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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 Sub-Committee II

GE.72-14760

I. INTRODUCTION

1. Sub-Committee II, which was one of the three Sub-Committees of the Whole set up in March 1971, continued its work during 1972. Under the terms of the agreement of 12 March 1971 on the organization of work^{1/} of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the limits of National Jurisdiction, the following subjects and issues were allocated to Sub-Committee II:

"To prepare a comprehensive list of subjects and issues relating to the law of the sea, including those concerning the régime of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States) and to prepare draft treaty articles thereon. It is understood that the Sub-Committee may decide to draft articles before completing the comprehensive list of subjects and issues related to the law of the sea."

2. With regard to the outstanding issues that under the above-mentioned agreement were left to be determined later, the Chairman of the Committee at its 66th meeting, on 27 August 1971, read out the following agreement^{2/}:

"The question of the international régime should receive a certain priority as explained by the co-sponsors of the original draft resolution later adopted as resolution 2750 C (XXV) and as implied in the terms of that resolution. This would mean, in the first instance, the allocation of more time to Sub-Committee I.

"While each Sub-Committee will have the right to discuss and record its conclusions on the question of limits so far as it is relevant to the subjects allocated to it, the main Committee will not reach a decision on the final recommendation with regard to limits until the recommendations of Sub-Committee II on the precise definition of the area have been received, which should constitute basic proposals for the consideration of the main Committee.

"The question of peaceful uses is allocated to the main Committee, it being understood that each of the Sub-Committees is free to consider it insofar as this question is relevant to its mandate."

3. Sub-Committee II held in 1972, during the Committee's sessions, two series of meetings - the first in New York from 1 to 30 March, and the second in Geneva from 17 July to 17 August. In March it held nine meetings; in July/August fifteen meetings.

^{1/} Official Records of the General Assembly, Twenty-sixth session, Supplement No. 21 (A/8421), para. 19.

^{2/} Ibid., para. 22.

4. Being a sub-committee of the whole, Sub-Committee II was composed of the States members of the Committee as enlarged by General Assembly resolutions 2750 C (XXV) and 2881 (XXVI). Also present were observers of the Member States of the United Nations which accepted the invitation to participate as such in the Committee's proceedings. FAO, IAEA, IMCO, UNESCO and its IOC, WMO and UNCTAD, were also represented at the meetings as observers.

5. At its twenty-fourth meeting, on 1 March 1972, the Sub-Committee decided that officers temporarily absent would be replaced, pending their return, by members of their respective delegations. Thus, Mr. Diggs (Liberia) and Mr. Kostov (Bulgaria) acted as Vice-Chairmen during the temporary absence of Mr. Holder and Mr. Yankov respectively and Mr. Kassem (Egypt) as Rapporteur during the temporary absence of Mr. Abdel-Hamid. In the absence of Mr. Galindo Pohl, the Sub-Committee at its thirty-third meeting, on 17 July 1972, elected Mr. Martínez Moreno (El Salvador) as Chairman. The Bureau of Sub-Committee II was composed of the following officers:

<u>Chairman:</u>	Mr. Reynaldo GALINDO POHL (El Salvador) (during the March meetings)
	Mr. Alfredo MARTINEZ MORENO (El Salvador) (during the July/August meetings)
<u>Vice-Chairmen:</u>	Mr. M. Burleigh HOLDER (Liberia)
	Mr. Ezedine KAZEMI (Iran)
	Mr. Alexander YANKOV (Bulgaria)
	Mr. Necmettin TUNCEL (Turkey)
<u>Rapporteur:</u>	Mr. Shaffie ABDEL-HAMID (Egypt)

6. As adopted in 1971, the agenda (A/AC.138/SC.II/L.1) of the Sub-Committee, reproduced in paragraph 92 of last year's report, read as follows:

- "1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of questions referred to the Sub-Committee by the Committee under the terms of the "Agreement reached on organization of work" as read by the Chairman at the 45th meeting of the Committee, on 12 March 1971.
5. Adoption of the report."

7. The guidelines for the organization of work of the Sub-Committee, as agreed in 1971, were contained in a letter and a statement of the Chairman, recorded in paragraphs 93 and 95 of last year's report. The letter (A/AC.138/SC.II/L.2) read inter alia as follows:

"....."

"2. To accomplish its mandate the Sub-Committee may adopt various procedures. All procedures that are customary in the United Nations practice are open to its choice.

"3. The Sub-Committee may wish to commence its work with an exchange of views concerning the subjects and matters allocated to it, including the question of the preparation of a comprehensive list of subjects and issues relating to the law of the sea and the preparation of draft treaty articles thereon. In due time, when appropriate, the Sub-Committee may establish working groups to consider in detail specific aspects of the Sub-Committee's work programme.

"....."

and the statement specified that:

"I understand that in accordance with the procedural decision, taken yesterday, delegations may submit concrete proposals, including draft articles and may make a statement explaining these proposals. In that connexion I should like to remind you of the text of my note of 18 March 1971 (A/AC.138/SC-II/L.2), which was adopted as a guidance for the work of the Sub-Committee during the present session, an extract from which reads as follows: [see first sentence of point 3 of the letter reproduced above in this paragraph].

"The Sub-Committee naturally intends to pay particular attention to the preparation of the list of subjects and issues related to its terms of reference. Consequently, for the sake of proper methods of work and organization of meetings, I hope that delegations will limit their remarks to explanations of proposals; these proposals will be discussed in detail later, at a suitable moment, in accordance with the procedure which the Sub-Committee considers appropriate, possibly through the establishment of working groups."

8. Paragraphs 98 and 99 of last year's report contained the following explanations in connexion with the consideration in 1971 of the questions referred to the Sub-Committee:

"98. The Sub-Committee considered the questions referred to it by the Committee at its 3rd and 5th-20th meetings, held on 19 March and from 27 July to 23 August. During the discussion which took place at those meetings several representatives made statements of a general character and on particular aspects of the questions referred to the Sub-Committee. The importance of the Sub-Committee's work in the context of the preparation of the future conference on the law of the sea was generally recognized. The Sub-Committee concluded the first stage of its work, namely the general debate on the questions referred to it, and started the preparation of a comprehensive list of subjects and issues relating to the law of the sea.

"99. It was generally agreed that the preparation, at the present stage, of a comprehensive list of subjects and issues on the law of the sea should be undertaken with a certain flexibility in order to be able to adjust the list in the light of the progress of work, it being understood that whether or not a particular subject or issue was included in the list would not prejudice the position of any delegation regarding the intrinsic value or substance of the subject or issue concerned or regarding whether or not such a subject or issue would eventually be included in the agenda of the future conference on the law of the sea. It was also understood that the list would not prejudge the order of priority for consideration of the subjects and issues. During the session the possibility that the Sub-Committee might decide to establish working groups to deal with subjects and functions relating to the Sub-Committee's mandate was not excluded."

9. When the Sub-Committee was reconvened on 1 March 1972, the Chairman made, at the twenty-fourth meeting, the following suggestion on the programme of work which was accepted at the same meeting by the Sub-Committee:

"... the Sub-Committee should not prepare a new programme of work. The old programme should be considered in the light of the explanations provided in paragraphs 93, 98 and 99 of the Committee's report (A/8421), which were drawn from the Sub-Committee's report. It was clear that the general debate had been concluded and that the Sub-Committee should proceed to prepare the comprehensive list of subjects and issues relating to the law of the sea. In order to save time ... the Sub-Committee should continue to follow the programme of work adopted at Geneva, as specified in paragraph 92 of the report."

10. As it appears from the summary records, at the conclusion of the 1972 March series of meetings, the Chairman of the Sub-Committee reported orally to the Committee as follows^{3/}:

"The Sub-Committee had held several meetings, during which it had heard the statements of various delegations on substantive questions. At the same time, in conformity with a decision taken at the beginning of the session, informal consultations had been held between the African, Asian and Latin American groups with regard to the list of subjects and issues relating to the law of the sea to be submitted to the third Conference on the Law of the Sea. The list that had been submitted following those consultations (A/AC.138/66) had subsequently been considered at a meeting and had also been the subject of consultations between various groups. Unfortunately, those consultations had produced no result, and therefore he regretfully informed the Committee that Sub-Committee II had been unable to achieve its assigned objective of preparing a definitive list."

^{3/} See summary record of the seventy-sixth session of the Committee (A/AC.138/SR.76).

11. The various documents submitted to the Committee were at the disposal of the Sub-Committee, including a new volume of the United Nations Legislative Series (ST/LEG/SER.B/16) containing texts of recent national legislation and treaty provisions relating to the law of the sea provided by Governments of Member States.

12. In addition, and pursuant to requests previously made, FAO submitted information concerning regulatory fishery bodies (A/AC.138/64), conservation problems with special reference to new technology (A/AC.138/65), an expanded and revised atlas of the living resources of the seas (FID/C/126-Rev.1), fishing methods likely to have adverse effects on the conservation of fishery resources (FID/C/147), sedentary, migratory and intermingling species, their habitat and distribution (FID/C/148), and a series of fishery country profiles.

II: CONSIDERATION OF QUESTIONS REFERRED TO THE SUB-COMMITTEE BY THE COMMITTEE UNDER THE TERMS OF THE AGREEMENT REACHED ON THE ORGANIZATION OF WORK READ BY THE CHAIRMAN AT THE FORTY-FIFTH MEETING OF THE COMMITTEE ON 12 MARCH 1971

13. The Sub-Committee considered the questions referred to it by the Committee at its 25th, 27th to 32nd, and 34th to 45th meetings, held on 15 and 22 to 30 March and 18 July to 16 August 1972^{4/}. A series of informal meetings were also held in connexion with the elaboration of a comprehensive list of subjects and issues on the law of the sea under the chairmanship either of the Chairman of the main Committee^{5/} or of the Chairman of Sub-Committee II, or jointly. Consultations and negotiations among delegations concentrated on the elaboration of the comprehensive list requested by General Assembly resolution 2750 C(XXV).

14. It was generally agreed that the list of subjects and issues on the law of the sea, without being necessarily complete, should be prepared following a comprehensive approach and should attempt to embrace a wide range of possibilities. It was also understood that the list would not establish the order of priority for consideration of the various subjects and issues and that sponsorship or acceptance of the list would not prejudice the position of any State or commit any State with respect to the items on it or to the order, form or classification according to which they were presented. It was generally agreed that the list should serve as a framework for discussion and drafting of necessary articles.

^{4/} An index to summary records of the Sub-Committee is given in Annex XXI to the present report.

^{5/} See summary records of the seventy-sixth (A/AC.138/SR.76), and seventy-seventh (A/AC.138/SR.77) meetings of the main Committee, held on 30 March and 17 July 1972 respectively.

15. As in previous sessions, emphasis was placed on the need for taking into account the interests of all States, developing and developed, coastal States, land-locked States, States with short coastlines, archipelago States, island States, shelf-locked States, States with narrow shelves, States with broad shelves, etc., the special interests and needs of the developing countries, whether land-locked or coastal, and all relevant aspects of the problems to be studied (legal, political, strategic, economic, social, technical, scientific, etc.) as well as geographical considerations. Reference was also made to regard for general international interests in connexion with various matters.
16. Concerning the preparation for a comprehensive list of subjects and issues relating to the law of the sea, the Sub-Committee had before it, in addition to the proposals submitted in 1971^{6/}, a list to be submitted to the conference on the law of the sea proposed by Algeria, Argentina, Brazil, Cameroon, Ceylon, Chile, China, Colombia, Congo, Cyprus, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Ghana, Guatemala, Guyana, Iceland, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mauritania, Mauritius, Mexico, Morocco, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Romania, Senegal, Sierra Leone, Somalia, Spain, Sudan, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia and Zaire (A/AC.138/66 and Corr.2) (see text in Annex I). Amendments to the list of subjects and issues sponsored by these fifty-six Powers were subsequently submitted: by Malta (A/AC.138/67) (see text in Annex II); by the United States of America (A/AC.138/68) (see text in Annex III); by Greece and Italy (A/AC.138/69 and Add 1) (see text in Annex IV); by Japan (A/AC.138/70 and A/AC.138/78) (see texts in Annexes V and XI); by the Union of Soviet Socialist Republics (A/AC.138/71) (see text in Annex VI); jointly by Afghanistan, Austria, Belgium, Bolivia, Czechoslovakia, Hungary, Mali, Nepal and Zambia (A/AC.138/72 and Corr.1) (see text in Annex VII); by Turkey (A/AC.138/74 and Corr.1) (see text in Annex VIII); jointly by France, the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (A/AC.138/76) (see text in Annex IX); and by Poland (A/AC.138/77) (see text in Annex X). A list of subjects and issues relating to the law of the sea was also submitted by Malta (A/AC.138/75 and Corr.1) (see text in Annex XII). These documents were the subject of intense consultations which led to the adoption of an agreed list of subjects and issues as indicated in paragraph 48 below.

^{6/} See Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421), para. 101 and Annex 1, 2, 5, 7, 9, 10, 12, 14, 15 and 16.

17. In accordance with the agreed guidelines on the organization of work mentioned in the introduction to the present report, some representatives made statements on certain aspects of the subjects and issues allocated to the Sub-Committee. At the same time, the following documents were before the Sub-Committee: draft articles on the breadth of the territorial sea, straits and fisheries submitted in 1971 by the United States of America (A/AC.138/SC.II/L.4)^{7/}; a working paper containing a draft ocean space treaty, some parts of which dealt with subjects allocated to Sub-Committee II, submitted in 1971 by Malta (A/AC.138/53)^{8/}; a draft article on fishing together with an explanatory note (A/AC.138/SC.II/L.6) and draft articles on straits used for international navigation (A/AC.138/SC.II/L.7) submitted in 1972 by the Union of Soviet Socialist Republics (see texts in Annex XIII and XIV); a working paper on management of the living resources of the sea (A/AC.138/SC.II/L.8) submitted in 1972 by Canada (see text in Annex XV); a revised draft fisheries article (A/AC.138/SC.II/L.9) submitted in 1972 by the United States of America (see text in Annex XVI); draft articles on exclusive economic zone concept (A/AC.138/SC.II/L.10) submitted in 1972 by Kenya (see text in Annex XVII); a working paper on principles for a fisheries régime (A/AC.138/SC.II/L.11) submitted in 1972 by Australia and New Zealand (see text in Annex XVIII); and proposals for a régime of fisheries on the high seas (A/AC.138/SC.II/L.12) submitted in 1972 by Japan (see text in Annex XIX). While a preliminary exchange of views took place on some aspects of these documents, the Sub-Committee, however, did not proceed to a detailed examination of them.

18. During the debate, reference was made to the topics enumerated in General Assembly resolution 2750 C (XXV) and to other related matters either contained in working papers submitted or in statements made in the Sub-Committee.

19. The points referred to concerning the territorial sea were its nature and characteristics, including the question of the unity or plurality of régimes, the breadth of the territorial sea, the global or regional criteria as well as geographical criteria (open seas and oceans; semi-enclosed seas; enclosed seas) to define such breadth, the question of the delimitation of the territorial sea and the various aspects involved,

^{7/} Text in Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421), Annex IV.

^{8/} Text in ibid., Annex I, 11.

historic waters, straits used for international navigation (see paragraphs 21 to 23 below), the sovereignty of the coastal State over its territorial sea, innocent passage through the territorial sea as passage not prejudicial to the peace, good order or security of the coastal State, and freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea.

20. The nature, characteristics and limits of the contiguous zone and the rights of the coastal State in such a zone with regard to national security, customs and fiscal control, sanitation and immigration regulations were also referred to. In this connexion reference was made to the protection of international rights and interests in the zone.

21. With respect to straits reference was made to the differences in their relative importance for international navigation, to straits used for international navigation, to straits within archipelagoes, and to the present customary and treaty régimes on straits.

22. The point was made, in this connexion, that innocent passage through straits used for international navigation as recognized and regulated at present with regard to various categories of ships harmonized adequately, on the one hand, the sovereignty and the protection of the interests of coastal States (security requirements, prevention of risks, safety of navigation, measures to combat pollution) and, on the other, the interests of international navigation. It was also stated that navigation in straits within the territorial sea was subject to coastal State regulation on the same basis as regulation of navigation in any other part of its territorial sea and that the right of the coastal State to enact regulations was inherent in the exercise of its sovereignty over its territorial sea. It was mentioned that such enactment of regulations and its implementation were never arbitrary and that the right of innocent passage as recognized and regulated at present could not be suspended through straits used for international navigation. Existing civil aviation regulations already provided for overflight of foreign territory by civilian aircraft, including straits in the territorial sea. It was emphasized that a distinction should be made between the true interests of international navigation and the deployment of naval and air forces at sea. Finally, it was stated that although a different régime for passage through straits would seemingly provide for safety of navigation and security requirements, in fact, suggestions to that effect were superfluous, since they were already covered by existing international law, did not provide the coastal States with real enforcement powers, and aimed at purposes other than promoting the interests of civil international navigation.

23. From another point of view, it was stated that the interests of international navigation required free transit through and over straits used for international navigation because the régime of innocent passage might be open to various interpretations and might not offer all the necessary safeguards. It was also stated that free transit through straits used for international navigation was collateral to the freedom of the high seas and facilitated communications between States. It was added that free transit should be maintained through and over straits used for international navigation connecting one part of the high seas with another part of the high seas. Reference was also made to free transit through and over straits connecting one part of the high seas with the territorial sea of a foreign State, but it was also stated that the régime of innocent passage should prevail in those straits. Free transit, it was suggested, should be subject to certain internationally agreed regulations which the coastal State and the flag-State would enforce. It was also suggested that the coastal State would have the right to designate corridors for transit, but it would not be entitled to interrupt or stop the transit. It was added that navigation should comply strictly with these regulations which should provide for the prevention of accidents and pollution as well as for flag-State strict liability for damages caused to the coastal State by accidents resulting from deviations from internationally agreed regulations. It was also added that free transit would be exercised in accordance with strict rules intended to avoid causing any threat to the security of the coastal State. In addition, it was stated that the law of the sea treaty should require State, including military, aircraft to normally observe existing civil aviation regulations, and also require State aircraft to operate at all times with due regard for the safety of navigation of civil aircraft. State aircraft exercising a free transit right would be strictly liable for accidents caused by deviations from such regulations. Finally, it was underlined that existing international agreements on straits should not be affected.

24. With regard to continental shelf, points were made in connexion with the nature and scope of the sovereign rights of coastal States over the continental shelf, the duties of States in respect of the continental shelf, the outer limit of the continental shelf and the applicable criteria or a combination thereof to define such limit, the question of the delimitation of the continental shelf between States and the various problems involved, for instance the delimitation between adjacent or opposite States, natural resources of the continental shelf and scientific research in the continental shelf.

25. Reference was made on the one hand to the exclusive economic zone beyond the territorial sea and on the other to coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea.

26. With regard to the exclusive economic zone beyond the territorial sea the points mentioned were: the nature and characteristics of the zone, including the rights and jurisdiction of coastal States to living and non-living resources of the zone and to pollution control and scientific research in the zone; the duties of States in the zone; the limits of the zone and the criteria applicable to the establishment of such limits; the freedom of navigation and overflight in the zone; regional arrangements relating to the zone; fisheries, including exclusive fishery zones, preferential rights of coastal States, management and conservation, protection of coastal States' fisheries in enclosed and semi-enclosed seas, and régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction; sea-bed within national jurisdiction, including its nature and characteristics, sovereign rights of the coastal State over natural resources, limits and criteria applicable to define them and delineation between adjacent and opposite States; prevention and control of pollution and other hazards to the marine environment, including the rights and responsibilities of coastal States in that respect; and scientific research. During the debate reference was made to the draft articles on exclusive economic zone concept submitted by Kenya as well as to the Declaration of Santo Domingo of 7 June 1972.

27. With regard to the coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea, the points mentioned were: the nature, scope and characteristics of these preferential rights or other non-exclusive jurisdiction; sea-bed resources; fisheries; prevention and control of pollution and other hazards to the marine environment; international co-operation in the study and rational exploitation of marine resources; settlement of disputes; and other rights and obligations. During the debate reference was made to draft articles and working papers submitted by Malta, the Union of Soviet Socialist Republics, Canada, the United States of America, jointly by Australia and New Zealand and by Japan.

28. More specific points regarding fisheries and exclusive economic zone or coastal State preferential rights or other non-exclusive jurisdiction are noted in paragraphs 30 to 34 below. Reference was also made to the rights and interests of land-locked States in regard to the exclusive economic zone and to coastal State preferential rights or other non-exclusive jurisdiction. Regard for general international interests was also mentioned with respect to maritime zones referred to in paragraphs 26 and 27 above.

29. As to the régime of the high seas reference was made to its nature and characteristics, to the rights and duties of States on the high seas, to the question of the freedoms of the high seas and their regulation, to freedom of navigation through and overflight of the high seas and other freedoms or uses, in particular to fishing and regulation, management and conservation of the living resources of the high seas (for specific points on the matter see paragraphs 30 to 34 below) as well as to the laying of sub-marine cables and pipelines on the bed of the high seas. Mention was also made of the prevention and repression of slavery, piracy and illicit traffic in drugs on the high seas, and of the exercise of hot pursuit on the high seas and other matters. For free access to the sea of land-locked countries and related matters see paragraphs 36 and 37 below.

30. Concerning fisheries and conservation of the living resources of the sea beyond the territorial sea, reference was made to rational utilization of such resources because of their importance in ensuring man's nutrition, to the situation of States dependent upon their coastal fisheries for their livelihood or economic development, to the interests of other States, particularly least developed countries, geographically disadvantaged States, including land-locked and shelf-locked countries, and developed States with local or geographically isolated populations heavily dependent on fisheries and States dependent on long-distant-water fisheries, to the different types of fisheries and fishery exploitation, including coastal fisheries and traditional or historic fisheries in coastal waters, to the problems deriving from over-exploitation or under-utilization of resources, to coastal fishery resources as a part of the natural resources of the coastal State, to measures for conservation and development of the living resources of the sea and its protection against pollution and other hazards having harmful effect, to the relationship between the protection of the marine environment as a whole and the conservation and management of the living resources of the sea, and to the distinction and the relationship between conservation and utilization of the living resources of the sea.

31. Reference was made to the need for more precise rules, on a world-wide or regional basis, with respect to regulation, allocation, management, control, and conservation of fisheries beyond the territorial sea in accordance with criteria for equitable and rational utilization of the living resources and taking into account the relevant economic, social, scientific (biological, ecological, geographical and geological) factors involved. However, different views were advanced with regard to the régime or system which should be established.

32. A number of delegations recognized that coastal States sought to reserve for their nationals living resources of the sea in areas adjacent to their coasts. There was a wide support for the view that this entailed certain specific rights and duties for all coastal States with respect to utilization, allocation, management and conservation of such resources. Particular reference was made to developing coastal States and the view was widely expressed that any future régime should safeguard the special interests and rights of developing coastal States. Equally, reference was also made to States or areas heavily dependent on fisheries whose special interests and needs should be taken fully into account in any future régime. Broadly speaking, coastal States' rights were expressed in either of two forms: exclusive sovereign rights or preferential fishing rights. On the other hand, a number of delegations considered it necessary to take into account the interests of distant-waters fisheries and the migratory characteristics of species.

33. Some representatives elaborated on the particular régime on fishing and conservation of the living resources of the sea which, in their view, should be established. An example of an approach based on the concept of "exclusive economic zone" under which the coastal State would have sovereign rights and the exercise of exclusive jurisdiction, inter alia, over the living resources of an economic zone which would not exceed 200 nautical miles was contained in the draft articles submitted by Kenya; an example of an approach based on the principle of the freedom of fishing in the high seas subject to preferential rights of developing coastal States in the area directly adjacent to their territorial sea (not exceeding 12 miles), including the right of reserving annually for itself a given share of the allowable catch in accordance with its fishing capability, was contained in the draft article submitted by the Union of Soviet Socialist Republics; an example of a functional approach under which the coastal State would have the exclusive management and regulatory jurisdiction of coastal fisheries (coastal and anadromous species) as a custodian, under internationally agreed principles and rules, and would have preferential rights, potentially exclusive for some species, in the exploitation of such resources was contained in the working paper submitted by Canada; an example of a species approach under which the coastal State would regulate and have preferential rights to coastal and anadromous resources to the limits of their migratory range, including the right to reserve to itself all available catch of these resources it could harvest, while recognizing that the unique nature of highly migratory oceanic

species was such that only international organizations could properly perform the management function, was contained in the revised draft article submitted by the United States of America; an example of a zonal approach under which the coastal State would have exclusive jurisdiction over the living resources of the sea with certain exceptions in a wide zone adjacent to its territorial sea to be exercised in accordance with certain basic principles reflecting the coastal State's rights and responsibilities with respect to the resources was contained in the working paper submitted by Australia and New Zealand; an example of an approach concerning preferential rights for protection of coastal fisheries, particularly of developing coastal States, in relation to distant-water fisheries of other States in areas of the sea adjacent to the 12-mile limit, which would entitle a developing coastal State to a preferential catch corresponding to its harvesting capacity and a developed coastal State to a differentiated preferential catch in case the protection of its locally conducted small-scale coastal fisheries was necessary, was contained in the proposals submitted by Japan; and a zonal approach under which there would be international management of ocean fisheries, together with exclusive jurisdiction of the coastal State over living resources within a 200-mile economic zone to be exercised in accordance with treaty-defined principles, was contained in the draft ocean space treaty submitted by Malta.

34. Different evaluations were made of the effectiveness and accomplishments of the existing international or regional fishery organizations or commissions as set up at present. Certain representatives stated that they should be strengthened and developed, particularly on a regional basis, because they provided the best framework within which conservation and management measures could be formulated and agreed upon internationally. As for highly migratory species some delegations stated that international fishery organizations provided the most appropriate mechanism for conservation and management. Another view was that this was also the case with respect to anadromous species. Different views were also expressed on the role and competence of fishery organizations or commissions in the future, according to the characteristics considered more appropriate for the régime on fishing and conservation of the living resources of the sea beyond the territorial sea to be established. Another view expressed was that international fishery organizations should be integrated within a more comprehensive framework. Mention was also made of the enforcement powers of the coastal State in the framework of that régime as well as of the need of procedures for the peaceful settlement of fishery disputes, including compulsory arbitration procedures. It was also suggested that control and enforcement powers should primarily be vested in the regional fisheries organizations.

35. Reference was also made to the international régime for the sea-bed and the ocean floor beyond national jurisdiction, to its nature and characteristics, international machinery for the area and its structure, functions and powers, the economic implications resulting from the exploitation of the resources of the area, the equitable sharing of benefits bearing in mind the special interests and needs of developing countries, whether land-locked or coastal, the definition and limits of the area, the harmonization of the uses of the area and the use of the area exclusively for peaceful purposes (for the sea-bed within national jurisdiction see paragraph 26 above).

36. Various points concerning the land-locked countries were made in connexion with the high seas, the sea-bed beyond national jurisdiction and the exclusive economic zones or preferential zones beyond the territorial sea. It was agreed to consider the general principles of the law of the sea concerning such countries and more specifically the following points: free access to and from the sea, including freedom of transit, means and facilities for transport and communications and equality of treatment in the ports of the transit States; free access to the international sea-bed area beyond national jurisdiction, participation in the international régime, including the machinery, and in the equitable sharing of the benefits of the area; the living resources of the sea; and the resources, pollution control and scientific research in exclusive economic zones or preferential zones beyond the territorial sea. The particular interests and needs of developing land-locked countries in the international régime for the sea-bed and in regard to the living resources of the sea were also mentioned.

37. In this respect reference was also made to agreements (bilateral or regional) to be concluded, although likewise this reference was questioned by delegations of land-locked countries which considered that their interests would be better and more appropriately safeguarded by international agreements.

38. Reference was made to the interests and rights of shelf-locked States, States with narrow shelves and States with short coastlines, particularly with regard to the international régime for the sea-bed area beyond national jurisdiction, fisheries and free access to and from the high seas. The special interests and needs of developing countries falling within these categories were also referred to. Mention was made of the interests and rights of States with broad shelves, including those which had exercised sovereignty thereon for a period of time.

39. Reference was made to various kinds of archipelagoes and to the criteria applicable to them. The special characteristics of archipelagic States were also mentioned, and in this connexion it was stated that archipelagic States would require special treatment as they were more than a group of islands. It was also added that the special interests and needs of archipelagic States with regard to economic development, political stability and national security would require a special régime which would also accommodate other interests by providing for the innocent passage of foreign ships through designated sealanes in archipelagic waters.

40. Reference was made to the various kinds of islands and to the criteria applicable to them such as their size, their location, their population, the marine space related to them in order to make a thorough study of the different situations which may arise. In particular the régime of islands was referred to in connexion with islands under colonial dependence or foreign domination or control or under the sovereignty of a State and located in the continental shelf of another State in a different continent. Islands were also mentioned in general as well as in specific contexts such as the territorial sea, the continental shelf and their delimitation, exclusive economic zone beyond the territorial sea and other related matters.

41. On the other hand, views were expressed by some delegations who emphasized the indivisibility of territorial sovereignty and jurisdiction and referred to the dangers inherent in drawing any distinction between islands according to their size, their location, their population and between island States on one hand, and islands under the jurisdiction of a State on the other. Stress was furthermore laid on the non-existence of a generally recognized concept of continent or of continental shelf as well as on the unacceptability of putting forth notions which would apply to some continents and not to others. The régime for enclosed and semi-enclosed seas and for artificial islands and installations was also referred to.

42. It was emphasized that the foregoing reference to islands in no way relates to island States. More particularly, with respect to the law of the sea, no distinction in the application of rules could be made between coastal States and island States.

43. It was also stated that dependent island units maintain their inherent right, on attaining independence, to claim on a basis of equality all rights enjoyed by independent coastal States.

44. With regard to the preservation of the marine environment, the points referred to were the sources of pollution and other hazards and measures to combat them, the measures to preserve the quality and ecological balance of the marine environment, the responsibility and liability for damage to the marine environment and to the coastal State, the responsibility and liability for damages resulting from the use of that environment, the rights and duties of coastal States, and international co-operation to preserve the marine environment.

45. In connexion with scientific research, reference was made to the nature, characteristics and objectives of scientific research of the oceans, to regulation of scientific research, to access to scientific information and to international co-operation. Different views were expressed on the question of freedom of scientific research, especially with regard to maritime spaces other than the high seas.

46. So far as development and transfer of technology are concerned, the points mentioned were the development of technological capabilities of developing countries, the sharing of knowledge and technology between developed and developing countries, the training of personnel from developing countries and the transfer of technology to developing countries. It was reiterated that the Sub-Committee, through the Committee, should recommend to the General Assembly to request the relevant specialized agencies and the industrial and developed States to expend or accelerate the training of personnel from the developing States in all respects of marine science and technology. A further point mentioned was control in the use of such technology as might have serious effects on marine environment.

47. Reference was likewise made to questions such as regional arrangements and universal arrangements, peaceful uses of the ocean space, zones of peace and security, transmission from the high seas, archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction, the enhancing of the universal participation of States in multilateral conventions relating to the law of the sea, and the peaceful settlement of disputes.

III. ADOPTION OF THE LIST OF SUBJECTS AND ISSUES RELATING TO THE LAW OF THE SEA

48. At its 45th meeting, held on 16 August 1972, the Sub-Committee approved the list of subjects and issues relating to the law of the sea resulting from the informal consultations and negotiations. The approved list is thereby transmitted to the Committee. It reads as follows:

"Explanatory Note

The present list of subjects and issues relating to the law of the sea has been prepared in accordance with General Assembly resolution 2750 C (XXV).

The list is not necessarily complete nor does it establish the order of priority for consideration of the various subjects and issues.

Since the list has been prepared following a comprehensive approach and attempts to embrace a wide range of possibilities, sponsorship or acceptance of the list does not prejudice the position of any State or commit any State with respect to the items on it or to the order, form or classification according to which they are presented.

Consequently the list should serve as a framework for discussion and drafting of necessary articles.

List of subjects and issues relating to the law of the sea

1. International régime for the sea-bed and the ocean floor beyond national jurisdiction
 - 1.1 Nature and characteristics
 - 1.2 International machinery: structure, functions, powers
 - 1.3 Economic implications
 - 1.4 Equitable sharing of benefits bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked
 - 1.5 Definition and limits of the area^{1/}
 - 1.6 Use exclusively for peaceful purposes
2. Territorial sea
 - 2.1 Nature and characteristics, including the question of the unity or plurality of régimes in the territorial sea
 - 2.2 Historic waters
 - 2.3 Limits
 - 2.3.1 Question of the delimitation of the territorial sea; various aspects involved
 - 2.3.2 Breadth of the territorial sea. Global or regional criteria. Open seas and oceans, semi-closed seas and enclosed seas
 - 2.4 Innocent passage in the territorial sea
 - 2.5 Freedom of navigation and overflight resulting from the question of plurality of régimes in the territorial sea
3. Contiguous zone
 - 3.1 Nature and characteristics
 - 3.2 Limits
 - 3.3 Rights of coastal States with regard to national security, customs and fiscal control, sanitation and immigration regulations

^{1/} To be considered in the light of the procedural agreement as set out in paragraph 22 of the report of the Committee (A/8421).

4. Straits used for international navigation
 - 4.1 Innocent passage
 - 4.2 Other related matters including the question of the right of transit
5. Continental shelf
 - 5.1 Nature and scope of the sovereign rights of coastal States over the continental shelf. Duties of States
 - 5.2 Outer limit of the continental shelf: applicable criteria
 - 5.3 Question of the delimitation between States; various aspects involved
 - 5.4 Natural resources of the continental shelf
 - 5.5 Régime for waters superjacent to the continental shelf
 - 5.6 Scientific research
6. Exclusive economic zone beyond the territorial sea
 - 6.1 Nature and characteristics, including rights and jurisdiction of coastal States in relation to resources, pollution control and scientific research in the zone. Duties of States
 - 6.2 Resources of the zone
 - 6.3 Freedom of navigation and overflight
 - 6.4 Regional arrangements
 - 6.5 Limits: applicable criteria
 - 6.6 Fisheries
 - 6.6.1 Exclusive fishery zone
 - 6.6.2 Preferential rights of coastal States
 - 6.6.3 Management and conservation
 - 6.6.4 Protection of coastal States' fisheries in enclosed and semi-enclosed seas
 - 6.6.5 Régime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction
 - 6.7 Sea-bed within national jurisdiction
 - 6.7.1 Nature and characteristics
 - 6.7.2 Delineation between adjacent and opposite States
 - 6.7.3 Sovereign rights over natural resources
 - 6.7.4 Limits: applicable criteria
 - 6.8 Prevention and control of pollution and other hazards to the marine environment
 - 6.8.1 Rights and responsibilities of coastal States
 - 6.9 Scientific research

7. Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea
 - 7.1 Nature, scope and characteristics
 - 7.2 Sea-bed resources
 - 7.3 Fisheries
 - 7.4 Prevention and control of pollution and other hazards to the marine environment
 - 7.5 International co-operation in the study and rational exploitation of marine resources
 - 7.6 Settlement of disputes
 - 7.7 Other rights and obligations
8. High seas
 - 8.1 Nature and characteristics
 - 8.2 Rights and duties of States
 - 8.3 Question of the freedoms of the high seas and their regulation
 - 8.4 Management and conservation of living resources
 - 8.5 Slavery, piracy, drugs
 - 8.6 Hot pursuit
9. Land-locked countries
 - 9.1 General Principles of the Law of the Sea concerning the land-locked countries
 - 9.2 Rights and interests of land-locked countries
 - 9.2.1 Free access to and from the sea: freedom of transit, means and facilities for transport and communications
 - 9.2.2 Equality of treatment in the ports of transit States
 - 9.2.3 Free access to the international sea-bed area beyond national jurisdiction
 - 9.2.4 Participation in the international régime, including the machinery and the equitable sharing in the benefits of the area
 - 9.3 Particular interests and needs of developing land-locked countries in the international régime
 - 9.4 Rights and interests of land-locked countries in regard to living resources of the sea
10. Rights and interests of shelf-locked States and States with narrow shelves or short coastlines
 - 10.1 International régime
 - 10.2 Fisheries
 - 10.3 Special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines
 - 10.4 Free access to and from the high seas

11. Rights and interests of States with broad shelves
12. Preservation of the marine environment
 - 12.1 Sources of pollution and other hazards and measures to combat them
 - 12.2 Measures to preserve the ecological balance of the marine environment
 - 12.3 Responsibility and liability for damage to the marine environment and to the coastal State
 - 12.4 Rights and duties of coastal States
 - 12.5 International co-operation
13. Scientific research
 - 13.1 Nature, characteristics and objectives of scientific research of the ocean
 - 13.2 Access to scientific information
 - 13.3 International co-operation
14. Development and transfer of technology
 - 14.1 Development of technological capabilities of developing countries
 - 14.1.1 Sharing of knowledge and technology between developed and developing countries
 - 14.1.2 Training of personnel from developing countries
 - 14.1.3 Transfer of technology to developing countries
15. Regional arrangements
16. Archipelagoes
17. Enclosed and semi-enclosed seas
18. Artificial islands and installations
19. Régime of islands:
 - (a) Islands under colonial dependence or foreign domination or control;
 - (b) Other related matters.
20. Responsibility and liability for damage resulting from the use of the marine environment
21. Settlement of disputes
22. Peaceful uses of the ocean space; zones of peace and security
23. Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction
24. Transmission from the high seas
25. Enhancing the universal participation of States in multilateral conventions relating to the law of the sea"

49. It was agreed that items 6 and 7 might be treated simultaneously.
50. Certain delegations, in expressing and explaining their acceptance of the list, reiterated the importance they attached to the understanding referred to in the explanatory note. In particular, they emphasized their understanding that the list could in no way circumscribe the right of delegations to advance their ideas or points of view or prejudice their substantive positions on any item.
51. Some delegations reserved their position on certain items of the list. The relevant statements made thereon by such delegations are recorded in summary records A/AC.138/SC.II/SR.44 and 45 of Sub-Committee II. Other delegations pointed out that the reservations in no way affected the provisions contained in paragraph 3 of the explanatory note of the list.

IV. FUTURE WORK OF THE SUB-COMMITTEE

52. On 16 August, following agreement in the Sub-Committee on the list of subjects and issues, the delegations of Australia and Canada tabled a paper containing proposals for the future organization of the work of Sub-Committee II. These are contained in document A/AC.138/SC.II/L.14, which is attached as Annex XX. Time was not available to give it detailed consideration. The hope was expressed, however, that early agreement would be reached on the organization of the future work of the Sub-Committee.

V. ADOPTION OF THE REPORT OF THE SUB-COMMITTEE

53. At its 47th meeting, on 17 August 1972, the Sub-Committee adopted the present report and decided to transmit it to the Committee.

ANNEXES

/Note: the text of the documents referred to in the annexes listed below will be inserted in the edited version of the report/

ANNEX I

List of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea sponsored by Algeria, Argentina, Brazil, Cameroon, Ceylon, Chile, China, Colombia, Congo, Cyprus, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Ghana, Guatemala, Guyana, Iceland, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mauritania, Mauritius, Mexico, Morocco, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Romania, Senegal, Sierra Leone, Somalia, Spain, Sudan, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia and Zaire

(document A/AC.138/66 and Corr.2)

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ANNEX II

Amendments submitted by Malta (document A/AC.138/67) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX III

Amendments submitted by the United States of America (document A/AC.138/68) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX IV

Amendment submitted by Greece and Italy (document A/AC.138/69 and Add.1) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX V

Amendments submitted by Japan (document A/AC.138/70) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX VI

Amendments submitted by the Union of Soviet Socialist Republics (document A/AC.138/71) to the list of subjects and issues to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX VII

Amendments submitted by Afghanistan, Austria, Belgium, Bolivia, Czechoslovakia, Hungary, Mali, Nepal and Zambia (document A/AC.138/72 and Corr.1) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX VIII

Amendments submitted by Turkey (document A/AC.138/74 and Corr.1) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX IX

Amendments submitted by France, the Netherlands and the United Kingdom of Great Britain and Northern Ireland (document A/AC.138/76) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX X

Amendments submitted by Poland (document A/AC.138/77) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX XI

Amendment submitted by Japan (document A/AC.138/78) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea (A/AC.138/66 and Corr.2)

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ANNEX XII

List of subjects and issues relating to the law of the sea to be submitted to the Conference on the Law of the Sea submitted by Malta (document A/AC.138/75 and Corr.1).

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ANNEX XIII

Draft article on fishing (basic provisions and explanatory note) submitted by the Union of Soviet Socialist Republics (document A/AC.138/SC.II/L.6)

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ANNEX XIV

Draft articles on straits used for international navigation submitted by the Union of Soviet Socialist Republics (document A/AC.138/SC.II/L.7)

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ANNEX XV

Working paper on management of the living resources of the sea submitted by Canada (document A/AC.138/SC.II/L.8)

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ANNEX XVI

Revised draft fisheries article submitted by the United States of America (document A/AC.138/SC.II/L.9)

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ANNEX XVII

Draft articles on exclusive economic zone concept submitted by Kenya (document A/AC.138/SC.II/L.10)

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ANNEX XVIII

Working paper on principles for a fisheries régime submitted by Australia and New Zealand (document A/AC.138/SC.II/L.11)

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ANNEX XIX

Proposals for a régime of fisheries on the high seas submitted by Japan
(document A/AC.138/SC.II/L.12)

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ANNEX XX

Proposals for the future organization of the work of Sub-Committee II submitted
by Australia and Canada (A/AC.138/SC.II/L.14)

[text to be inserted]

ANNEX XXI

Index to summary records of Sub-Committee II

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