

UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
GENERAL

A/AC.138/31

26 July 1972

Original: ENGLISH/FRENCH/SPANISH



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

1. The Legal Sub-Committee held a series of formal and informal meetings during its two sessions in 1970. It held six formal meetings and seven informal meetings in New York from 9 to 24 March 1970. It held three formal meetings in Geneva from 25 to 27 August 1970. The Sub-Committee also held informal consultations in New York from 15 to 19 June and in Geneva from 27 to 31 July 1970; with the concurrence of the Committee at the opening of its August session in Geneva, the Legal Sub-Committee continued its informal consultations from 3 to 25 August 1970.
2. The Bureau of the Legal Sub-Committee was composed of the following members:
Chairman: Ambassador Reynaldo Galindo Pohl (El Salvador)
Vice-Chairman: Mr. Alexander Yankov (Bulgaria)
Rapporteur: Mr. Abdel Halim Badawi (United Arab Republic).
3. Under operative paragraph 4 of General Assembly resolution 2574 B (XXIV), the Committee was requested to expedite its work of preparing a comprehensive and balanced statement of principles and to submit a draft declaration to the General Assembly at its twenty-fifth session. Accordingly, there was agreement at the seventeenth meeting of the Committee, held on 26 February 1970, that in accordance with the Committee's programme of work (A/AC.138/8) which allocates the various items and functions between the Committee itself and its two Sub-Committees, the Legal Sub-Committee should consider during its two sessions in 1970 the formulation of principles requested by the General Assembly designed to promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether landlocked or coastal.

4. The Sub-Committee based its consideration particularly on the synthesis at the end of its report covering the 1969 period of its work.^{1/} The synthesis, as noted by the General Assembly in operative paragraph 3 of resolution 2574 B (XXIV), reflected the extent of the work done in the formulation of principles at its March session. The Sub-Committee considered individually each of the topics dealt with in the synthesis but decided to consider also other matters which were not touched on in the synthesis but which it was believed should be included in the statement of principles. It also took into account other formal and informal proposals submitted for consideration; two draft resolutions submitted to the Sub-Committee during the March session (A/AC.138/SC.1/L.2 and L.4) were taken into account by the Sub-Committee in addition to various informal proposals submitted in the course of informal consultations. A revised version of the draft resolution contained in document A/AC.138/SC.1/L.4 was submitted during the August session (A/AC.138/SC.1/L.4/Rev.1). The texts of the draft resolutions contained in documents A/AC.138/SC.1/L.2 and L.4/Rev.1 are annexed to this report.

5. The Legal Sub-Committee agreed, at its thirtieth meeting held on 10 March 1970, that an informal group should be set up to conduct informal consultations and to review the formulation of principles. The great majority of the members of the Sub-Committee participated in the informal consultations. In view of the fact that several formulations were submitted with regard to each of the elements to be included in the draft declaration of principles, it was felt during the informal consultations that the preparation of a single paper which would attempt to narrow as far as possible the differences between such formulations in the light of the discussions and various views that were expressed during the sessions would be useful. Several delegations, particularly those which had advanced concrete proposals assisted the Rapporteur in carrying out his task. A paper was accordingly prepared by the Rapporteur and circulated among members of the Sub-Committee.

^{1/} Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 22 (A/7622), part two, paras. 83-97.

6. The Legal Sub-Committee did not submit a report to the Committee on its work during the March session. Instead, the Chairman of the Sub-Committee, Ambassador Galindo Pohl, sent a letter to the Chairman of the Committee, Ambassador Amerasinghe, informing him of the progress of work (A/AC.138/SC.1/10).
7. At the twenty-seventh meeting of the Committee held on 26 March 1970, there was agreement that the Legal Sub-Committee would hold informal consultations before the August session of the Committee. As a result of contacts undertaken by the Chairman of the Legal Sub-Committee with its members it was agreed that two series of consultations should be held, the first in New York for a week from 15 to 19 June and the second in Geneva for a week prior to the August session of the Committee, from 27 to 31 July. This second series of consultations was carried through beyond the original time allocated to it since it was estimated that their informal character would be conducive to an early agreement on a draft balanced and comprehensive declaration of principles as requested by General Assembly resolution 2574 B (XXIV).
8. The informal discussions had their value, but this was reduced by the fact that the participation was limited, and at times, insufficiently representative. Nevertheless some common grounds were found among the participants to these consultations with respect to some principles and elements for inclusion in the declaration although agreement was not possible on others. These elements, however, had to be considered in the context of the declaration as a whole. In the course of these consultations several delegates attempted to put together a number of formulations which in their views could serve as the basis for the elaboration of a declaration of principles.
9. The Chairman of the Legal Sub-Committee presided over the informal consultations. The Vice-Chairman, Mr. Alexander Yankov, presided over ad hoc drafting groups set up in Geneva in order to consider different formulations on specific principles or elements of principles after examination by the informal consultations. There were no records of the informal consultations.
10. The second session of the Legal Sub-Committee opened in Geneva on 25 August 1970 and heard a report by the Chairman on the results of informal consultations at New York and Geneva.
11. The view was expressed by a number of delegations that the procedure of informal consultations adopted by the Sub-Committee was not conducive to progress since no records were maintained of the views expressed, nor were the various proposals made available to delegations not participating in these informal talks. The emphasis on

informality tended in the view of those delegations to convert the Sub-Committee into a series of consultation groups. Accordingly, the agreement reached in these informal discussions should be restricted to those who participated in them and unless the agreements in question had been considered and adopted by the Sub-Committee, they could not therefore be deemed even as tentative agreements as regards non-participants.

12. On the other hand, the view was expressed by some other delegations that the informal procedure followed by the Sub-Committee had in fact succeeded in enlarging the areas of agreement and, although the formulation of an entire draft Declaration had not been completed by the Sub-Committee at its present session, the extent of agreements achieved on certain texts, however tentative, should be preserved.

13. A proposal was made that informal consultations should be held during the twenty-fifth session of the General Assembly, to be followed by a formal meeting of the Committee to consider and adopt a draft Declaration of Principles, for submission to the General Assembly at its twenty-fifth session. Some delegations considered however that it was premature at this stage to take any position on this proposal. No decision was taken on this proposal.

Brazil, Cameroon, Ceylon, Chile, India, Kenya, Kuwait, Libya, Madagascar, Sierra Leone, Sudan, Tanzania, Thailand, Trinidad and Tobago, and Yugoslavia: draft resolution (A/AC.138/SC.1/L.2)

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968 and 2574 (XXIV) of 15 December 1969 concerning the area to which the title of the items refers,

Reaffirming the objectives set forth in those resolutions,

Reaffirming that there is an area of the sea-bed and the ocean floor, and the subsoil thereof, that lies beyond the limits of national jurisdiction,

Recognizing that it is in the interests of mankind as a whole that the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction be reserved exclusively for peaceful purposes,

Convinced of the need for international co-operation in the exploration, conservation, use and exploitation of that area and its resources for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into special consideration the interests and needs of the developing countries, whether land-locked or coastal,

Believing it essential to that end to establish within the United Nations system, international machinery with jurisdiction over the area and its resources and having responsibility for regulating, co-ordinating, supervising and controlling activities with respect thereto,

Recognizing that it is in the common interest of all nations that the exploration, conservation, use and exploitation of that area and its resources should be conducted in such a manner as to avoid infringement of the other legitimate interests and established rights of nations with respect to the uses of the sea,

Taking into account that the existing legal régime for the high seas is not applicable to the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction,

Mindful of the threat to the marine environment caused by pollution and other hazardous and harmful effects which might result from such activities,

Desiring to promote effective national and international measures for prevention and control of such pollution and to allay the serious damage which might be caused to the marine environment, and, in particular, the living marine resources which constitute one of mankind's most valuable food resources,

Seeking to enrich the knowledge of all mankind by encouraging a free flow and dissemination of information of the oceans to all States,

I

Solemnly declares that the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction including the resources of that area (all hereinafter collectively referred to as the "international zone") are the common [heritage] [patrimony] of mankind. Accordingly, the principles hereinafter set forth shall apply with respect to the international zone:

1. The international zone shall not be subject to appropriation by any means by States or by persons, natural or juridical, nor shall any State claim or exercise sovereignty or sovereign rights over any part of it. Except as may be permitted pursuant to the régime to be established for the international zone, no State or person, natural or juridical, may claim or exercise any right with respect to the resources of that zone;

2. The international zone shall be reserved exclusively for peaceful purposes. All military uses of the international zone and all military activities within it shall be prohibited. One or more international agreements shall be concluded as soon as possible in implementation of this principle;

3. Exploration, conservation, use and exploitation of the resources of the international zone shall be carried out in accordance with the provisions of the régime to be established which shall take into account the applicable rules of international law, including the relevant provisions of the Charter of the United Nations;

4. All activities with respect to the international zone, including the exploration, conservation, use and exploitation thereof, shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into special consideration the interests and needs of the developing countries, whether land-locked or coastal;

5. The régime to be established shall provide for the orderly development and rational management of the resources of the international zone and for equitable sharing in the proceeds and other benefits derived herefrom, taking into account the paramount need to accelerate thereby the economic growth of the developing countries;

6. As part of the aforesaid régime, there shall be established, within the United Nations system, international machinery with jurisdiction over the international zone and having responsibility for regulating, co-ordinating, supervising and controlling exploitation, conservation, use and exploitation of that zone;

7. The exploration, conservation, use and exploitation of the resources of the international zone shall be undertaken in such a manner as to foster healthy development of the world economy and balanced growth of international trade. In particular, measures shall be taken to minimize any fluctuation of prices of raw materials that may result from those activities;

8. The international zone shall be open to scientific research exclusively for peaceful purposes by or on behalf of all States undertaking to promote international co-operation in such research

- (a) through timely prior publication of research programmes and making available to all, without delay or discrimination, the results thereof; and

- (b) by collaboration in measures to strengthen the research capabilities of developing countries, including participation of nationals of other States in such research programmes;

provided, however, that no such activity shall form the basis for any claim with respect to any part of the international zone;

9. Nothing herein shall affect the legal status of the waters superjacent to the international zone as high seas or that of the air space above those waters;

10. In regard to any activity with respect to the international zone, States shall pay due regard to the rights and interests of all other States, in particular those of any coastal State adjacent to the area of that activity. Close and continuing consultations shall be maintained with the coastal State concerned with a view to avoiding any infringement of such rights and interests;

11. States shall also:

(a) Adopt and ensure the application of appropriate measures, including internationally acceptable standards and procedures, for

- (i) prevention of pollution of, and other hazards to, the marine environment;
- (ii) the safety of life and property;
- (iii) application of sound operational practices;
- (iv) protection and conservation of the living resources of the seas;
- (v) collaboration in case of accident, distress or danger; and

(b) Ensure that the laying or maintenance of submarine cables or pipelines on the sea-bed is not impeded;

12. A State shall bear responsibility for any activity with respect to the sea-bed whether carried on by governmental agencies or non-governmental entities, and for assuring that any such activity is carried on in conformity with the international régime to be established;

II

Requests the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction to make recommendations to the General Assembly at its twenty-sixth session concerning the establishment as early as practicable, by means of an international agreement, of the régime contemplated for the international zone, including the international machinery as specified in paragraph 6 of the foregoing Declaration;

III

Invites the specialized agencies, the International Atomic Energy Agency and other intergovernmental bodies including the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization to co-operate fully with the Committee with a view to ensuring the observance of the principles set forth in the foregoing Declaration.

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968, and 2574 (XXIV) of 15 December 1969 concerning the area to which the title of the items refers,

Reaffirming that there is an area of the sea-bed and the ocean floor and the subsoil thereof that lies beyond the limits of national jurisdiction (hereinafter collectively referred to as the area), the precise limits of which are yet to be determined,

Convinced of the need for international co-operation in reserving the area exclusively for peaceful purposes and in reserving the exploration, conservation, use and exploitation of that area and its resources for the benefit of mankind as a whole, irrespective of the geographical location of states, whether land-locked or coastal, taking into particular consideration the interests and needs of the developing countries.

Believing it essential that an international régime including an appropriate international machinery should be established for this area and its resources as soon as possible,

Recognizing that this régime shall not affect the legal status of the super-jacent waters of the area and of the airspace above these waters,

Mindful of the threat to the marine environment caused by pollution and other hazardous and harmful effects which might result from such activities and

Desiring to promote effective measures, international and national, for the effective control and prevention of such pollution and to allay and repair the serious damage which might be caused to the marine environment by such pollution.

Seeking to enrich the knowledge of all mankind by encouraging the free flow and dissemination of information on these areas and the ocean as a whole.

Solemnly declares:

1. The area and its resources is the common heritage of all mankind and as such shall enjoy a special status in accordance with the present Declaration and the international régime to be established.

2. The area shall not be subject to appropriation by any means by States or by persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part of it.

No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the régime to be established and the principles of this Declaration.

3. The régime applying to the area and its resources shall be established by a basic international instrument generally agreed upon, inter alia, reflecting applicable principles of international law and the principles of this Declaration.

4. Without prejudice to any wider limits which may be agreed upon or any other measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament, the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction shall be reserved exclusively for peaceful purposes.

International agreement or agreements shall be concluded as soon as possible in order to implement effectively this principle and to prevent an armaments race on the sea-bed, the ocean floor and the subsoil thereof.

5. The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of states, whether coastal or land-locked, taking into particular consideration the needs and interests of the developing countries. Efforts should be made to minimize fluctuations in prices of raw materials that may result from the exploitation of the resources of the area.

6. Nothing herein shall affect the legal status of the waters superjacent to the area as high seas or that of the air space above these waters; in particular there shall be no infringement of the recognized freedoms of the high seas nor shall activities in the area interfere unjustifiably with the exercise of these freedoms.

7. In their activities in the area States shall take appropriate measures and shall co-operate in the adoption and implementation of international rules, standards and procedures for:

- (a) Prevention of pollution, contamination and other harmful effects and hazards to the area and the marine environment including the coastlines concerned and of interference with the ecological balance of the marine environment.

- (b) Protection and conservation of the resources of the area and prevention of damage to flora and fauna of the marine environment.

8. States shall take appropriate measures to ensure that activities carried out on the sea-bed, the ocean floor and in the subsoil thereof, both within and outside the area shall not infringe upon the rights and legitimate interests of other States, in particular those of coastal states.

Consultations should be held in particular with the coastal states concerned with a view to avoiding infringement of such rights and interests.

9. States shall have the obligation to ensure that activities in the area whether undertaken by governmental agencies or by non-governmental entities or persons under their jurisdiction or acting on their behalf shall be carried out in conformity with the international regime to be established.

The same obligation applies to international organizations and their members of activities undertaken by such organizations or on their behalf.

Damage caused by activities undertaken in the area shall entail liability and the obligation to make effective reparation.

10. The area shall be open to scientific research exclusively for peaceful purposes by or on behalf of all states without discrimination.

States shall promote international co-operation in such research.

- (a) By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries,
- (b) through effective dissemination of research programmes and the results of such programmes through international channels,
- (c) by co-operation in measures to strengthen the research capabilities of developing countries including the participation of their nationals in research programmes.

No such activity shall form the legal basis for any claims in respect to any part of the area and its resources.

11. The regime to be established shall, inter alia, provide for:

- (a) the orderly development and the rational management of the area and its resources,

- (b) the equitable sharing by the international community in the proceeds and other benefits to be derived from the exploration and exploitation of the resources of the area taking into particular account the interests and needs of the developing countries whether coastal or landlocked,
- (c) international arrangements concerning the international machinery endowed with the necessary authority and jurisdiction for regulating, co-ordinating, and supervising activities in the area.

12. The parties to any dispute relating to activities in the area shall resolve such dispute by the means mentioned in article 33 of the United Nations Charter and such procedures for settling disputes as may be agreed upon in the regime to be established.