regarded by some delegations as being more suitable for inclusion under item 4 (use of the resources for the benefit of mankind as a whole); other delegations were of the view that element (vi) was inseparable from the concept of "common heritage of mankind" and should therefore be retained in item 1.

33. Element (vii) "this area should be considered separately from the superjacent waters of the high seas" gave rise to the observation that it suffered from obscurity and could lend itself to various interpretations. One interpretation was that the formulation would apply once a régime for the sea-bed had been established, although the existing law of the sea would continue to be relevant in so far as the régime of the sea-bed ought to respect the rules which govern human activities in the other areas of the sea. It was emphasized that the status of the superjacent waters as high seas and the air space above it should be preserved. Some delegations expressed doubts as to the adequacy of a separate treatment for the sea-bed and the superjacent waters since these areas constituted an organic unity. But it was also pointed out that in spite of also constituting an organic unity with the superjacent waters, the continental shelf had already been the object of a separate treatment for the purpose of the exploration and exploitation of its resources. For other delegations, while the régime governing the sea-bed would have to be considered in relation to the régime governing the superjacent waters, the Committee's terms of reference did not cover the superjacent waters and the status of those waters should therefore not be mentioned in the enumeration of legal principles concerning the sea-bed. It was suggested that in any event element (vii) belonged to item 2 (applicability of international law). It was also said that although element (vii) is a basic assumption its inclusion in the declaration does not seem essential. It was also suggested by some delegations that the régime of the high seas should not and indeed cannot automatically be applicable to the régime of the sea-bed and ocean floor. And it was further suggested by some delegations that any freedoms laid down in the Convention on the High Seas should apply to the sea-bed only as far as provided by the régime to be set up. Other delegations pointed out that international law governing the high seas is also applicable to the bottom of the sea, beyond the limits of national jurisdiction.

34. The view was expressed that item 1 omitted two important elements: (1) the recognition that there exists an area of the sea-bed and the ocean floor and subsoil thereof which lies beyond the limits of national jurisdiction and (2) the recognition of the need for an internationally agreed and precise boundary for the area. It was noted that existing uncertainty as to where such a boundary should be drawn may be a serious obstacle to the formulation of legal norms regulating questions concerning the exploitation of the sea-bed. It was also pointed out that the existence of the area was the main assumption of the work of the Committee and therefore need not be spelt out in a statement of principles. It was further pointed out that these elements had not been included because they were unnecessary and irrelevant to the item; moreover, these two elements had been dealt with extensively by the Sub-Committee under item 8 (Other questions). It was also stated that the Committee and the Sub-Committee were not competent to deal with the delimitation of the area.

35. As a corollary of elements (ii), (iii), (iv) and (v), the suggestions were made that the appropriation of the resources of this area shall be effected in accordance with the régime to be established on the basis of the principles contained in this declaration; and that the activities of non-governmental organizations and of private persons in the area must be authorized and kept under constant surveillance by a State or an intergovernmental organization. Owing to lack of time these suggestions were not discussed by the Sub-Committee.

(2) Applicability of international law including the United Nations Charter

(a) General discussion

36. Some delegations emphasized that international law, including the Charter of the United Nations, is applicable to the activities of States on the sea-bed. It was also stated that international law by its scope was considerably broader than concrete norms applicable to the regulation of activities of States in any individual area, for instance in the various marine environments as included in the high seas - the sea-bed, water column, and superjacent air space. In this connexion some general international legal principles were mentioned, such as the renunciation of the threat or use of force in the relations among States, respect for the provisions of international treaties to which they are parties,

international responsibility of States, respect for territorial integrity, etc. Some delegations stressed the importance of the Convention of the High Seas, the Convention on the Continental Shelf and other international agreements, particularly the 1963 treaty banning nuclear weapon tests in the atmosphere, in outer space and under water and the 1959 treaty on the Antarctica in defining the international law applicable to the sea-bed. It was impossible to say, according to these delegations, that a legal vacuum existed and that international law was only partly applicable to the sea-bed. As applicable guidelines in the Charter of the United Nations mentioned in this connexion, reference was made to the principle concerning sovereign equality of States and the maintenance of international peace and security, the peaceful settlement of disputes and the promotion of international co-operation.

37. Those delegations which advocated the concept of common heritage of mankind emphasized that existing international law was mostly customary or contained only very general legal principles to regulate the conduct of States to the sea-bed beyond national jurisdiction, of which the relevance was not specific and only incidental. In their opinion, existing international law cannot be applied in its totality to the sea-bed and therefore existing principles which are only applicable in part or by doubtful and controverted analogy to a different environment cannot and should not be invoked. It is only possible to derive from the Charter of the United Nations and existing international law at most certain guidelines, but these guidelines do not suffice to constitute norms. It was controverted in this connexion which specific principles of international law were suitable for application to the sea-bed. This ambiguity required urgent clarification. Also in some cases the application of some principles of existing international law to the sea-bed would have grave inequitable consequences for many States. Some delegations felt that the 1958 Geneva Convention on the Continental Shelf, which related in some ways to the sea-bed beyond national jurisdiction, was inadequate and incomplete in respect to its application to this area. It was pointed out that the large and obvious lacunae in the law in this respect were best shown by the fact that the Committee had been charged with the task of elaborating new legal principles in this field; at the same time the application of present international law would have the effect of permitting the indiscriminate exploitation of sea-bed resources and this would be contrary to the interests of the international community.

(b) Consideration of the report of the informal drafting group

38. In the light of the views they had already expressed, delegations lent their support or argued against the elements set forth in paragraph 14 of the report of the informal drafting group. None of them was deemed entirely satisfactory. However, it was stated that such elements did not contradict but complemented each other; this was a necessary method for the purpose of arriving at widely acceptable formulations.

39. The discussion centred on the formulation suggested for the consideration of the Sub-Committee in paragraph 18 of the report. While some delegations expressed their readiness to accept this formulation, other delegations doubted its adequacy. Some of the delegations who doubted the adequacy of paragraph 18 argued that a distinction should be drawn between the norms applicable to the area and those applicable to the activities undertaken in the area so that while the former undeniably applied - and a reference to them would be superfluous - the latter were virtually inexistent. Consequently and because activities had not yet been undertaken in the area, the only norms thus far existing were those concerning the laying of submarine cables and pipes. It was therefore equivocal to say that "all activities in this area shall be carried out in accordance with international law" since this would lead to the erroneous conclusion that the régime of the high seas was applied to the area. The supporters of this view suggested that, by analogy with the order of priority established in Article 38 of the Statute of the International Court of Justice, the formulation should mention first the principles of the declaration and then the general principles of international law which would apply to situations not specifically provided for in the declaration. Other delegations considered that reference to Article 38 of the Statute of the International Court of Justice was irrelevant to the subject under discussion. Still other delegations questioned the desirability of the reference in the formulation in paragraph 18 to principles and norms to be agreed in the future since it could only be reasonably construed as applicable after the conclusion of an agreed régime and added nothing to the provisions of a statement of principles dealing with the question of a régime.

(3) Reservation exclusively for peaceful purposes

(a) General discussion

40. The view was expressed that the reservation of the sea-bed and the ocean floor for exclusively peaceful purposes was one of the most urgent matters engaging the attention of the international community since unless steps were taken in the very near future to prevent the militarization of that area, the arms race would inevitably be extended to it and this would represent an obstacle to the use of the sea-bed for peaceful purposes. Various delegations emphasized the urgency of banning nuclear or other weapons as well as military bases and fortifications from the area beyond national jurisdiction. Other delegations stressed that the sea-bed and the ocean floor and the subsoil thereof beyond the limits of the maritime zone of coastal States, the boundaries of which are to be agreed upon in international negotiations on disarmament, shall be used exclusively for peaceful purposes; accordingly, all military activities shall be excluded and all forms of military use shall be prohibited. Some delegations stated that they had refrained from discussing this principle in view of the fact that discussions and negotiations were taking place on this subject in the Geneva Disarmament Committee. The view was expressed that while the Geneva Disarmament Committee was already considering disarmament and arms control measures in areas within and beyond national jurisdiction, the mandate of the Committee on the Peaceful Uses of the Sea-Bed was confined to the area beyond national jurisdiction and that it would therefore not be possible to accept a formulation applicable to the area over which States have sovereign rights for the purposes of exploration and exploitation of resources. Other delegations reminded the Committee of its terms of reference under operative paragraph 3 of resolution 2467 A (XXIII).

41. The initiative of the USSR in submitting a draft treaty to the Committee on Disarmament on 18 March 1969 was welcomed by some delegations. Supporters of the draft treaty stated that it went beyond a general declaration.

42. The view was expressed that any military activity is incompatible with the use of the sea-bed exclusively for peaceful purposes. Reference was made to precedents and to understandings existing in this connexion since the Second World War. In this respect, mention was made to previous discussions in the Disarmament Committee, General Assembly resolutions on atomic energy, the Treaty on Non-Proliferation of Nuclear Weapons, article I of the Antarctic Treaty of 1959 and article IV of the Outer Space Treaty. These precedents and understandings, it was contended, made it clear that the United Nations had invariably understood the use of a given environment for exclusively peaceful purposes to mean its complete demilitarization, which included the prohibition of all military activities whatever their purpose. Proponents of this interpretation stated that there should be no departure from such practice in the case of the sea-bed and the ocean floor; the expression "peaceful uses" should be defined along those lines in order to avoid ambiguity.

43. Other delegations reserved their position on this interpretation of the meaning of the expression "exclusively for peaceful uses" or stated that this expression in no way precluded military activities that are consistent with international law and the Charter of the United Nations.

44. Some delegations while supporting the concept of the exclusion of military activities from the largest possible area of the sea-bed, pointed out that a difficulty in the realization of this desirable goal could be the interpenetration between scientific and military activities and the uncertainty as to whether it was possible to verify with present technology that certain military activities did not in fact take place on or under the sea-bed.

45. It was pointed out that the sovereign rights granted to the coastal State under the Continental Shelf Convention were limited for the purpose of exploring the continental shelf and exploiting its natural resources and therefore were quite irrelevant to its military uses; furthermore, the military use of the continental shelf would inevitably affect the peaceful exploration and use of the sea-bed. It was stated on the other hand that it could be assumed that States were not likely to ignore their security requirements simply because the Convention is silent or unclear on the subject.

46. It was emphasized that the implementation of the principle of peaceful uses of the sea-bed, the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, required the determination of the limits of the area to which such principle should be applied. Other delegations pointed out that given the mandate of this Committee that view was irrelevant.

(b) Consideration of the report of the informal drafting group

47. On the discussion of the principle of the "reservation exclusively for peaceful purposes" it was stated in the Sub-Committee that it was an essential or appropriate part of any declaration or statement of principles to be adopted by the General Assembly. It was stated that since the Geneva Disarmament Committee was endeavouring to elaborate detailed formulations of a treaty character in this respect, the Sub-Committee could well limit itself to principles couched in general terms, without by this detracting from its mandate under General Assembly resolution 2467 A, paragraph 3. Such principles should avoid prejudicing positions of delegations on issues - such as that of the specific activities to be prohibited or the geographical scope of the prohibition - currently under negotiation. Some delegations supported this objective without referring to the work being done outside the Committee. However, there was a difference of opinion as to the meaning of "use exclusively for peaceful purposes". Some of the formulations suggested during the discussion referred to the question of limits which are to be agreed for these purposes. In this connexion, reference was made to paragraph 3 of General Assembly resolution 2467 A.

(4) Use of the resources for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries

(a) General discussion

48. The view was emphasized by certain delegations that the Committee had been entrusted with the task of studying the establishment of an international legal régime for the sea-bed beyond the limits of national jurisdiction, and that that task implied in itself the use and exploitation of the area by all, without discrimination. It was further emphasized that the special interests and needs of

the developing countries should, accordingly, be built into the very fabric of the régime, as this should not aim at the attainment only of equality of opportunity but provide for actual equitable sharing of benefits derived from the use, exploration and exploitation of the resources of the sea-bed. In any case, a most fundamental objective for the Committee's task was to avoid creating situations which may be detrimental to the technologically less developed countries, or in any way stifle them or destroy the incentives for their activities.

49. It was widely acknowledged that a balanced and coherent declaration of principles should recognize that land-locked States ought to be placed on an equal footing with coastal States. A view was also expressed that the exploration, use and exploitation of the sea-bed should not endanger the legitimate interests of coastal States, particularly of developing countries who do not dispose of adequate means to protect these interests.

(b) Consideration of the report of the informal drafting group

50. With regard to the scope of application of the words "exploration, use and exploitation" two different views have been expressed. Some delegations held the view that these words should be applied to the area as a whole, other delegations held the view that they should be applied only to the resources of this area. Both groups of delegations sought to justify their views by reference to the language of resolution 2467 (XXIII). In addition, some of those who supported the second view interpreted the expression "use of the resources for the benefit of mankind" as limited to resources other than living resources, since the latter were clearly covered by the relevant provisions of international law governing fishing on the high seas.

51. It was emphasized that all the formulations pertaining to this item tended to consider an international régime as an essential prerequisite for the purpose of exploration, use and exploitation of this area. A difference of opinion, however, arose on whether the international régime should be qualified by the word "legal" since certain delegations argued that the term "agreed" would be sufficient.

It was furthermore argued that any régime that is established has to be formulated in legal language, and embodied into multilateral agreements. It is with this understanding that it would be considered as a legal régime without necessarily attaching too much importance to the use of the word "legal".

52. During the discussion of the specific elements of paragraph 25 of the report some delegations emphasized the contents of sub-paragraph (ii) ("Economic incentives") while considering that reference to international machinery in a statement of principles was not desirable; others emphasized the contents of sub-paragraph (iii) ("International machinery"), the central role which in their opinion international machinery should play in a régime for the area, and also stressed that such a régime should provide appropriate and equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries.

53. Doubts were voiced as to the desirability in a régime for the exploitation of sea-bed resources of the provision in sub-paragraph (v) ("Take into account economic effects of exploitation, for example, to take required measures to minimize (control) the fluctuations of prices of raw materials in the world market resulting from the exploitation of the resources of this area"). Another view was that this was an essential provision of a régime particularly as such a régime was expected to cover, according to this view, the area as a whole.

54. The view was expressed that sub-paragraph (vi) ("Accommodation among the commercial and other uses of this area and the marine environment") belonged more properly to item 6 ("Reasonable regard to the interests of other States in their exercise of the freedom of the high seas").

55. It was suggested that the provisions in paragraph 25 needed to be condensed particularly those in sub-paragraphs (iv) to (viii).

56. Some delegations considered that the various elements of this item required a much closer examination because of their serious implications and the fact that the Sub-Committee had not studied the legal aspects of international machinery which were dealt with in the report of the Secretary-General on the

subject (A/AC.138/12 and Add.1). It was stressed by some delegations that the future legal régime for the exploitation of the resources of the sea-bed should not necessarily presuppose the establishment of an international machinery; it was also stressed that as the structure of resolution 2467 (XXIII) shows, the existence of a difference between régime and machinery is established and accepted; consequently in the opinion of these delegations inclusion of a reference to international machinery in the legal principles would be unwarranted. These views, however, were contested.

57. A suggestion was made that a statement of principles should contain a commitment to the establishment of an internationally agreed régime and that it should spell out in general terms the more salient features of such a régime.

(5) Freedom of scientific research and exploration

(a) General discussion

58. The importance of this principle was emphasized in connexion with article 2 of the Geneva Convention on the High Seas and article 5 of the Convention on the Continental Shelf. Some delegations pointed out that the principle of the freedom of scientific research does not give in itself the exclusive right of economic exploitation of the resources of the area or provide the basis for freedom of economic exploration and exploitation. It was also pointed out that this particular freedom should entail the obligation to make results of scientific activities available to other States.

(b) Consideration of the report of the informal drafting group

59. During the discussion on the elements listed in paragraph 26 of the report, the members of the Committee stressed the fundamental importance of scientific research on or concerning the sea-bed and the need to promote international co-operation conducive to such research.

60. Although the principle of freedom of scientific research was unanimously adhered to, there was a difference of opinion as to establishing certain criteria designed to distinguish between pure scientific research and scientific research with commercial objectives. Thus, some delegations in supporting elements (ii) ("Communication beforehand of programmes of scientific research") and (iii) ("Communication of results of scientific research") took the position that the elements constituted either necessary preconditions or were an integral part of any formulation pertaining to freedom of scientific research. For these delegations an unconditional freedom of scientific research was susceptible of abuse, no freedom was absolute, and with respect to the marine environment freedoms must be exercised with reasonable regard to the interests of other States. Other delegations while also supporting elements (ii) and (iii) were of the view that freedom of scientific research exists and should exist as a matter of principle and not as a conditional right; they accordingly supported element (i) (freedom of scientific research without discrimination and avoidance of interference with such research). Some of these delegations nevertheless supported elements (ii) and (iii) while others among them pointed out that scientific research and international co-operation in such research must not be impeded by any obstacles erected by elements (ii) and (iii). For some of these delegations a rigid prior or post dissemination or publication requirements were unrealistic since this requirement could not in all cases be imposed without disrupting, as to method and timing, the existing system for disseminating information used by the oceanographic community or without imposing unreasonable financial burdens on research institutions; also, element (v) (Encouragement by States of their nationals to follow the practices concerning communication of information regarding programmes and results) had to be taken together with elements (ii) and (iii) since in some States private scientific institutions had a long tradition of independence.

61. Element (iv) (Promotion of international co-operation) was found unquestionable.

62. Some delegations expressed the view that in element (vi) ("No rights of sovereignty or exploitation are implied in the carrying out of scientific research") the reference to rights of sovereignty was unnecessary since the sea-bed and the ocean floor and subsoil thereof beyond the limits of national

jurisdiction were not subject to sovereignty or sovereign rights (I Legal Status, element (iii)). Some delegations, however, emphasized that no rights of exploitation should be implied in the carrying out of scientific research.

63. Some delegations emphasized the importance of making a distinction between scientific research of the marine environment directed to obtaining a wider knowledge of the environment and exploration as a preliminary step leading to commercial exploration. They pointed out in this respect that the title of item 5, which states freedom not only of scientific research but also of exploration, seemed to be misleading. Other delegations stated that there is no difference in concept between research and exploration and that their national legislation did not establish any distinction between the two.

64. The view was set forth that, since the marine environment constituted a whole, coastal States should be recognized some rights with regard to research carried out in areas of the sea-bed which are adjacent to their national jurisdiction, so that research in the sea-bed is not used as a pretext for research on the continental shelf without the consent of the coastal State, as required by article 5, paragraph 8 of the Geneva Convention. This view was regarded as unacceptable by other delegations.

(6) Reasonable regard to the interests of other States in their exercise of the freedom of the high seas

(7) Question of pollution and other hazards and obligations and liability of States in the exploration, use and exploitation

(a) General discussion

65. In connexion with this concept reference to article 2 of the Convention on the High Seas was made. The protection of the interests of coastal States was mentioned in connexion with article 6 of the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas.

66. It was pointed out that the provisions of the Convention for the Prevention of Pollution of the Sea by Oil of 1954, and the Geneva Convention on the High Seas were too narrow and lacked effective means of implementation against new sources of pollution. It was suggested that there exists a need to adopt new international instruments which would provide for firm obligations of States to respect the adopted standards and to make them obligatory for their nationals through national legislations. The need to establish international regulations on liability for pollution and other hazards was emphasized by several delegations.

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It was suggested that in order to make any set of principles more balanced and coherent it should include the principle of liability for damages caused by activities in the exploration, use and exploitation of the sea-bed and ocean floor.

(b) Consideration of the report of the informal drafting group

67. The substance of elements (i) ("Reasonable regard for the interest of all States") and (ii) ("Non-infringement of the freedoms of the high seas; and no unjustifiable interference with the exercise of such freedoms") received the general support of delegations although some of them stated that a closer consideration of the elements was necessary before legal principles are formulated. It was recalled that a formulation on the concept of accommodation between different uses of the area and the marine environment which had been included under sub-paragraph (vi) of paragraph 25 in item 4 belonged more properly to item 6.

68. As regards element (iii) ("Adoption of appropriate safeguards against the dangers of pollution and other harmful effects on the marine environment"), (iv) ("Adoption of appropriate safeguards so as to conserve and protect the living resources of the marine environment or non-interference with the conservation of the living resources") and (v) ("Adoption of safety measures concerning all activities in the area") suggestions were made concerning the precise language in which the elements should be expressed. Emphasis was placed on the urgent need for international safeguards against pollution in the marine environment.

69. Element (vi) ("Rendering of assistance in case of mishap, distress or danger") was viewed by some delegations as probably unnecessary in the light of article 12 of the Convention on the High Seas concerning the obligation to render assistance. According to these delegations there was no reason why such provision should not apply to mishaps, distress or danger occurring in the sea-bed. However, other delegations felt that the elaboration of a principle governing assistance in the case of mishap, distress or danger could be justified. It was suggested that it would be useful to elaborate on this question so that international arrangements for such assistance might be worked out.

70. As regards element (vii) ("Damage caused by activities in the area (undertaken without appropriate safeguards) shall entail liability"), the view was expressed

that drafting of detailed provisions on liability (including State liability which is dealt with under items 8 and 9 of the report) required considerable study because of its complexity. Some delegations expressed an inclination to favour strict liability, as opposed to liability arising from activities undertaken without appropriate safeguards or authorization. Suggestions were made that pending the elaboration of a precise or detailed provision, the principle of liability for damage be formulated in general terms, or referred to in the enumeration of the features of the régime to be agreed upon. Other delegations suggested that since damages caused by activities in the area could not only affect the property or the operator or other individuals but also the common interest of mankind, as well as the economy of the nearest coastal State, due consideration should be given to the question of criminal responsibility for damages caused by such activities.

71. Some delegations had doubts concerning the meaning of element (viii) ("Consultations with coastal States closest to the area in which any activities occur, lest their rightful interest be harmed"). They stated that if the purpose of the formulation was to entitle the coastal State to a preferential share of the benefits derived from exploitation of resources discovered beyond its national jurisdiction, such purpose would be incompatible with the principle that all nations have equal access to those resources and that the resources should be utilized for the benefit of mankind. Other delegations regarded element (viii) as fully compatible with a principle of justice such as that embodied in article 6 of the Convention on Fishing and Conservation of Living Resources of the High Seas. The special interests of those States should be taken into account only in the regions which are adjacent to the jurisdictional parts of the sea-bed and not in any other regions of the sea-bed and the ocean floor and its subsoil underlying the high seas.

72. Element (ix) ("Right of coastal States to take appropriate measures to protect their shores and coastal waters against pollution which has occurred outside their national jurisdiction") gave rise to misgivings expressed by some delegations concerning the possibility that the measures taken by the coastal State may result in the exercise of jurisdiction in an area beyond the limit of national jurisdiction and violate the principles of the freedom of the high seas.

Other delegations considered such a concept to be a necessary element in combatting and controlling pollution that has occurred in the marine environment. Some delegations suggested that this element should be considered together with element (iii) (Pollution) and element (vii) (Liability). Others considered that such measures would not constitute a violation of the principles of the freedom of the high seas but rather of the collective competence which is to derive from recognizing or declaring that the sea-bed and the ocean floor beyond national jurisdiction are the common heritage of mankind and cannot be the subject of national appropriation. Other delegations contested this view.

73. Element (x) ("Procedures to be followed in the event of anticipation of possible harmful interference with other activities") was considered unclear by some delegations. Others supporting the element suggested that if a statement of principles were shorter and less detailed, inclusion of this element would not be necessary.

(8) Other questions

(i) Existence of an area

74. Reference was made to a proposed principle which provides that: "There is an area of the sea-bed and ocean floor and the subsoil thereof, which lies beyond the limits of national jurisdiction." It was pointed out that this proposed principle appeared to merit general support and that being a far-reaching proposal the Sub-Committee should not minimize the progress which that general support represented; the principle amounted to acknowledging that claims cannot be unlimited under the Continental Shelf Convention or under general international law, and it should be recorded as agreed. On the other hand, the view was expressed that it was not necessary to state in a declaration of principles a fact which had obviously been taken for granted since the Committee was studying the elaboration of legal principles precisely for that area.

(ii) Question of boundary

75. During the discussion preceding the adoption of the programme of work for the March session, a proposal had been made to add the following item: "The question of the definition of the boundary between that area of the sea-bed and

the ocean floor lying beyond the limits of national jurisdiction and the area which falls under national jurisdiction." As a result of consultations the Sub-Committee reached an agreement as regards this item and requested the Chairman to draw up a statement embodying that agreement. (See paragraph 6 of this report).

76. Some delegations pointed out that General Assembly resolutions 2340 (XXII) and 2467 (XXIII) instructed the Committee to study the elaboration of legal principles and norms for the sea-bed and ocean floor beyond present national jurisdiction and not to determine the limits of that area, thus excluding from the mandate of the Committee (and of the Legal Sub-Committee) the framing of recommendations concerning the question of such limits or the advocacy of the revision of such limits. For these delegations the area upon which national jurisdiction applies had already been determined by the States concerned, or could be sufficiently determined in the case of the continental shelf by using the combined elements of "adjacency" and "exploitability" contained in article 1 of the Convention which had simply embodied a principle of customary law; in any event attempts to limit national jurisdiction infringed upon the sovereignty and security of States, matters which are of the greatest importance for the States concerned.

77. Other delegations stated that it was obviously beyond the powers of the Sub-Committee, the parent Committee or the General Assembly itself to exercise judicial or quasi-judicial powers to determine the extent of the jurisdiction of any given State or group of States, and that for this reason such functions had been excluded from the mandate of the Sub-Committee and that of its parent Committee. It was further stated, however, that there was an intimate relationship between the question of the nature of the régime to be established and that of the limits of the area to which it is to apply and accordingly real progress would not be made unless work proceeded simultaneously on both questions. In support of this view, it was suggested that the position of many countries concerning the nature of the solutions envisaged for the régime may be governed to a large extent by the determination of the actual area in question. It was also pointed out that no international régime could be effective unless it were precisely established in advance what area it would cover; it would therefore be necessary to refer to the need for a precise boundary in the context of the

need for an international régime. It was also stated that special situations, such as that of the internal and marginal seas should be considered. The Sub-Committee should, according to this view, lay the foundations for the elaboration of generally agreed principles for the subsequent delimitation of the area. It was suggested by some delegations that the previous establishment of an international régime would facilitate the task of determining the limits of the area. On the other hand it was pointed out that the existing uncertainty as to where this boundary should be drawn may be a serious obstacle to the formulation of legal norms regulating questions concerning the exploration of the sea-bed. It was also suggested that while the actual definition of a boundary was the function of some other body, the Legal Sub-Committee would certainly have to express some opinion on the appropriateness of the boundary in question and to draw the attention of the General Assembly and of Governments to the problem; the Committee was at least morally bound to call the attention of the General Assembly to the fact that the definition of the continental shelf contained in the Geneva Convention lends itself to interpretations susceptible of affecting the limits of the area which the Committee had been entrusted to study. In this connexion certain delegations stated that such recommendations could appear in the preamble of the declaration of principles in the same manner as any other general concept. A view was expressed that while the Sub-Committee was not competent to decide on questions concerning limits, it should recommend that action be taken to cordon off the territorial sea either within an internationally uniform width or alternatively, taking into account the different geographical features of particular coastal regions. Other delegations considered that the discussions on the delimitation were only to distract the Committee from questions constituting its real mandate.

78. On the other hand, it was pointed out by some delegations that the obstacles for an early agreement on internationally agreed precise boundaries should not inhibit progress in the elaboration of legal principles guiding the activities of States in th exploration and use of the sea-bed beyond national jurisdiction and the exploitation of their resources; similar difficulties in reaching agreement on the definition of outer space and the exact delimination of its boundaries had not prevented the adoption of a declaration of legal principles governing the activities of States in outer space and the partial codification of these principles. Some delegations expressed the view that although there do not exist internationally agreed boundaries to maritime spaces such as the

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territorial sea and the continental shelf, these maritime spaces have a legal régime which in some cases is even embodied in international conventions.

79. It was suggested by some delegations that an international conference may be required to work out agreed principles for the delimitation of the area beyond national jurisdiction. One view was that the conference should consider only the revision of the Continental Shelf Convention and the legal régime for the area beyond the continental shelf, entirely excluding questions relating to the living resources of the high seas. Another view was that the conference should consider the revision of both the Geneva Convention on the Continental Shelf and the Geneva Convention on Fishing and Conservation. The view was also expressed that the question of revising the Convention on the Continental Shelf could be solved only in accordance with the provision supplied by the Convention itself. The view was emphasized that a conference convened to determine principles for the delimitation of the area beyond national jurisdiction should be preceded by careful preparatory work to enlarge the prospects of agreement on this question. It was stated in this connexion that a substantial body of national and international law including the 1958 Geneva Convention on the Continental Shelf and customary international law could not be ignored nor could political realities be disregarded without increasing disagreements and conflicts since both States parties to the Geneva Convention and those not parties to it, had been guided by this body of law in enacting national legislation or concluding bilateral agreements. Thus the Sub-Committee should concentrate on elaborating legal principles on the basis of which further work could proceed.

80. It was suggested that pending clarification of the boundaries of the sea-bed area situated outside the limits of national jurisdiction, a moratorium or freezing of claims over the sea-bed beyond national jurisdiction might be desirable. The view was expressed that such moratorium or freezing would lack legal foundation. The view was emphasized that such moratorium or freezing would not in any event imply a prohibition of exploration or exploitation.

(iii) State responsibility

81. The discussion on this question was of a general character. Some delegations dealt with this question within the framework of element (vii) of items 6 and 7. The view was expressed that it was essential that States bear responsibility for the activities of their nationals. It was suggested that several factors would

have to be taken into account to give the formulation a more precise form: the case of persons carrying out activities under the authorization of a State other than that of their nationality; activity in the area carried out by international organizations; and the existence of rules of international law concerning the international responsibility of States for the actions of their nationals.

(iv) Implementation of the principles of the declaration

82. While this element was supported by some delegations the suggestion was made that it was premature to consider proposals concerning this question; on the other hand it was stated that the formulation should be included in the legal principles.

Item 2 of the programme of work: Consideration of the legal aspects of the report submitted by the Secretary-General pursuant to resolution 2467 C (XXIII) regarding international machinery (A/AC.138/12 and Add.1)

Item 3 of the programme of work: Consideration of the legal aspects of a long-term and expanded programme of oceanic exploration and research (Note by the Secretary-General, document A/AC.138/14 and Corr.1)

83. Owing the insufficiency of time the Sub-Committee decided to postpone consideration of these two items until its next session.
