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

PROPOSALS IN REGARD TO THE ORGANIZATION OF THE COMMITTEE'S WORK
PRESENTED TO THE COMMITTEE BY THE CHAIRMAN AT THE 90TH MEETING
HELD ON 5 MARCH 1973

1. The two sessions of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor scheduled to be held in 1973 and the first of which commences on 5 March 1973, will be two of the most crucial in the history of this Committee.
2. The prospects for the Third United Nations Law of the Sea Conference making a substantive start, as contemplated, during the Spring of 1974 in Santiago, Chile, after a formal inauguration of the Conference during the General Assembly's twenty-eighth session this year must depend essentially on the progress that is achieved during the five weeks' Spring and the eight weeks' Summer sessions of the Committee.

I would, therefore, appeal to all groups and all members to exert themselves to secure a sufficient degree of agreement and understanding which will facilitate the preparatory work.

3. It was the adoption, during the Summer session of the Committee in 1972, of a comprehensive list of subjects and issues relating to the Law of the Sea, referred to in paragraph 2 of resolution 2750 C (XXV) that influenced the General Assembly's decision in its resolution 3029 A (XXVII) to decide, subject to review at its twenty-eighth session of the progress of the preparatory work of the Committee, to convene the first session of the Third Conference on the Law of the Sea in New York for a period of approximately two weeks in November and December 1973, for the purpose of dealing with organizational matters, and to convene the second session of the Conference, for the purpose of dealing with substantive work, at Santiago, Chile, for a period of eight weeks in April and May 1974.

4. The progress made by the Committee so far may be examined in relation to the terms of reference and the work of the three Sub-Committees.

The Committee may also wish to consider what modifications, if any, in its present organization are deemed necessary to expedite its preparatory work.

5. For this purpose, this paper will deal in turn with each Sub-Committee and the progress it has achieved so far.

Sub-Committee I

Terms of reference:

"To prepare draft treaty articles embodying the international régime - including an international machinery - for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, taking into account the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked, on the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil thereof, beyond the Limits of National Jurisdiction, economic implications resulting from the exploitation of the resources of the area /resolution 2750 A (XXV)/ as well as the particular needs and problems of land-locked countries /resolution 2750 B (XXV)/."

6. As section II of the report of the Committee for 1972 indicates, that Sub-Committee established a Working Group to deal with item 1 of its programme of work entitled "Status, scope and basic provisions of the régime based on the Declaration of Principles (resolution 2749 (XXV))".

This Working Group consisted of 22 members but was to be open-ended to enable non-members to present proposals or those who had already done so to join in their examination.

7. Sub-Committee I also discussed and concluded the discussion of item 2 of its programme of work, viz: Status, scope, functions and powers of the international machinery in relation to:

(a) Organs of the international machinery, including composition procedures and dispute settlement;

(b) Rules and practices relating to activities for the exploration, exploitation and management of the resources of the area, as well as those relating to the preservation of the marine environment and scientific research, including technical assistance to developing countries;

(c) The equitable sharing in the benefits to be derived from the area, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked;

(d) The economic considerations and implications relating to the exploitation of the resources of the area, including their processing and marketing;

(e) The particular needs and problems of land-locked countries; and

(f) Relationship of the international machinery to the United Nations system.

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This item was also referred by the Sub-Committee to the Working Group appointed to deal with item 1.

8. This covers the entire scope of the terms of reference of Sub-Committee I and special arrangements need not be made for that Sub-Committee other than for the continuation of the deliberations of its Working Group and for periodic meetings of the Sub-Committee itself to review the progress in its Working Group and to take any other action necessary for fulfilling its mandate.

Sub-Committee II

9. The terms of reference of this Sub-Committee are as follows:

"To prepare a comprehensive list of subjects and issues relating to the law of the sea, including those concerning the régimes 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."

10. In the course of my informal consultations last week it was stated that just as Sub-Committees I and III had discussed their subjects and issues in detail before appointing Working Groups, Sub-Committee II should also be provided with the same opportunity and facilities. This I am sure, the Committee will approve but I must appeal to Sub-Committee II to avoid protracted general debates and to proceed with all despatch to the detailed examination of the subjects and issues falling within its purview by the appointment of a Working Group or Working Groups.

11. A distinction has to be drawn between the preparation of the list of subjects and issues and the competence of any particular Sub-Committee to discuss, and draft treaty articles on, those subjects and issues. As many of the subjects and issues are closely interrelated and in such cases each of them does not lend itself to treatment in isolation from the rest, the Chairman would like to suggest the grouping of the subjects and issues in appropriate categories, each category to be assigned to a Working Group. The Committee will note that there is an inconsistency between, on the one hand, the terms of reference of Sub-Committee II, which, on a literal interpretation, empower it to draft treaty articles on all items included in the list of subjects and issues and, on the other hand, the terms of reference of the other two Sub-Committees which empower them to draft articles on those aspects of the law of the sea which fall within their purview and which appear in the list of subjects and issues as items or subitems.

The Committee must, therefore, decide that Sub-Committee II has to confine itself to matters other than those assigned to Sub-Committee I and Sub-Committee III or retained by the Committee itself.

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12. The treatment of the question of the limits of national jurisdiction and of the question of peaceful uses has already been determined by the main Committee under the agreement read out by the Chairman at the 66th meeting on 27 August 1971. That agreement reads as follows:

"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 in so far as this question is relevant to its mandate."

13. There are certain other items which concern general principles of international law and which do not fall strictly within the terms of reference of any Sub-Committee. On the other hand, each of the Sub-Committees, in regard to its terms of reference, has to deal with these particular items. For example, item 15 "Regional arrangements", item 20 "Responsibility and liability for damage resulting from the use of the marine environment", and item 21 "Settlement of disputes" have each of them a special relevance to some of the items assigned to each of the three Sub-Committees.

In these circumstances, the most rational method of dealing with those items, viz: items 15, 20 and 21, is, while retaining them as the responsibility of the main Committee, to require each of the Sub-Committees to discuss those items in so far as they are relevant to the terms of reference of the various Sub-Committees.

14. If I may now revert once again to the progress achieved by the Sub-Committees, I should like to deal with Sub-Committee III.

The terms of reference of Sub-Committee III are as follows:

"To deal with the preservation of the marine environment (including, inter alia, the prevention of pollution) and scientific research, and to prepare draft treaty articles thereon."

This Sub-Committee arranged its programme of work under five main headings as follows:

A. Preservation of the marine environment (including the sea-bed)

B. Elimination and prevention of pollution of the marine environment (including the sea-bed)

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C. Scientific research concerning the marine environment (including the sea-bed)

D. Development and transfer of technology

E. Other matters.

Sub-Committee III has set up a Working Group on marine pollution based on the same formula as the Working Group on the régime in Sub-Committee I, i.e., a Working Group of 33 but open-ended to permit of participation of other interested members.

The principle has been accepted that Working Groups will be serially numbered in the order in which they have been established for the Committee as a whole without a separate serial numbering for each Sub-Committee. The Working Group on Marine Pollution has been designated Working Group 2.

Before suggesting a suitable categorization of the subjects and issues which may be dealt with by Sub-Committee II, I should like to suggest the assignment of the various items and subitems as between the various Sub-Committees.

In doing so, we must bear in mind the agreement of 27 August 1971 and in the background of that agreement seek to sift out of the list of subjects and issues those items and subitems which belong elsewhere than in Sub-Committee II.

It was never intended that any single Sub-Committee would be the focal point of the preparatory work for the Law of the Sea Conference. There can be only one focal point and that is the Committee itself.

15. In the course of the informal consultations which I held last week the suggestion was made that in dividing the subjects and issues we should adopt the criterion of national jurisdiction or international jurisdiction.

In many cases this distinction and this criterion for the separation of subjects and issues into two different groups would be extremely relevant and logical but there are many subjects and issues, many items and subitems, which do not lend themselves to such a grouping.

The Committee would do well, therefore, to adopt both these principles - the principle of division according to national or international jurisdiction as well as the pragmatic approach of assigning a particular item or subitem to the Sub-Committee whose terms of reference are most relevant to that particular item or subitem.

As a general rule, any Sub-Committee should be free to make proposals or recommendations on any aspect of any item or subitem if it is relevant to or impinges on any part of that Sub-Committee's terms of reference.

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16. I would suggest for the Committee's consideration the following distribution of responsibility between the various Sub-Committees. In doing so, I have taken into consideration the valuable proposals made by the delegations of Australia and Canada and which appear on pages 197 and 198 of document A/8721. These proposals were originally issued as document A/AC.138/SC.II/40.

I have also taken into account the observations made by various members during the informal consultations that I conducted last week.

17. The distribution of responsibility that I would suggest for the Committee's consideration - and here I must emphasize that it is the Committee's responsibility to determine this distribution - is as follows:

Item 1 and all the subitems, with the exception of subitems 1.5 and 1.6 to Sub-Committee I.

Subitems 1.5 and 1.6 to be dealt with in accordance with the agreement of 27 August 1971.

The following items and all the subitems under them would be the responsibility of Sub-Committee II:

Item 2 - Territorial sea

Item 3 - Contiguous zone

Item 4 - Straits used for international navigation

Item 5 - Continental shelf - with the following modification:

In regard to subitems 5.4 and 5.5 so far as they relate to national jurisdiction, they would be the responsibility of Sub-Committee II and so far as they relate to international jurisdiction they would be the responsibility of Sub-Committee I;

Subitem 5.6 would go to Sub-Committee III.

The following items would also belong to Sub-Committee II with the modifications indicated:

Item 6 - Exclusive economic zone beyond the territorial sea: subject to questions of pollution control and scientific research in the zone and duties of States relating thereto being assigned to Sub-Committee III (included under subitem 6.1):

Subitem 6.7, "Sea-bed within national jurisdiction" would be the primary responsibility of Sub-Committee II but Sub-Committee I might need to consider it in relation to "Sea-bed beyond national jurisdiction".

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Subitem 6.7.4 "Limits: applicable criteria" to be dealt with in accordance with the agreement of 27 August 1971.

Subitems 6.8, 6.8.1, and 6.9 to Sub-Committee III.

In regard to item 7, "Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea" Sub-Committee II would deal with it subject to the following:

Subitem 7.2 to be dealt with in the same manner as subitem 6.7.

In regard to subitem 7.6, "Settlement of disputes", as I have indicated, this subitem should be assigned to the Main Committee, but each Sub-Committee would be free, and will in fact have, to deal with the arrangements for settlement of disputes so far as the questions coming within its purview are concerned. I cannot imagine, however, that different arrangements for settlement of disputes would have to be adopted and applied in regard to different subjects and issues and it would, therefore, be more rational for the Main Committee to handle the general question of settlement of disputes.

Item 8, "High seas" and all subitems under it would go to Sub-Committee II.

The following items, subject to the modifications indicated, should be assigned to Sub-Committee II:

Item 9, "Land-locked countries"

Item 10, "Rights and interests of shelf-locked States and States with narrow shelves or short coastlines"

Item 11, "Rights and interests of States with broad shelves".

The modifications are as follows:

Subitems 9.2.3, 9.2.4, 9.3 should go to Sub-Committee I.

Subitem 10.1 should also go to Sub-Committee I.

The following items and all the subitems under them should go to Sub-Committee III:

Item 12, "Preservation of the marine environment"

Item 13, "Scientific research"

Item 14, "Development and transfer of technology".

In regard to all subitems under item 14, Sub-Committee I and Sub-Committee II would also have to consider them so far as they are relevant to their respective mandates.

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Item 15, "Regional arrangements" - each Sub-Committee would have to consider this question so far as it is relevant to its respective mandate.

The following items would go to Sub-Committee II:

Item 16, "Archipelagos"

Item 17, "Enclosed and semi-enclosed seas"

Item 18, "Artificial islands and installations"

Item 19, "Régime of islands"

Where any of these items relate to any aspect of the mandates of the other Sub-Committees, they would be entitled to consider the question.

Item 20, "Responsibility and liability for damage resulting from the use of the marine environment" would be dealt with in the same manner as suggested for item 15.

Item 21, "Settlement of disputes" - A proposal has already been made in regard to this subject.

Item 22, "Peaceful uses of the ocean space; zones of peace and security" would be dealt with in accordance with the agreement of 27 August 1971.

Item 23, "Archaeological and historical treasures, etc." - Sub-Committee I.

Item 24, "Transmission from the high seas" - Sub-Committee III.

Item 25, "Enhancing the universal participation of States in multilateral conventions relating to the law of the sea" would be the responsibility of the main Committee.

The distribution that has been suggested by me would avoid unnecessary duplication of discussion without impairing the essential unity of the subject as a whole, viz: the law of the sea.

18. In an earlier part of this statement, I suggested that the subjects and issues should be grouped in appropriate categories and that Sub-Committee II - and I refer to Sub-Committee II because it is in relation to the work of that Sub-Committee that such a categorization is necessary - each category might be assigned to a Working Group when the Sub-Committee is ready and disposed to do so.

These are only suggestions and I have not lost sight of the fact that the Sub-Committee itself should be responsible for the organization of its work.

I would suggest for consideration by Sub-Committee II that it examine the subjects in the following groups and categories, and I refer to the items

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and subitems which have already been assigned to Sub-Committee II or which are to be assigned to it:

Category I - Item 2
Item 3
Item 4
Item 16
Item 17

Category II - Item 6
Item 7
Item 9
Item 10
Item 11
Item 19

Category III - Item 5

Category IV - Item 8
Item 24

Category V - Item 18

and Item 19 - unless either of these could more appropriately be considered in any of the other categories.

19. In the course of my consultations, I indicated that the organization into Sub-Committees, while it was appropriate during the earlier stages of the Committee's work, might not any longer be relevant, but I would not wish to see any change and would, therefore, suggest that a three-tiered procedure be adopted as follows:

Working Groups, having examined the various subjects and issues in detail, would report to their respective Sub-Committees, making any recommendation deemed fit in regard to the appointment of small and workman-like drafting committees; the Sub-Committees would in turn report to the Main Committee and for that purpose the Committee could hold one or two meetings a week to review progress.

All draft treaty articles and draft articles must be the responsibility of the Committee as a whole which should, therefore, approve the arrangements made for the preparation of such articles.

20. In the course of my informal consultations with various groups, certain suggestions were made which deserve consideration. One of these was that the proceedings of the London Conference on Ocean Dumping and those of the Vancouver Conference on Fishing - the first to be held in the last 15 years - should be brought to the notice of the Main Committee for the information of Sub-Committee II.

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It was also suggested that the proceedings of the proposed IMCO Conference should, when they are available, be similarly forwarded to the Main Committee. The Committee might wish to decide that the Secretariat be asked to take action accordingly.

I should be glad if the Committee would consider these proposals and arrive at an early decision. In the meantime, those Working Groups that have already been established could proceed with their work.
