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

Draft Addendum to the Report

1. As is indicated in paragraph 28 of its report (A/ ) the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction decided, at its meeting on 27 August 1971, to adopt the first part of its report on the understanding that at a special session, to be held solely for this purpose in New York as early as possible during the General Assembly, the second part of this report, which should reflect the general debate, would be approved.
2. Certain broad questions were the subject of comment in almost every intervention. These may be taken as the relationship between existing law and what should emerge from the Conference on the Law of the Sea scheduled to be held in 1973 in accordance with the terms of resolution 2750 C (XXV); the identification of particular forms of interests of States, as well as of categories of States, and of the international community as such; and suggestions regarding various possible means of reconciliation of divergent interests and needs. The Committee recognized the need to bear in mind in such an account the statement in resolution 2750 C that problems of ocean space were closely interrelated and needed to be considered as a whole.
3. The relationship of existing law to the kinds of international arrangements that might emerge from the anticipated Conference on the Law of the Sea elicited a variety of approaches. The need for the progressive development of the law of the sea was widely recognized, but opinions differed considerably about the nature and extent of the changes required.

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4. While noting that the Committee was to examine the law of the sea comprehensively, particularly from the point of view of States which had not attended the 1958 Geneva Conference, various Members emphasized the need to retain as much as possible of the Geneva Conventions of 1958 or of other relevant international agreements, preserving the freedoms of the high seas, and seeking solution of outstanding problems that had not been settled at the Geneva Conferences as well as any adjustments in such agreements necessitated by the establishment of the new régime to govern the peaceful uses and the exploration and exploitation of the resources of the area of the sea-bed and the ocean floor beyond national jurisdiction. Among the unresolved issues the following were mentioned: the breadth of the territorial sea and the question of supplementing and clarifying existing rules on the right of transit through and over international straits, the nature and extent of preferential rights to be accorded to coastal States in waters adjacent to their territorial sea, and the need for new agreed rules concerning high seas fisheries and for preservation of the marine environment. Reference was also made to the need to permit accession by all States to the 1958 Geneva Conventions and any future international instruments governing the law of the sea. Among other considerations alluded to in this respect was that of the need to preserve an existing system until agreement had been reached on one to replace it.

5. Much emphasis was placed, however, on the degree to which existing law had been outmoded by the rapidity of technological advance which involved new and more extensive uses of ocean space and its resources, by the realization that the latter were not inexhaustible and that the world's seas were not immune to pollution, by the changing nature of the world from a political, economic and social point of view, and by the overwhelming need to bridge the dangerous division between the minority consisting of highly industrialized countries and the majority made up of developing countries. Reference was made to the need to take account of the origins of existing law, which reflected the interests of that minority, and in particular of the fact that many States Members of the United Nations had not been able to take part in the framing of the existing Conventions or were not parties to them; one aspect stressed in this context was the importance of ensuring that the law be equitable.

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6. A wide spectrum of suggestions as to what should emerge from the new Conference on the Law of the Sea was put forward. It included suggestions that solutions should be found to the problems of mid-ocean archipelagos; that greater recognition should be given to the coastal State's interest both in the conservation of the living resources of the sea adjacent to it, and the reservation of a reasonable share of the resources to its own nationals; that scientific research should enjoy maximum freedom; that there should be no lessening of the coastal State's security; that the marine environment should be used only for peaceful purposes; that the concept of innocent passage required review; that the new régime for the seas should view them as one ecological entity and that sectoral divisions of that entity under the 1958 Geneva Conventions should not be regarded as essential to any future régime; that just as the seas could be used, so also they could be abused and, therefore a theory of abuse of the high seas could be developed; that the advance of technology and the diversified uses of ocean space to which it had given rise made it necessary, while retaining those provisions in the 1958 Geneva Conventions that were still viable, to create a new equitable legal order of an institutional character for the oceans as a whole to replace the existing law of the sea; that the new system must be acceptable to most, if not all, States and that a solution imposed on the rest by a relative majority which did not take account of existing realities and the interests of different States would not be satisfactory; that established rights of States under existing law could not be called into question, and could not be altered without the consent of the State concerned; that the new régime would be of a universal character without excluding regional arrangements, and that it should be durable and must contain provisions preventing a State or minority of States from altering the balance of interests through unilateral decisions; that the new international régime should recognize that the diversity of interests of different countries could be accommodated by a plurality of régimes; that account should be taken of international law developed on a regional basis.

7. Differing positions were taken in regard to the basis on which the rights of States were founded. These included the view that a State was entitled to fix its own maritime jurisdiction in accordance with the geographical, geological, ecological, social and economic characteristics of its own territory and the ocean

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space of its coasts, and in this respect it was noted that there were no uniform limits prescribed by existing law. They also included the position that States could not establish jurisdictional limits without regard to international practice and interests. In support of this position it was pointed out that there were uniformities of practice with respect to such limits in existing law.

8. Many of the interventions in the general debate dealt in detail with the circumstances and interests of States in relation to the matters under consideration. In view of the importance attributed to the reconciliation and adjustment of these interests and circumstances, both as between States, and with the interest of the international community as a whole, as well as the importance of securing a realistic and workable solution to problems posed by potentially conflicting uses of ocean space, it would appear desirable to indicate the kinds of particular interest and circumstance brought to the attention of the Committee. It may be noted, however, that these matters involved delicate and often controversial issues of definition at least in respect of the classification of types of interest and circumstance and of classes of States in relation thereto. Thus, while classifications were suggested, it was contended that there were very few States whose interests could be regarded as identical.

9. In the general debate reference was made to the special circumstances and interests of the following: island States; archipelago States; coastal States; maritime States; land-locked States; and shelf-locked States. Among other circumstances and interests which were considered relevant to the treatment of the issues involved were the stage of economic development of States and the extent of their resources for future development; the interest of States in the sea-bed and ocean floor beyond national jurisdiction as the common heritage of mankind, including the extent of that area and equitable sharing of the benefits derived from exploration and exploitation of its resources; the interests of States in terms of the economic impact of future production of marine resources from the area beyond national jurisdiction on existing production of resources or consumption of resources, including the fluctuation of prices; the degree of dependence of the economy of a State on mineral resources produceable from the sea-bed and the ocean floor beyond national jurisdiction; the area of the continental shelf of States under different possible formulae of jurisdiction; the degree of dependence

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of States on the marine environment and the resources thereof; the interests of States in regard to off-shore and distant water fisheries; the security interests of States, including their situation in relation to straits; the degree of geographical isolation of States; the degree of dependence of States on international trade; the degree of dependence of States on merchant fleets; the situation of States in relation to actual or potential continental shelf resources; the existing and future ability of States to exploit subsea mineral and other resources; the interest of States, and particularly coastal States, in adequate measures against marine pollution and its effects on tourism and fisheries; the interest of States in conducting and in the results of scientific research, including the special interest of coastal States in respect of scientific research in areas adjacent to them; and the interest of developing States in scientific and technological training of their nationals.

10. The international community interests mentioned in the general debate included the following: the need for international order and security and for the avoidance of conflict in the various uses of ocean space; the need for development and economic and social justice; the need for free, economic and dependable means of trade and communication; the need for the peaceful and rational management and orderly development of ocean space and its resources; the need to protect and preserve the marine environment including prevention of pollution; and the need to establish uniform minimum standards to that end.

11. In the course of the general debate, various delegations addressed themselves to the problem of finding means of reconciling the divergent interests that had come to light in the Committee's work of preparing for a new Conference on the Law of the Sea. One view described the Committee's role in the matter as being that of a negotiating centre essentially concerned with political decisions which, once taken, could be given legal form.

12. Several suggestions put forward in the Committee were presented as means for an over-all accommodation of the interests of coastal States and the international community and thus provided an indication of the thinking of some members in this respect, although there would appear to be need for further study and examination of the problems involved.

13. The following were among these suggestions: that much of the administration of the law of the future must be carried out by coastal States on the basis of the concepts of resource management and delegation of powers to them, together with the assumption by them of duties and responsibilities as custodians of the vital interests of the international community in the discharge of their delegated and sovereign powers; that there would be established one broad limit of national jurisdiction for all purposes rather than different limits for different purposes, though some legal limitations would have to be set to the freedom of States within the area under their control, and a portion of the financial benefits derived from that area would be contributed to the international community; that the territorial sea under the coastal State's exclusive sovereignty and jurisdiction should be of reasonable width and that there should be a broad economic zone, described as the patrimonial sea, in which there would be freedom of navigation and overflight with the coastal State enjoying an exclusive right to all resources, with States maintaining their existing rights over that part of the continental shelf not covered by the patrimonial sea and not exceeding the depth criterion mentioned in the 1958 Geneva Convention on the Continental Shelf; that a reconciliation of interests could be found by establishing an intermediate zone under a régime of mixed coastal and international elements in which coastal States interests would be accommodated through international arrangements taking into account the special interests of the coastal State, or through delegation of specific and limited authority to the coastal State.

14. The inclusion of suggestions and ideas in this addendum as a reflection of the general debate does not in any way imply acceptance or endorsement by the Committee of such suggestions and ideas. The Committee also wishes to note that this account should be read in conjunction with other portions of its report, Parts II, III and IV of which provide detailed information on various aspects of its work.

15. The Committee further wishes to record that two delegations made statements on behalf and at the request of the Governments of five developing South Pacific countries not members of the Committee whose Governments had requested them to draw the attention of the Committee to the special importance of marine resources to the islands of the South Pacific.

16. The present addendum to the Committee's report to the General Assembly was adopted on \_\_\_\_\_ and should be regarded as constituting the final portion of Part I of its Report as adopted on 27 August 1971 (A/\_\_\_\_\_).

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