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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)

Addendum

(to be placed in the report (A/AC.138/18) after paragraph 82, the subsequent paragraph of the report being renumbered and retained)

(9) Synthesis

83. The debates during the two sessions of the Legal Sub-Committee and the informal consultations that have taken place during the intersessional period have been useful inasmuch as they have contributed towards the clarification of positions on legal principles. They have furthermore, in what in fact should be considered a significant progress, been instrumental in steering the discussions of the legal sub-committee away from a generalized approach towards the task of devising specific formulas for a number of defined ideas. It is to be noted, however, that the multiplicity of formulations on a single point, whether those in the report of the informal drafting group or those suggested by the various delegations during the course of the second session, could prima facie be construed as denoting differences of opinion. While this might be the case with regard to certain elements, it is not so for a number of others; various formulations contain similar ideas and do sometimes overlap. The variety of formulations is due in this connexion to differences in emphasis and as to scope. In certain instances it is to be observed that part of the membership of the Committee finds itself attached to particular concepts to which in varying degrees the other part does not concur.

84. At this stage of the Sub-Committee's deliberations the practicability of underscoring "areas of agreement" or "areas of disagreement" might be questioned, since none of the formulations have so far been endorsed. Yet it could be considered suitable to attempt a synthesis of the related formulations in order to determine in so far as possible common denominators. These denominators could in no way be construed as an acceptance by the sub-committee that they constitute an adequate basis for the elaboration of a balanced and comprehensive declaration of principles.

85. It appeared at the outset that the legal sub-committee accepted as implied in resolutions 2340 (XXII) and 2467 A (XXIII) that there is an area of the sea-bed and ocean floor and the subsoil thereof which is beyond the limits of national jurisdiction. There was, however, no agreement on the inclusion in the draft of a reference to the establishment of a precise boundary for this area.

Legal status

86. A common denominator on this item would be the concept that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, shall not be subject to national appropriation by any means and that no State shall exercise or claim sovereignty or sovereign rights over any part of it.

87. This concept though acceptable to all was considered by some as not sufficiently comprehensive. For the latter the following idea should be included that except as may be provided in a regime, no State shall claim or exercise or grant exclusive rights over any part of this area, but there was no agreement as to the inclusion in the draft that no one may acquire property rights over any part of the area by use, occupation or any other means.

88. The over-all concept that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction are the common heritage of mankind (or part of the common heritage of mankind) was widely supported but not acceptable to all.

Applicability of International Law including the United Nations Charter

89. On this item it has been possible to detect as a common denominator that there are principles and norms of international law which apply to the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.

90. There was however no agreement as to the extent to which the rules of existing international law apply or should be applied in the future or as to whether any rules of existing international law apply to economic activities in the exploration and exploitation of the area in the future.

Reservation exclusively for peaceful purposes

91. A common denominator in this regard has emerged in the sense that a declaration of principles would contain in accordance with resolution 2467 A the idea that the sea-bed and ocean floor shall be reserved exclusively for peaceful purposes.

92. There was, however, no agreement on the nature of the references in the draft to the geographic limits of application of this principle or to the scope of the prohibition of activities.

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

93. An agreement seems to have emerged on the need for the establishment of a regime as well as on the use of the resources for the benefit of mankind irrespective of the geographical location of States and taking into account the special interests and needs of the developing countries. The qualification of that regime is still to be agreed upon as well as the scope of the applicability. Whether the regime shall be characterized as legal, international or agreed remains to be decided on, but it was agreed that the regime should be legally binding. Similarly whether the regime shall apply to the area or only to resources is a matter still to be settled. No agreement has yet been reached on the main features of such a regime. Thus, for example, the question of the most appropriate and equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries, which was underlined by a number of delegations is still under consideration.

Freedom of Scientific Research

94. This principle was acceptable in general, as well as the notion of the promotion of international co-operation in the conduct of scientific research. The idea that freedom of scientific research in this area shall be assured to all

without discrimination and that States shall promote international co-operation in the conduct of scientific research and that there shall be no interference with fundamental scientific research carried out with the intention of open publication appeared able to command agreement, on the understanding that it would be necessary to be able to distinguish clearly scientific research from commercial exploration. One element in this distinction was agreed to be the subsequent making available or communication of results.

95. Differences still remain as to the relation between freedom of scientific research and the possible obligations regarding prior communication of programmes and subsequent communication of results, as well as differences as to whether the notions of accessibility or availability on the one hand or dissemination on the other should be employed. There is still no agreement on the inclusion of the idea that such research should not be the basis for claims for rights to exploitation. The suggestion regarding strengthening the research capabilities of the developing countries is still to be further considered.

Reasonable regard for the interests of States in their exercise of the freedom of the high seas

Question of pollution and other hazards and obligations and liability of States involved in the exploration, use and exploitation

96. It can be assumed that the concepts of reasonable regard for the interest of all States and non-infringement of the freedoms of the high seas and no unjustified interference with the exercise of those freedoms are not contested. Furthermore, there exists general acceptance of the necessity for the adoption of appropriate safeguards against the dangers of pollution. The adoption of appropriate safeguards to protect the living resources of the marine environment as well as of safety measures concerning activities in the area were not objected to.

97. On the extent of the rights of coastal States with regard to activities, including scientific research and exploration undertaken in the area there is yet no agreement. The question of liability for damage caused by activities in the area is still under consideration.