

UNITED NATIONS

GENERAL  
ASSEMBLY



Distr.  
LIMITED

A/AC.138/L.3/Add.1  
26 August 1970

Original: ENGLISH

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

DRAFT REPORT

PART III

CONSIDERATION OF THE REPORT OF THE SECRETARY-GENERAL ON INTERNATIONAL  
MACHINERY PURSUANT TO GENERAL ASSEMBLY RESOLUTION 2574 C (XXIV)

24. At its second session in 1970, the Committee discussed the report (A/AC.138/23) submitted to it by the Secretary-General in accordance with General Assembly resolution 2574 C (XXIV). Reference was also made to a number of Committee documents during this discussion and, in particular, to working papers introduced by the United States (A/AC.138/25), the United Kingdom (A/AC.138/26) and France (A/AC.138/27) at the beginning of the session.

25. The report by the Secretary-General (A/AC.138/23) was generally welcomed by members of the Committee, although various speakers considered that the first two types of machinery examined in part II of that report should be ruled out as possibilities. It was suggested that although international machinery for exchange of information and preparation of studies did represent an essential stage of development, such arrangements would not be adequate since they would not provide practical organization or effective administration for the area beyond the limits of national jurisdiction. It was also noted that such functions were either already being performed or would in any event be only one of the functions of international machinery.

26. The second type of machinery described in the Secretary-General's report, machinery with intermediate powers, was also regarded as inadequate by various delegations. The tasks to be performed by such machinery, it was said, could be carried out by existing bodies. An intermediate organization or a mere registration body with limited scope and competence would not only be unacceptable to most States but would not reflect the basic concept that the area and its resources were the common heritage of mankind. The objective of the proposed machinery was not merely to avoid friction between individual States engaged in the exploration and exploitation of the sea-bed resources, but to ensure the optimum utilization of those resources for the benefit of the international community as a whole.

27. Many delegations expressed support for the establishment of international machinery competent to issue licences and to collect royalties and fees, and it was urged that this was the kind of machinery on which the Committee should concentrate. Differing views were expressed in this context, however, on the nature of the machinery to perform these functions, and various delegations stressed that the machinery should be of the type considered in part III of the report of the Secretary-General, namely, machinery with comprehensive powers. It was proposed that all exploration, except scientific research, as well as exploitation of mineral deposits in the international sea-bed area, would be licensed. There should be general provisions governing the entities admitted to apply for licences, the conditions under which licences would be used, the size of the areas to which licences might be applied, their duration, the minerals to be covered by the licences and the amounts of fees and payments.

28. It was also considered that States must have an essential role within the régime of exploration and exploitation of the sea-bed because they were the only possible link between such a body and the public or private companies undertaking the exploration and exploitation. It would be easier to deal with a State or with regional or other internationally recognized organizations than with private corporations which lacked a clearly defined status in international law. Furthermore, States would then assume responsibility for all activities carried out under licences; they would not be mere intermediaries but would be free to use both private and public resources as they saw fit. It was also pointed out that unless licences were issued to States, it would be difficult to achieve equitable distribution of the benefits to be derived from exploration of the sea-bed. To issue licences directly to operators would risk putting at a permanent disadvantage those States which at present lacked substantial technological capacity.

29. On the other hand, it was noted that difficult questions might arise if an operator had no genuine link with the sponsoring or authorizing State and it was doubtful to what extent a State could be held responsible for the actions of such operators. Those problems might be avoided if the international machinery were empowered to grant licences not only to States, groups of States or international organizations, but also to international business organizations of repute. Another view was that licences might be granted to private enterprises or joint ventures, Government enterprises or international consortia, representing private or joint enterprises, and inter-governmental concerns representing various economic systems. It was suggested that international inspection of operations would have to be conducted by the international machinery or under its supervision.

30. Another point of view advanced was that licensing was only one of many complex questions connected with the international machinery which was still a long way from being solved. It required further careful and detailed study. Licensing on a first come first serve basis, licensing by lottery, licensing on the basis of the applicant's qualifications and licensing on the basis of the highest bidder, as also licences granted to private companies, would all, in practice, it was stated, give an advantage to particular groups of countries and monopolies and would serve the narrow interests of individual States and companies rather than those of mankind as a whole.

31. Differing views were expressed on the subject of the type of machinery analyzed in part III of the report of the Secretary-General, namely international machinery having jurisdiction over the peaceful uses of the area. Many delegations contended that the international machinery should take the form of an autonomous, universal organization possessing full legal personality and having jurisdiction over the sea-bed to ensure the rational exploration, conservation, exploitation and use of its resources, including the co-ordination and control of development, pollution prevention, the protection of life, property and mineral resources, settlement of conflicts and the enforcement of regulations and standards in collaboration with other bodies. Only such machinery, it was held, would correspond to the basic concept that the area and its resources were the common heritage of mankind.

32. Conflicts of a colonial type, it was said, could be avoided only if provision were made for the equitable management, not only of the resources, but of the area itself. In this connexion, it was held preferable to envisage the establishment of an "international sea-bed authority", rather than an "international sea-bed resource

authority". In this connexion, it was also noted that the Secretary-General's report did not mention all the potential and probable uses of the area. The international machinery, in another view, should have full legal personality with the right to make contracts, to acquire and dispose of property and to institute legal proceedings. It should also be itself liable to be sued, while enjoying privileges and immunities comparable to those of, for instance, the International Bank for Reconstruction and Development. Its functions should include licensing, direct exploitation of resources, control of production in order to avoid excessive price fluctuations, collection of fees and royalties, prevention of pollution and implementation of training programmes.

33. If the international machinery was to deal with other peaceful uses of the sea-bed, and not only with the exploration and exploitation of resources, it was considered it would have to have an economic, technical and commercial wing to regulate and control the exploration and exploitation of resources, and a general or political wing to deal with co-ordination with other international organizations concerned with specific aspects of the marine environment and questions relating to the exclusive use of the sea-bed for peaceful purposes.

34. On the other hand, it was contended that international machinery with comprehensive powers such as described in the third part of the Secretary-General's report would mean setting up a huge apparatus which might easily be paralyzed by the very complexity of its legal, economic, technical and scientific functions. Such machinery could probably only be set up if based on a series of multilateral treaties. It would require a full and detailed study of marine resources and their uses and the completion of such a project could conceivably take a long time. Another view was that international machinery should not, at least in the initial stages, have functions and powers other than those governing the exploration and exploitation of mineral resources; all living resources should be excluded and international regulations on fishery resources conservation should be made applicable to sedentary species.

35. The question of broader powers, it was said, should be approached circumspectly not only because of the complex questions involved but for fear that the proposed machinery would become too cumbersome and expensive. A more practical approach might be to devise a structure providing for all the essential elements at the outset, beginning with a skeleton framework, to be expanded as progress was made.

36. Differing opinions were also expressed on the stage reached in the Committee's work with regard to international machinery. On the one hand, it was held that the two reports by the Secretary-General (A/7622, annex II, and A/AC.138/23) contained sufficient data to enable the desired type of machinery to be selected and that active measures should be taken to initiate the process of establishing the machinery. On the other hand, the conviction was expressed that not enough information was yet available for an immediate attempt to settle the practical and complicated questions whose solution demanded thorough examination.

37. Many references were made to the question of the context in which the issue of establishment of international machinery should be viewed. The relationship between machinery and principles and régime was widely emphasized. It was held that there was an essential link between the declaration of principles, the régime, and the machinery, and that it was not possible to choose any specific type of machinery, to define its functions and powers, to fix its structure and to define its legal status until agreement had been reached on the wording of the declaration. Specific provisions, it was added, could only be formulated when agreement had been reached on the most appropriate régime. International machinery, it was said, could not be set up in a vacuum but must have a realistic legal basis.

38. It was held that the main problem was that of deciding on the substance of an international régime, of which the functions of any international machinery would have to be an integral part. It was essential that the régime should be effective to safeguard the interests of mankind as a whole and ensure that all States, particularly the developing countries, benefit from the exploitation of the area's riches. The régime should also provide attractive alternatives for States which might otherwise have recourse to other means to safeguard their own interests in the area. Failure to deal with such problems could have undesirable consequences. Not only the law of the sea, but the broader question of international relations had to be considered. In another view, peace, rather than development, was held to be the most important consideration; growth, no matter how well planned, could be impaired by the absence of peace. Although important, the exploitation of sea-bed resources and the development of the benefits accruing therefrom for the well-being of mankind were not the only factors to be taken into consideration. The international machinery must ensure that the technology, equipment and human and financial resources now concentrated

in the hands of a few States were available to the international community as a whole. If that was recognized, agreement on the status and structure of the machinery should not be difficult. However, it was also pointed out that a great deal of compromise would be necessary and that because of the great complexity of the problems involved, the régime and its supporting machinery were unlikely to be completely satisfactory to any single member of the Committee.

39. The point was made that the protection of living resources should clearly be a major consideration and a balance should be sought between the different interests involved in the major uses of the oceans.

40. The heart of the matter, in one view, was to ensure equitable distribution of the benefits of sea-bed exploitation to all States parties to the international régime. The attempt to meet the interests of mankind as a whole merely by providing for a distribution of a portion of the profits was too restricted an approach. A system of quotas assigned on criteria to be agreed would enable all States also to participate directly in the benefits of exploitation. It was also said that the international machinery as the licence-issuing authority should be guided primarily by objective criteria which would have to be incorporated as part of the régime, and should not introduce elements of arbitrariness in granting a licence to any particular applicant.

41. Still another view in this connexion was that the international régime and its machinery should be oriented, at least in its early years, primarily towards encouraging the exploration and exploitation of resources in a difficult environment. The single most important factor would be the need to establish a resource management system designed to encourage and maintain investment on a continuing and orderly basis. A balance must be struck between the need to attract investment capital and the need to ensure that mankind as a whole, particularly the developing countries, benefited from the results of exploitation. The view was also expressed that manganese nodules of the sea-bed could be profitably exploited only under either monopoly or strictly limited conditions.

42. Various speakers expressed opposition to the creation of either an interim régime or of interim machinery. It was contended, among other things, that any provisional measure might frustrate the efforts to set up permanent machinery. It was, however, suggested that a two-phased development of machinery, providing initially for immediate control of exploration and exploitation and gradually developing into a second exploration and development phase, might be considered; that would not be an interim régime but a comprehensive régime with interim machinery.

43. Speakers in the discussion generally concurred in the view that machinery should be established by international treaty, which should be as universal as possible, and, it was suggested, ratified by a large number of States. Various speakers suggested that more than one treaty might be required, one for the broad general lines, and the other for details of structure, function and so forth. Several speakers felt that detailed provisions for the machinery should be spelled out in the treaty establishing it. It was also noted that until the machinery gained general confidence, it would need to have detailed provisions, but as it gained in confidence, more leeway could be left to it. Reference was made in this connexion to the importance of provisions for amendment and for periodic review.

44. The manner in which profits and benefits would be distributed was held to be of vital importance. Such distribution should not be reduced to a patronizing form of foreign aid. Benefits must be used to meet the developing countries' needs, bridge existing gaps and create conditions in which peace and well being could be established and maintained.

45. In this connexion, reference was also made to the importance of training programmes for nationals of the developing countries so as to ensure that the latter gained knowledge of the latest scientific and technical methods of exploration and exploitation. It was suggested also that such programmes should not wait for the establishment of the machinery.

46. It was recognized in general that international machinery would be a new type of international organization and that existing institutions would not provide precise models in view of the unprecedented nature of many of the problems that would be encountered and of the functions that would have to be performed. Various speakers expressed the view that the agency should form part of the United Nations system and it was suggested that in some respects, such as the control of pollution, the function of the machinery would be one of co-ordination, with full use being made of the existing institutions in the United Nations system. Another view was that the proliferation of United Nations committees and other organs, and the resulting duplication and overlapping, had already gone far enough and it would be preferable to control activities on the sea-bed, at least initially, through existing machinery such as UNCTAD, rather than by establishing new institutions.

47. It was held that the international machinery and régime should be flexible enough to take account of existing economic and legal differences. It was proposed that the machinery should provide for the participation of regional organizations whenever participation by individual developing States would be ineffective. Such regional organizations should also be encouraged to set up joint research centres.

48. The question of the limits of the area was also mentioned by various delegations. It was maintained that there was a close connexion between that question and the establishment of machinery. Some delegations considered that no régime or machinery should be established until this issue was settled. Other delegations considered this matter to fall outside the competence of the Committee.

49. Reference was also made to the need for provisions for consultation of coastal States when their interests were affected. It was considered reasonable, when setting up international machinery, to give coastal States the right to decide whether operations could be conducted in areas of vital importance to their national economies, for example on fishing grounds just beyond the limits of their national jurisdiction.