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

INTERNATIONAL REGIME

Working Paper presented by the United Kingdom

1. The regime should be established by means of an international agreement

(a) Depending upon the range of questions to be regulated by the regime, one or several international instruments may be needed. If several agreements were necessary, these could either be concluded simultaneously, bringing the regime into full effect at one time, or over a period of time, so that the regime might progressively embrace a broader range of matters.

(b) To ensure that the regime will be effective, it should command the acceptance of the great majority of Member States of the United Nations and specialized agencies, including the major maritime nations. The substantive provisions of the agreement, and those for its entry into force, should be drafted with this aim in mind.

(c) Such an agreement should contain provision for review after an appropriate period of time to take account of international experience and of technological developments. The review would be without prejudice to acquired rights and would not affect the conditions attaching to existing licences and sub-licences without the consent of the licensees and sub-licensees.

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2. The regime should govern the exploration of the sea-bed and ocean floor, and of their subsoil and the exploitation of the natural resources of this area

The agreement should specify precisely which resources are concerned. For this purpose the definition of resources of the Convention on the Continental Shelf might be drawn on. The regime would thus embrace the mineral resources of the sea bed beyond national jurisdiction at present known, including hydrocarbons, manganese nodules, phosphate deposits and mineralized muds, but not minerals recovered from the actual waters of the seas. It would seem more natural to regard such minerals as pertaining to the high seas. Sedentary living resources capable of commercial development would also be subject to the regime, although we do not at present know of any such existing at substantial depth.

3. The agreement should define the area in which the regime is to apply

When the regime eventually comes into force, the international community must know to what area it applies.

4. The agreement should provide that the establishment of the regime does not affect the legal status of the superjacent waters as high seas or that of the air space above those waters

5. The agreement should provide that, subject to the right to take reasonable measures for the exploration of the area and the exploitation of its natural resources, as provided under the regime, the laying or maintenance of submarine cables or pipelines should not be impeded. Moreover, the exploration of the area and the exploitation of its resources should not result in any unjustifiable interference with other uses of the sea-bed or of the high seas, including the conservation of the living resources of the sea, or in any interference with the freedom of scientific research

The agreement should provide measures to eliminate or reduce as far as possible conflicts between the legitimate interests of the operator and those of other users of the high seas and the sea-bed, and to this end could deal, amongst others, with the following questions:

(a) the prevention and control of pollution of the marine environment resulting from research into and exploration of the area, or exploitation of its natural resources;

(b) the conservation of the natural resources of the area;

(c) the prevention of unjustifiable interference with navigation, overflight and fishing;

(d) the promotion of international co-operation in scientific research in the area and arrangements for making accessible to all the results of such research.

Scientific research would be defined in such a manner as to distinguish it clearly from commercial prospecting.

6. The agreement should provide for the establishment of an international body to administer appropriate parts of the regime in accordance with its provisions

(a) Such an international body might form a part of the United Nations family.

(b) The agreement might provide for a plenary conference of the States Parties to the agreement. The plenary conference's powers and functions would be defined in the international agreement establishing the regime and the conference might elect a Board of Governors who would be responsible for administering such of the provisions of the agreement as were within the competence of the international body. Such a Board of Governors might be small in size in the interests of administrative efficiency and its membership should reflect a balance which would inspire confidence and would reflect the interests of, and the technical contribution which could be made by, the developed and developing countries, both landlocked and maritime. In principle such a Board might work on a majority voting basis. The international body should also have a Secretariat responsible for the day to day conduct of the business of the international body and for the preparation of matters for decision by the Board of Governors.

(c) The agreement establishing the regime would need not only to specify the form of the international body, but also to lay down in particularly clear and precise provisions the rules by which it would operate and the criteria it should follow, in order to reduce to the minimum the scope for disagreement.

(d) However precise the terms of the agreement, the possibility cannot be discounted that there may be international disagreements about the way the international body should operate or about the meaning and implementation of its decisions. The agreement should, therefore, provide separate arrangements for the settlement of disputes between States parties or between States parties on the one hand and the international body on the other.

7. The agreement should provide for the allocation of licences to States

(a) The possible range of methods for the allocation of rights to explore and develop resources within the regime is described in the second part of the Secretary-General's study in document A/AC.138/12 and in A/AC.138/23. There are major difficulties about the actual conduct of operations on the sea-bed by or on behalf of an international agency.

(b) The most suitable regime might be one under which licences (either for all minerals or for specific minerals) would be issued by the international body to Member States only, such States being then responsible for sub-licensing operators under their own legislation, vouching for the technical and financial competence of such operators and ensuring that agreed standards and safeguards (which could be set out in the agreement) were complied with.

8. Equitable allocation of licences between States Parties

(a) The agreement might provide for division of the whole of the sea-bed outside national jurisdiction into areas (called "blocks" and possibly defined by reference to co-ordinates of latitude and longitude) large enough to permit of efficient exploration and exploitation but small enough to allow fair opportunities to all States parties to the agreement. Different kinds of resources may require different sizes of blocks. These sizes will be influenced by geological and economic factors (including the depth of water at the site of operations, distance from land and from sources of supplies, and kinds of equipment necessary) about which there is insufficient knowledge at present to form a basis for judgment.

(b) The agreement should determine what proportion of the blocks available would be open for application by each signatory state. It would be for consideration what criteria should determine the proportions to be available to each signatory state. If any state failed to ratify within an agreed period after the entry into force of the agreement arrangements might be made for its share to be reallocated.

(c) Upon entry into force of the agreement, any State party would be free to apply for blocks available in the period in question up to the maximum number open to it. States might be required to show that an operator or operators was available who would be interested in working in the area. The international body would automatically allot licences in respect of blocks for which there was no more than one bid. In the case of competition for a block, allocation might be either to the first applicant State on the basis of a timed and dated application or by mutual agreement between the applicant States, which might include joint operations, or by the applicant States being given an opportunity to amend their applications so as to refer to blocks not already allocated, or failing all else by determination of the international body based solely on random selection by computer.

(d) Provision might be made for a fixed proportion of blocks to be licensed for development during successive periods of fifteen years following the entry into force of the agreement. While the number initially available would thus be restricted, the blocks would not be restricted to any particular geographical location.

(e) The agreement might provide for the relinquishment of parts of holdings at stipulated periods. Such areas would revert to the pool of unlicensed blocks and the State concerned could be credited with a reduction in its total holding.

9. The nature of the licences to be issued would require precise definition

(a) For the purpose of allocating licences, the process of exploring and exploiting should be divided into two phases, the first (here called "prospecting") involving comparatively low investment, the second ("development") beginning at the point where it becomes necessary to make very substantial investments. These phases may be tentatively defined as follows:

(i) prospecting: broadly based surveys, generally of large areas in the first instance, leading, by progressive narrowing of the search, either to the location of mineral occurrences of possible economic importance or to the identification of areas where hydrocarbons may occur;

(ii) development: all activity beyond the prospecting stage up to and including production and beginning with the detailed investigation of mineral occurrences or the establishing whether hydrocarbons are present in potentially favourable areas.

(b) The best regime might be one under which licences would be issued for prospecting and for development of the resources of the sea-bed in the form of a system comprising (i) non-exclusive prospecting licences and (ii) exclusive development licences.

(c) Broadly based search, over large areas, could be on the basis of a non-exclusive prospecting licence. Non-exclusive licences would authorize prospecting in any area not subject to exclusive licences, but the programme of work would have to be filed with the international body by the licensee State. Non-exclusive licences would not count against a State's licence quota. Such licences might be subject to renewal at the option of the licensee State, say every three years. Non-exclusive licences would lapse if the licensee State failed at the proper time to exercise the option for renewal.

(d) On the other hand the more detailed work in smaller areas involved in establishing whether hydrocarbons are present, evaluating a deposit and production can be undertaken only on a basis of exclusive development licences. Similarly the development of other minerals can only be on an exclusive basis.

(e) Exclusive development licences should be issued for a period long enough to ensure that the mineral resource potential is fully evaluated, to offer the operator an adequate return and to enable the economic potential to be realized.

(f) Subject to (e) above, upon termination of the period of validity of an exclusive licence, the block(s) concerned should revert to the pool of unlicensed blocks.

(g) To avoid the possibility of allocated blocks remaining undeveloped, it would be necessary to stipulate a minimum work programme for exclusive development licence holders, possibly expressed in terms of expenditure. The licensee State might be required to deposit a bond equal to the cost of the work programme which might be forfeit if the work programme were not fulfilled.

(h) The international body could revoke licences if the licensee State failed to discharge properly other major obligations of the licence.

(i) Operators would be subject to the laws, including the tax regime, of the State from which they had derived their sub-licence (whether exclusive or non-exclusive) during the currency of the sub-licence and thereafter in respect of acts performed during the period.

(j) A sub-licensee would require protection against unreasonable surrender of the licence by the State.

10. The agreement should provide for the payment of international royalties and for the licensing fees in respect of operations conducted under the regime.

(a) The level of such payments would have to be calculated carefully to ensure that they did not have the effect of discouraging the development of sea-bed resources.

(b) Licensing fees should be limited to what is necessary to cover the administrative costs of the international body. They would be payable by the State which would be entitled to recover such fees from its sub-licensees, together with such other administrative expenses as might be incurred by it in the exercise of its own responsibilities under the agreement.

(c) The State would be obliged to pay an international royalty which should be distributed for the benefit of States parties to the agreement establishing the regime, taking account of the special needs and interests of the developing countries. As the Secretary-General points out in his study, such funds could be administered either through some new arrangements or by making use of existing machinery.

(d) Royalties should be calculated by reference to the volume or weight of production and not on the basis of revenue or profits.

(e) The scale of royalties which a State will be called upon to pay throughout the period of its activities should be known in advance, although this might include provision for a variable scale of payments (depending for example on levels of production or the year of development) in order to encourage orderly development at an economic rate. Similarly the terms which an operator would be called upon to meet should be known in advance.

11. The agreement should make provision for Operating Rules

The agreement might lay down that each State would be responsible to the international body for ensuring that its sub-licensees, whether working in blocks allotted to it or under a non-exclusive licence, did so in accordance with the provisions of the regime and not appropriate standards, particularly in the following respects:

(a) technical standards in performing the work;

(b) prevention of waste in the development of the resources;

(c) safety of personnel and equipment;

(d) prevention of unjustifiable interference with other uses of the high seas;

(e) prevention of pollution and other damage to other resources and to the environment.

The general standards to be achieved could be laid down in the Treaty but more detailed rules might be drawn up by the international body or by the individual States; the States in turn would notify the international body of the rules they had laid down.

12. Arrangements would be needed to verify that States were complying with the agreement

(a) The international body might have the right under clearly defined arrangements to inspect operations which were being carried out, to satisfy itself that required standards were being observed. To assist the international body in this respect, the

agreement might contain provisions enabling it to call on States for summaries of the progress made by their sub-licensed operators, the locations at which operations were being carried on and could be inspected, and other useful information (e.g. geological data).

(b) The agreement should also contain appropriate safeguards against the disclosure of operators' commercially valuable information.

13. Liability for Damage

Provisions governing liability for damage (including to other operators, other users of the sea, the living resources of the sea and the coasts of States) would need to be included in the agreement. These provisions would aim at securing reimbursement of the cost of remedying the damage.