



UNITED NATIONS GENERAL ASSEMBLY



Distr.
GENERAL

A/AC.138/SC.1/1
10 March 1969
ENGLISH
ORIGINAL: SPANISH

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

Legal Sub-Committee

PROGRAMME OF WORK

Note by the Chairman

The Legal Sub-Committee has been made responsible for considering the items which appear under the numerals (i), (ii) and (iii) concerning the allocation of functions as set out in the document on the organization of work which was approved by the Main Committee on the proposal of Mr. Amerasinghe, the Chairman.

Of these three items, it would seem appropriate, at the spring session, to concentrate on item (i), which is as follows: "Operative paragraph 2 (a) of resolution 2467 A (XXIII) - To study the elaboration of legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, having regard to the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole."

In the consideration of this item, the Sub-Committee would have at its disposal the report of the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/7230), and the Secretariat study which contains the views expressed by delegations and the draft resolutions which were submitted to the Ad Hoc Committee and, at the twenty-third session of the General Assembly, to the First Committee. Thus, for a study of this item - by contrast with the other two items referred to - the Sub-Committee would have some background material that would enable it to start work without delay on the task which it has been assigned.

If the Legal Sub-Committee decides to take up this item as the matter to be dealt with at the present session, there will immediately arise the problem of how this task is to be approached and how it is to be distributed.

The item in question embodies two main subjects, namely, the legal principles and the norms. Although legal principles and norms are interrelated, it is possible for them to be separated from the points of view of logic, method and work. An examination of the background material provided by the Ad Hoc Committee reveals that there is an abundance of material as regards the legal principles but very little as regards norms. While it is, of course, difficult to draw a precise line of demarcation between these two matters, this must be done for the purposes of the programme of work. Although the links between the two subjects are fully recognized, the matters with which they are concerned can be distinguished one from the other. Since, moreover, it is appropriate for the whole to be divided into parts so that it can be dealt with methodically, item (i) could be divided, without its inherent unity being affected, into two sub-items which would be (a) legal principles and (b) norms.

On the basis of the distinctions that can be made between legal principles and norms, it would be possible to go further and divide the subject-matter of legal principles in such a way as to render the discussions as fruitful as possible. It should be borne in mind that the item concerning the principles has been the subject of numerous statements and draft resolutions in the Ad Hoc Committee and is therefore not a new item. The next problem would be how to deal with the legal principles along certain lines that would lead to results which would make it possible for this Sub-Committee to present something tangible and consistent at the end of the present session.

It may be recalled by way of example that certain principles are embodied in the draft resolutions that were considered by the Ad Hoc Committee and the First Committee, namely, that the sea-bed and ocean floor are the common heritage of mankind; that no State may claim or exercise sovereignty over the sea-bed and ocean floor; that the exploration, use and exploitation of the sea-bed and ocean floor shall be carried out exclusively for peaceful purposes and for the benefit of all countries, particularly the developing countries; that the exploration, use and exploitation of the sea-bed and ocean floor shall be carried out in

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accordance with the principles and purposes of the United Nations Charter and such appropriate international régime as is set up; that the activities carried out on the sea-bed and ocean floor must not hamper other legitimate activities in the sea; that States which do not have a seacoast shall be placed on a footing of equality as regards the conditions, rights and obligations of States which do; that the coastal States which are most closely situated to the areas of activity must be consulted; that international assistance must be rendered in the event of accident, and contamination of the marine environment must be avoided; and that any damage caused entails liability. It is difficult at this stage of the work to mention in any detailed fashion the principles which have been put forward in previous discussions, and even more difficult to say whether the matter has been exhausted or whether, as is probable, new principles will come to light as further study proceeds.

In view of the difficulty of enumerating what has already been done and the even greater difficulty of drafting this in appropriate form, and in order to avoid prejudging in the agenda that is set up what the detailed examination of the subject-matter must be, the Sub-Committee could rely on the Ad Hoc Committee's work and divide up the item of the principles into the main sub-divisions dealt with in pages 44 to 50 of document A/7320. The advantage of endorsing this distribution of the subject-matter in question is that that document has official standing and that it is familiar to and has met with the approval of many States. Of the various ways in which the subject-matter concerning the principles could be divided up, this seems to be the least controversial. The Sub-Committee would deal with the principles within each of these headings. The purpose sought in adopting the order in which the material is presented in the Ad Hoc Committee's report is to achieve maximum objectivity with the least possibility of controversy and to retain the text of the material as set out in that document. The Chairman considers it appropriate to abide by the order and wording of the original document, but he feels that the Sub-Committee could introduce such changes as it sees fit. There is one exception in the case of paragraph (6) since, from the point of view of legal terminology, the wording used in the report does not conform with the programme of work; the substance of that paragraph, however, provides the basis for the proposed new formulation.

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Accordingly, the subjects would be grouped as follows:

1. Legal status of the sea-bed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction;
2. Reservation of the sea-bed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction exclusively for peaceful purposes;
3. Use of the resources of the sea-bed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction in the interests of mankind;
4. Freedom of scientific research and exploration of the sea-bed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction;
5. Reasonable regard to the interests of other States in their exercise of the freedoms of the high seas;
6. Responsibility and liability in the exploration, use and exploitation of the sea-bed and ocean floor;
7. Other questions.

Consideration of each of these subjects would include discussion of some of the principles already suggested and others which may be submitted during the current session. The advantage of dividing up the subject-matter is that this is conducive to orderly discussion and allows different points of view to be expressed on a relatively narrow range of issues. This, in turn, enables conclusions to be reached and facilitates the comparison of opinions and, thereby, the achievement of a consensus, which is our Committee's task.

It must be understood, of course, that any principles adopted must constitute a harmonious whole and that a comprehensive discussion will therefore be necessary. The Sub-Committee could decide when such a discussion should take place. It will probably be necessary when the Sub-Committee is attempting to organize its final synthesis. In fact, it seems inevitable that consideration of these subjects will culminate in a synthesis, by means of which the principles will be co-ordinated and incorporated into a system. The Sub-Committee will have twelve to fourteen meetings available to it. I have given no details under Part B:

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Norms, in view of the probability that the session can be devoted to the principles, but should the progress of the work permit, some meetings could be devoted to considering the subject of norms in order to give delegations an opportunity of expressing their views on how to deal with it and thus to provide some guidance for the summer session.

In conclusion, I submit to the Legal Sub-Committee the following programme of work for the March session:

- I. Operative paragraph 2 (a) of resolution 2467 A (XXIII) - "To study the elaboration of legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, having regard to the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole."

A. Legal principles:

- (1) Legal status of the sea-bed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction;
- (2) Reservation of the sea-bed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction exclusively for peaceful purposes;
- (3) Use of the resources of the sea-bed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction in the interests of mankind;
- (4) Freedom of scientific research and exploration of the sea-bed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction;
- (5) Reasonable regard to the interests of other States in their exercise of the freedoms of the high seas;
- (6) Responsibility and liability in the exploration, use and exploitation of the sea-bed and ocean floor;
- (7) Other questions.

B. Norms.

It is understood that the Sub-Committee may prepare for submission to the Main Committee any recommendations on these matters which it deems appropriate.