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

PART I

WORK OF THE COMMITTEE IN 1972

19. The Committee held its first session in New York from 28 February to 30 March. The second session was held in Geneva from 17 July to 18 August.

20. The Committee held _____ meetings.

21. The officers of the Committee during 1972 were as follows:[1/]

Chairman:	Mr. Hamilton Shirley Amerasinghe (Ceylon)	
Vice-Chairmen:	Zaire	Mr. Kalonji-Tahilala
	Mauritius	Mr. R.K. Ramphul (first session) Mr. L. Venchard (second session)
	Kuwait	Mr. S. Khanachet (first session) Mr. S.N. Al-Sabah (second session)
	Chile	Mr. D. Casanueva (first session) Mr. H. Santa Cruz (second session)
	Trinidad and Tobago	Mr. K.T. Hudson-Phillips
	Norway	Mr. J. Evensen
	Poland	Mr. W. Natorf
	Yugoslavia	Mr. L. Mojsov (first session) Mr. Z. Perisić (second session)
Rapporteur:	Mr. Charles V. Vella (Malta)	

22. At the opening of the summer session, on 17 July 1972, the Committee agreed that the highest priority should be given to the question of the list of subjects and issues relating to the law of the sea. It was also agreed at the start of the summer session that the Committee should meet twice a week in order to review the progress made by the Sub-Committees.

23. On __ August 1972 the Committee formally approved the following list which had been recommended by Sub-Committee II (see Part III below):

(Text of List)

1/ The officers of the three Sub-Committees and of working groups are listed in the relevant sections of the report.

24. The task of considering the matters raised by General Assembly resolution 2846 (XXVI) (see para. 8 above) was assigned to Sub-Committee III.

25. At its 86th and ____ meetings on 17 and 18 August, the Committee adopted the reports of its three Sub-Committees and decided that they should form parts II, III and IV of the present report.

26. On 23 March, the Committee agreed to the suggestion of the Chairman that, having regard to the relevant provisions of General Assembly resolution 2750 C (XXV), the Secretariat should earmark funds for a five week session in the spring and an eight week session in the summer of 1973.

27. At the 73rd meeting, on 10 March, the representative of Senegal drew the Committee's attention to some points of disagreement between his Government and the United Nations Secretariat in connexion with the denunciation of the Convention on the Territorial Sea and Contiguous Zone and the Convention on Fishing and Conservation of the Living Resources of the High Seas. Statements were made on this matter by the Legal Counsel and by the representative of Senegal on 23 March.

28. At its March session, the Committee heard statements made by the five new members appointed under General Assembly resolution 2881 (XXVI). These statements referred for the most part to various points dealt with in the Committee's previous report to the Assembly at its twenty-sixth session (A/8421). It may be noted that one of the new members expressed the view that the current international struggle with regard to rights over the high seas and oceans was in essence a struggle between aggression and resistance, between plunder and conservation, and between foreign hegemony and independence; and that all States must respect the equality of small and large countries in settling questions concerning rights over the oceans. Other delegations rejected the accusations and pointed out that the Committee should devote its energies to resolving the differences and accommodating the interests of various countries so as to prepare for a successful law of the sea conference.

29. At the 77th meeting, on 30 March 1972, the representative of Kuwait introduced a draft decision (A/AC.138/L.11), consideration of which, by a decision of the Committee, was deferred until the summer session. The proposal, as revised (A/AC.138/L.11/Rev.1), was reintroduced by the delegate of Kuwait on 14 August 1972.

30. When reintroducing the revised text, the delegate of Kuwait declared that the submission of the proposal had been motivated by the evidence of operational activities undertaken by certain States in the international area. Such actions were contrary to General Assembly resolution 2574 D (XXIV) and the Declaration of Principles [resolution 2749 (XXV)], as well as UNCTAD resolution 52 (III). The representative of Kuwait requested inclusion of the proposal in the Committee's report.

31. The draft decision and the approach embodied in it were supported by a number of speakers both before and after the introduction of the revised text. It was stated that the fact that existing law did not contain an express prohibition of unilateral activities in the area did not mean that such activities could be undertaken. The international character of the area, it was said, was brought about both by its actual nature and location and by virtue of the consensus embodied in the Declaration of Principles: the Declaration was the only authentic legal expression of the will of States on the matter, and, it was considered, meant that national authorities were denied the power to regulate exploitation in the area or to grant licences. The view was advanced that the "moratorium" contained in resolution 2574 D (XXIV) had legal force, not because it was contained in an Assembly resolution as such, but because it was the inevitable legal corollary of the principles, which no one disputed, that there was an international area of the sea-bed. The Declaration of Principles did not, it was noted, constitute an interim régime for the area, but made activities there subject to the international régime to be established. It was also stated that the proposed decision reflected existing positive law, since the principle of freedom of the high seas was not a rule of natural law but one attributable to customary law, which had never had more than permissive value. According to this view, the Declaration of Principles, which had been adopted without opposition by the General Assembly representing the international community, had removed one of the constitutive elements of the customary principle, namely, the opinio necessitatis, and by doing so had abrogated the customary principle itself.

32. Other speakers, however, were opposed to the draft decision. It was stated that the proposal now advanced could not, any more than resolution 2574 D (XXIV), which a number of Member States had opposed, modify international law, or deprive States of their rights under international law. Moreover, it was pointed out that the Declaration of Principles did not constitute an interim régime, had no dispositive effect until the international régime had been agreed upon and the area to which it was applicable defined, and the common heritage principle, in any event, did not mean the common property of mankind. There was no possibility, it was emphasized, of agreement on a moratorium, and attempts to secure the adoption of the proposal would inject a divisive element into the discussions being held. It would be preferable according to this view to work with maximum speed on the elaboration of an agreed international régime, before commercial exploitation actually began. The draft decision, it was said, represented an attempt to restrict technological progress and to limit experimental activities, which would not aid the international community in its efforts to benefit from the existence of sea-bed resources. It was also pointed out that a moratorium with regard to the exploitation of sea-bed resources could be established only in the case if at the same time the moratorium would also be applied with respect to the extension of the territorial sea, fishery zones and the other economic zones beyond the 12-mile limit. It was also observed that the Committee was empowered to prepare texts for the Conference, rather than itself to adopt resolutions or propose them to the General Assembly.

33. At its 78th meeting, on 20 July 1972, the Committee decided that the text of the Declaration of Santo Domingo, which was provided by the representative of Venezuela, and that of the conclusions in the General Report of the African States Regional Seminar on the Law of the Sea held in Yaoundé, which was provided by the representative of Kenya, should be circulated as Committee documents (A/AC.138/80 and 79). Statements commenting upon and introducing these texts were made at the same meeting.

34. In subsequent meetings various references were made to these documents and to the ideas they contained, in particular that of an exclusive economic zone or that of a patrimonial sea. Reference was also made in this connexion to the draft articles on the economic zone concept submitted in Sub-Committee II by Kenya, which was regarded by a number of delegations as a starting point for serious negotiations. In the view of these delegations, the concept provided for a realistic revision of international law on the utilization of marine resources which could guarantee a fair share for the developing countries without interfering with the legitimate interests of other States.

The following points were among those made on these subjects: that the Santo Domingo Declaration was based on the idea of the need for a progressive development of the law of the sea in the light of scientific and technological progress and of the new political realities, the idea that the new law of the sea should take the form of rules of worldwide application, without prejudice to regional or sub-regional agreements based on those rules, the idea that it was essential to bear in mind the need to close the existing gap between the developing and developed countries, the idea that the new law of the sea should reconcile the needs and interests of individual States with those of the international community, the idea that it was necessary to define not only the rights but also the obligations and responsibilities of States in respect of the various sea areas, and the idea that the new rules on the subject should promote international co-operation for the adequate protection of the marine environment and the proper utilization of its resources; that the Santo Domingo Declaration had gathered together, interpreted and in some cases amplified the policies of other Latin American countries which had been striving to asset their right to develop all the resources of the sea adjacent to their coasts; that the Yaoundé seminar had been the first step taken by African countries towards codifying their views on the future of the sea; that the Declaration and the Yaoundé conclusions had many points in common and indicated that the views of developing parts of the world were growing increasingly similar; that there was within reach a basis for accommodation on the problems of the law of the sea following the functional approach under which the coastal State could exercise particular forms of specialized jurisdiction in an area or areas extending beyond the limits of its sovereignty over its territorial sea and that a consensus appeared to be developing around the twelve mile limit for the territorial sea together with a broad economic zone; that these proposals for an economic zone-patrimonial sea embodied a functional approach essential to a successful outcome of any law of the sea conference; that the economic zone concept was in accordance with UNCTAD's principle XI (TD/III/Res./46), para. XI) which endorsed the rights of the coastal States to the resources of the sea within the limits of national jurisdiction; that the basic elements of the economic zone concept had been placed before the Committee in the Kenya draft articles; that the use of the word "exclusive" with regard to the resources of the

economic zone need not hamper agreement on various other possibilities, through preferential arrangements, licencing systems and co-operation with existing and future international organizations; that, in particular, bilateral, multilateral or regional arrangements could be entered into with land-locked and other geographically under-privileged neighbouring countries; that differences with regard to the breadth of the economic zone and the ways in which rights were exercised were less important than the actual principle of the existence of a zone of special jurisdiction; and that the economic zone was not intended to be a zone of sovereignty such as the territorial sea and that the distinction between the two was due to the need to reconcile various uses of the sea. Other points were that the Santo Domingo Declaration as the product of a sub-regional conference could not be deemed applicable to the oceanic States of Latin America which had not taken part in the Conference; that at the Santo Domingo Conference a call had been made for more time to study the concept of the patrimonial sea; that virtually complete coastal State resource management jurisdiction over resources in adjacent sea-bed areas was acceptable if this jurisdiction was subject to international treaty standards to prevent unreasonable interference with other uses of the oceans to protect the oceans from pollution, to protect the integrity of investment, on sharing of revenues for international community purposes and on compulsory settlement of disputes; that there were reasonable ways to accommodate the interests of both coastal and distant States and that a solution of the fisheries problem should take into account the migratory habits of fish and the manner in which they were fished; that an effective and equitable régime for the deep sea-beds must protect not only the interests of the developing countries but also those of the developed by establishing reasonable and secure investment conditions; that the impact of such a broad claim to an extensive zone of patrimonial sea could not be isolated from its impact on the sea-bed beyond national jurisdiction which could only be diminished thereby; that despite the fact that these texts were considered significant milestones in the progressive development of the law of the sea, the Santo Domingo Declaration appeared to seek to perpetuate the "exploitability" criteria

of the 1958 shelf Convention in regard to the delimitation of the continental shelf, although by calling for study of the precise outer limit of the shelf it also appeared to leave the latter an open question; and that that Declaration contained no reference to international standards and dispute settlement procedures applicable to coastal State resource jurisdiction or any distinction in the treatment of living resources based on their migratory characteristics, but that those documents certainly provided a starting point for serious negotiations; that only a third of the Members of the Organization would benefit from exclusive economic rights up to 200 miles from their territory; that equity would call rather for rational use and conservation of fish stocks and for allowing developing countries which did not have sufficient means of exploitation an exclusive right to their own catch; and that the resources of the high seas could be used by all countries. It was also noted that the criterion of exploitability to the edge of the continental margin was reflected in customary and conventional international law; that the North Sea Continental Shelf cases affirm that the continental shelf comprises the submerged land mass; and that the retention of the exploitability, alone or with depth and/or distance criteria was an essential element in any overall accommodation on the law of the sea.

35. On 9 August 1972, the representatives of Afghanistan, Austria, Belgium, Bolivia, Czechoslovakia, Hungary, Nepal, Netherlands, Singapore, Zaire and Zambia submitted a request (A/AC.138/81), which was introduced by the delegate of Singapore, proposing that the Secretary-General be asked to prepare a study on the different economic implications of the various proposals for limits of the international sea-bed area. The question of the limits of national jurisdiction was important, it was said, not only for coastal States, but also, as regards the viability of the international régime, and machinery; the economic significance of the régime and the possibility of obtaining benefits which could be shared would vary according to the limits ultimately adopted. Further, it was argued, the character and functions of the organs of the international machinery would necessarily depend on the actual extent and nature of the area of the international régime which ultimately accrued to mankind as a whole. Since information on the economic significance and implications of the different proposals on limits was not yet available to the Committee, the sponsors considered it desirable and useful to have a study of the kind requested of the Secretary-General, based on existing data and knowledge, and which would complement the existing reports prepared by the Secretary-General, contained in documents (A/AC.138/36 and 73). Developing countries had neither the technical, financial nor the human resources to carry out such a study themselves.

36. A number of speakers expressed their strong opposition to the request that the study be made by the Secretary-General. It was said that the list of five limits specified in the proposal prejudged a very delicate subject and was totally unacceptable. There were various other limits, or combinations of limits, which could be examined and which were inter-connected with ideas on the nature of the international régime and machinery for the sea-bed. According to this view, the study requested was in fact to be regarded as an argument against the broad jurisdiction of the coastal State which had been advocated repeatedly by States from all continents. It was also stated that obtaining the full amount of scientific information required in order to carry out the study would be beyond the resources of the Secretariat and entail a large expenditure of funds. Furthermore, it was said that the matter could in any case not properly be dealt with on the basis of the limits alone. The implications of narrow limits for coastal States also required study, it was suggested. The view was advanced that States should work out for themselves the implications of the various possible limits as regards their individual situation.

37. At the 86th meeting on 17 August 1972 the text of the Moscow Declaration on principles of the rational exploitation of living resources of the world ocean in the common interest of all peoples of the world was introduced by the representative of the Polish People's Republic on behalf of the delegations of Bulgaria, Czechoslovakia, Hungary, Poland and the USSR (A/AC.138/85).

38. It was stressed in the Moscow Declaration that the régime of fisheries on the high seas should be based on the principle of equal participation of all States in fishing and strict observation of scientifically-based measures for conservation of the sea at the maximum sustainable level. Existing systems of international regulation of fishing, it was said, should be constantly improved and in this connexion the role of regional international fishery organizations should be increased and widened; the possibility should also be provided for all States concerned to participate in them without discrimination on the basis of their sovereign equality. The Moscow Declaration, it was stated, supported the struggle of developing countries to establish their own national economy including fisheries; the parties to the Declaration gave assistance to the developing countries in respect of establishment of and technical equipment for their fishing industry and would further co-operate with developing countries in the field of marine fisheries. It was also said that certain preferential rights which would give the

possibility of development of national fisheries and overcoming technical backwardness should be provided for developing countries. In this view, the rapid solution of the problem of full and rational utilization of living resources of the seas in the common interests of peoples could be found on the basis of a reasonable combination of the interests of coastal States and of distant water fishing States by way of international regulation instead of by adoption of unilateral measures by individual States.

39. The following points were amongst those made during the Committee's discussions in assessing the rate of progress achieved and the speakers' evaluation of the form and overall nature of the Conference envisaged in resolution 2750 C (XXV): it was stated that although there were a number of difficulties outstanding, they would fall into place when the essential questions relating to national jurisdiction were resolved, and that the broad outlines of a possible settlement of the major outstanding issues of the law of the sea had in fact already emerged from the deliberations of the Committee and from developments, particularly in recent years, in state practice; that if an early general conference on the law of the sea was found to be feasible and desirable, it would be necessary that its agenda and committee structure should not be such as to make negotiations difficult and the achievement of international solutions illusory, and that it was extremely unlikely that the General Assembly would decide to hold a conference limited to the question of the sea-bed beyond national jurisdiction and a few other law of the sea issues; that the preparation of draft articles should be preceded by an endeavour to reach political agreement on the general outlines of a new, universal law of the sea which could serve as a basis for regional and sub-regional agreements; that at the present stage what was really important was to reach agreement on the fundamental bases of the system and that what was needed was a global solution, not partial solutions which would in any case depend on the subsequent solution of other problems of the law of the sea; that the law of the sea Conference should not resolve itself simply into a political deal between maritime powers and developing coastal States but that in establishing a new law of the sea the implications of technological advance and considerations of equity should also be taken into account; that the developing countries of Africa, Asia and Latin America had adopted, through various regional meetings, broadly convergent views, and that the time for a frank dialogue with the maritime powers was at

hand; that as a result of the progress made, the forthcoming conference would not confine itself to the problems left unsolved by the 1958 and 1960 Conferences or which had arisen as a result of scientific and technological advances, but would be concerned with the progressive development of the law of the sea; that the negotiations so far conducted had enabled individual countries to weigh various interests and to consider their positions; that controversial topics and questions had been identified and criteria harmonized and unified in regional groups and between countries with common needs and interests, thus facilitating future negotiations; that draft articles submitted so far bore only on isolated questions, and that a working group should be established to consider the draft articles on fishing in order to accelerate the Committee's work.

40. Views as regards the timing of the Conference were frequently related to the positions taken on the stage reached in the preparatory work. The point was made that adequate preparation was necessary and that only in that case should the Conference be convened; that so far the Committee had not achieved the task entrusted to it by the General Assembly; a Conference which would be convened under such circumstances might result in failure and such failure must be avoided at any cost; on the other hand the desirability of holding the Conference at the earliest possible moment in the interest of accelerating progress of work was also mentioned. In essence the main suggestions put forward were as follows: that the Conference should be convened as soon as possible in 1973; that the Conference should be convened in 1973, with the Committee holding at least one more session prior thereto; that the initial session of the Conference, to deal in particular with organizational matters, should be convened during the 28th session of the General Assembly with the substantive work of the Conference to begin early in 1974 if possible and, if not, in 1975; that two sessions of the Committee should be held in 1973, and, if the last session made sufficient progress, that the Conference could meet late in 1973; that the issue of the timing of the Conference should be determined by the General Assembly in accordance with the terms of paragraph 3 of resolution 2750 C (XXV) in the light of its judgement on the sufficiency of preparation; and that it was of paramount importance to the success of the Conference that preparation of all the necessary documents be complete and the progress of preparatory work was therefore the first thing to take into account as regards the timing of the Conference. Another possibility mentioned was to set the date of the Conference in the latter part of 1973,

replacing the Committee by an Ad Hoc Committee which would be composed of States members of the Bureaux of the Committee with the limited mandate of preparing exclusively organizational and procedural aspects for the Conference.

41. As regards the place where the Conference should be held, the Committee was informed on 10 August 1972 of an official invitation from the Government of Chile for the holding of the Conference at Santiago de Chile in accordance with the terms of paragraph 10 of General Assembly resolution 2609 (XXIV). The advantages of holding the Conference in a developing country having good relations and a clear definition in favour of international negotiation were stressed. The Chilean invitation, it was stated, was in respect of any meetings which would take place within one year. If the duration should extend beyond that period, some other country from any part of the world could offer to act as host for the additional period.

42. The Chilean invitation received a warm welcome and broad support from representatives from all regional groups. In this connexion, the successful experience of the recent Third United Nations Conference on Trade and Development and the contribution of the Latin American countries to the work of the Committee were recalled.

43. The Committee was also reminded of the formal invitation extended by the Government of Austria on 15 December 1971 at the 26th session of the General Assembly to hold the Conference in Vienna. It was pointed out that since the Chilean invitation covered a period of one year, possibilities for accommodating the two invitations existed since it was thought probable that the Conference would extend over a longer period.

44. The Austrian invitation was also considered in a favourable light, it being noted that a compromise solution was possible as far as the two invitations were concerned.

45. Other references were made relating to the location of the Conference. The hope was expressed that if and when Governments of other developing countries offered sites for holding of subsequent sessions, these offers should also be considered. In another view, the question was raised whether fixed positions could be taken at the current stage of the Committee's work since the final decision must be taken by the General Assembly. Still, in another view, it was held that a Conference in several sessions contradicted the approach provided for in resolution 2750 (XXV), and that there must, therefore, be a single, well-prepared session. Reference was also made to general positions on the subject of the location to be used for major conferences.