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

### LEGAL SUB-COMMITTEE

#### INFORMAL CONSULTATIONS

#### Report of the Informal Drafting Group on the formulations proposed under the Programme of Work (A/AC.138/SC.1/3)\*

1. The informal drafting group consisting of Brazil, India, Libya, Norway, the Union of Soviet Socialist Republics and the United States of America, met a number of times to consider the formulations proposed on all items.
2. In the listing of formulations and elements, parentheses have occasionally been employed to indicate language as to which certain questions were raised or reservations expressed.
3. The listing of formulation and elements does not necessarily constitute an endorsement of them by the members of the informal drafting group for inclusion in a declaration; and at times the group has set forth contending views as to some formulations and elements.

#### Item 1. Legal status

4. All formulations presented on this item were considered.
5. The main elements in these formulations are as follows:
  - (i) The sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction are the common heritage of mankind;

\* This paper was prepared by an informal drafting group following informal consultations pursuant to a decision of the Committee at its sixth meeting on 28 March 1969 to conduct informal inter-sessional consultations among the various delegations represented on the Committee.

- (ii) This area is not subject to national appropriation by any means whatsoever;
- (iii) No State may exercise or claim over any part of this area sovereignty or sovereign rights;
- (iv) No State may exercise or claim over any part of this area sovereignty or sovereign rights; or jurisdiction; nor grant exclusive rights;
- (v) No one may acquire property over any part of this area whether by use, occupation or by any other means;
- (vi) All States shall participate in the administration and regulation of the activities in this area as well as in the benefits obtained from the exploration, use and exploitation of the resources of the said area;
- (vii) This area should be considered separately from the superjacent waters of the high seas;
- (viii) There shall be no discrimination in the availability of this area for exploration and use by all States and their nationals in accordance with international law.

6. Element (i)

(a) Those supporting this idea were insistent that it was the basis on which a formulation regarding item 1, and for that matter the statement of principles, should be based. Therefore, its inclusion in the formulation under consideration would be essential. Others believed that this concept should not be included in the declaration.

(b) Under item 9, a formulation regarding the subject of this element had been suggested for inclusion in the preambular portion of a declaration, which reads as follows:

"Asserting that this area shall be considered as part of the common heritage of mankind."

7. Element (ii)

This element was considered to be acceptable.

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8. Elements (iii) and (iv)

The concept in element (iii) was considered unexceptionable, but there was a point of view that it was not sufficiently comprehensive, therefore the language of element (iv), which by this point of view was regarded as adequate and comprehensive was suggested instead. There was also a suggestion for a provision to the effect that, except as might be provided in an international regime, no State shall claim or exercise exclusive rights or jurisdiction over any part of this area.

9. Element (v)

Those who supported this element insisted on the need for clearly stating the non-appropriation of this area by private persons or entities. A view was expressed that the question of the suitability of the concept of "property" for the purposes of a declaration required further consideration.

10. Element (vi)

Differing views were expressed on this element.

11. Element (vii)

Those who favoured this idea wanted that the separate status of the two areas should be spelt out to avoid confusion. However, for the sake of clarity they were prepared to put it as a preambular paragraph, if that was considered necessary. Others were of the view that this idea was not justifiable from the legal point of view.

12. Element (viii)

Those who favoured this element would want to include it in the declaration under consideration as according to them this was their understanding of present international law or in any event it was a necessary principle of State conduct. On the other hand, it was pointed out that such an element could be included in a formulation regarding item 4.

Item 2. Applicability of international law, including the United Nations Charter

13. All formulations presented on item 2 were considered.

14. The following elements were studied:

- (i) Activities in this area shall be carried out in accordance with the Charter of the United Nations, in the interest of maintaining international peace and security and the promotion of international co-operation.
- (ii) Activities in this area shall be carried out in accordance with (the relevant principles of) international law.
- (iii) The exploration and exploitation of the resources of this area shall be carried out in accordance with an international regime to be established. In the elaboration of the said international regime, the existing norms of international law shall be duly taken into account.

15. It was considered that the Charter of the United Nations had to be mentioned in the context of international law and could not be separated from international law. A view was expressed that the scope of the applicability of the two did not fully coincide.

16. Concerning 2 (ii), a view was expressed that international law applies to the area only in a subsidiary way since it regulates mainly the use of the other areas of the marine environment. On the other hand, a view was expressed that a declaration should make clear that existing international law applies to the area.

17. Regarding 2 (iii), a view was expressed that it would not be appropriate to refer in this context to an international regime to be established.

18. The following formulation was suggested for consideration:

"All activities in this area shall be carried out in accordance with international law, including the Charter of the United Nations, and the principles of this declaration as well as (in due course) the legal principles and norms to be internationally agreed upon for the exploration, use, and exploitation of this area."

Item 3. Reservation exclusively for peaceful purposes

19. The following elements were identified in the various formulations concerning this item.

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- (i) Reservation exclusively for peaceful purposes
- (ii) Prohibited activities:

Alternatives included:

- (a) Use for military purposes
- (b) All military activities and all military uses
- (c) Use for other than peaceful purposes

- (iii) Area of the sea-bed and ocean floor to which the prohibition applies:

Alternatives included:

- (a) Beyond the twelve-mile maritime zone of coastal States
- (b) Beyond the limits of national jurisdiction
- (c) Beyond a coastal strip the limits of which are yet to be agreed upon

Item 4. Use of the resources for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries

20. The first part of some formulation deals with the need to carry out exploration, use and exploitation for the benefit of mankind as a whole, etc. It was contended that the words "exploration, use and exploitation" should apply to the area as a whole and not only to the resources of this area. On the other hand, it was contended that these words should apply only to the resources of the area in this context. Nevertheless, a general formulation, as given below, was considered:

"The exploration, use and exploitation (of the resources) of this area and its subsoil shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, and for the promotion of economic development, taking into account the special interests and needs of the developing countries."

21. Those who wanted that the words "exploration, use and exploitation" should apply to the area as a whole, suggested the following language based, according to them, on the wording of paragraph 2 (a) of resolution 2467 A (XXIII):

"The exploration and use of this area and the exploitation of resources of this area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, and for the promotion of economic development, taking into account the special interests and needs of the developing countries."

This language was not acceptable to others.

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22. All the formulations regarding this item called for the establishment of an international regime for the purpose of exploration, use and exploitation (of the resources) of this area. The following omnibus formulation regarding the establishment of an international regime was considered:

"An (agreed) international (legal) regime shall be established for the exploration and exploitation (of the resources) of this area and its subsoil. Such a regime shall reflect the other principles contained in this declaration and shall include, among others, provision for:"

23. A view was expressed that the word "regime" should be qualified by the word "legal". Others did not see the need or relevance of this addition and suggested that the qualifying word "agreed" would be sufficient. Again, a view was expressed that it was premature to spell out "provisions" which should determine the features of a regime and an enumeration of the provisions should not be made at this stage. On the other hand, it was mentioned by the others that a statement of principles which did not include the main features of a regime would be inadequate. The points of view regarding the words "of the resources" as stated above were expressed in this respect too. Those who wanted that the words "exploration, use and exploitation" should apply to the area as a whole, suggested the following language, based, according to them, on the wording of paragraph 2 (a) of resolution 2467 A (XXIII):

"An (agreed) international (legal) regime shall be established for the exploration and use of this area and in particular for the exploration and exploitation of the resources of this area and its subsoil. Such a regime shall reflect the other principles contained in this declaration and shall include, among others, provision for:"

This language was not acceptable to others.

24. It was suggested that a general purpose of the regime should be to secure rational development and equitable management of this area.

25. The following provisions, which are contained in the various formulations, were considered:

(i) Application of benefits;

(a) provide for the most appropriate equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries;

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- (b) dedication as feasible and practicable of a portion of the value of the resources recovered from this area to international community purposes;
- (c) dedication of a portion of the financial proceeds resulting from the exploitation to international community purposes;
- (ii) Economic incentives;
  - (a) conditions conducive to the making of investments necessary for the exploration and exploitation of the resources of this area;
  - (b) provide economic incentives to encourage the necessary investment;
  - (c) ensure that the burdens assumed by the operator be matched by corresponding rewards;
- (iii) International machinery or organ (or administrative arrangements);
  - (a) establish an international machinery for the regulation of activities in this area, in particular to control the development of the resources of this area and its subsoil;
  - (b) entrust the management of the resources of this area to an organ which should be representative of the international community;
- (iv) The orderly development of the resources of the area in a manner reflecting the interest of the international community in the development of these resources;
- (v) Take into account economic effects of exploitation, for example, to take required measures to minimize (control) the fluctuations of prices of raw materials in the world market resulting from the exploitation of the resources of this area;
- (vi) Accommodation among the commercial and other uses of this area and the marine environment;
- (vii) Promote effective international co-operation in the exploration, use and exploitation of this area;
- (viii) Provide due protection for the integrity of investments in the exploitation of this area undertaken prior to the establishment of its boundary.

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Item 5. Freedom of scientific research and exploration

26. After consideration of the several formulations, it was decided to separate the main elements which are:

- (i) Freedom of scientific research (for peaceful purposes) without discrimination and avoidance of interference with such research;
- (ii) Communication beforehand of programmes of scientific research.  
Different methods were mentioned in the proposals: (a) publication; (b) accessibility; and (c) dissemination;
- (iii) Communication of results of scientific research. The different methods mentioned under ii were also suggested for iii;
- (iv) Promotion of international co-operation. Two suggestions were made: (a) participation of nationals of different States in common research programmes; and (b) strengthening of the research capabilities of the developing countries;
- (v) Encouragement by States of their nationals to follow the practices concerning communication of information regarding programmes and results;
- (vi) No rights of sovereignty or exploitation are implied in the carrying out of scientific research.

27. The examination of the proposals indicated the existence of three different approaches as to the relationship between element i and other elements. The first approach would state independently the freedom of scientific research and such other elements as may be agreed upon. The second approach predicated that these other elements should be stated as necessary consequences of the freedom of scientific research. The third approach would make freedom of scientific research conditional upon publication beforehand of research programmes and upon the accessibility of the results of these programmes with the least possible delay.



Items 6 and 7

6. Reasonable regard to the interests of other States in their exercise of the freedoms of the high seas
7. Question of pollution and other hazards, and obligations and liability of States involved in the exploration, use and exploitation

28. Under these items the following elements from the various formulations concerning the activities in this area were identified:

- (i) Reasonable regard for the interest of all States;
- (ii) Non-infringement of the freedoms of the high seas; and no unjustifiable interference with the exercise of such freedoms;
- (iii) Adoption of appropriate safeguards against the dangers of pollution and other harmful effects on the marine environment. Among particular harmful effects mentioned in the proposals were:
  - (a) radioactive contamination;
  - (b) interference with the ecological or other processes or balances of the marine environment;
  - (c) damage to the flora and fauna;
- (iv) Adoption of appropriate safeguards so as to conserve and protect the living resources of the marine environment or non-interference with the conservation of the living resources;
- (v) Adoption of safety measures concerning all activities in this area;
- (vi) Rendering of assistance in case of mishap, distress or danger;
- (vii) Damage caused by activities in the area (undertaken without appropriate safeguards) shall entail liability;
- (viii) Consultations with coastal States closest to the area in which any activities occur, lest their rightful interests be harmed;
- (ix) Right of coastal States to take appropriate measures to protect their shores and coastal waters against pollution which has occurred outside their national jurisdiction;
- (x) Procedures to be followed in the event of anticipation of possible harmful interference with other activities.

Items 8 and 9

8. Other questions

9. Synthesis

29. Under these items the following matters were considered:

- (i) Existence of an area: The drafting group considered the various formulations and affirmed that there is an area of the sea-bed and the ocean floor and subsoil thereof underlying the high seas which lies beyond the limits of national jurisdiction.

However, a view was expressed that the above statement is a fact and not a legal principle and therefore should not be included in a declaration of principles.

- (ii) Question of boundary: The proposals which were made in this regard are listed below:

- (a) "Taking into account the relevant dispositions of international law there should be an agreed precise boundary for this area;"
- (b) "There is an area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction, a more precise boundary of which shall be established;"
- (c) "Taking into account the Geneva Convention of 1958 on the continental shelf, there shall be established, as soon as practicable, an internationally agreed precise boundary for the deep ocean floor and sea-bed and subsoil beyond that over which coastal States may exercise sovereign rights for the purpose of exploration and exploitation of its natural resources; exploitation of the natural resources of the ocean floor that occurs prior to establishment of the boundary shall be understood not to prejudice its location regardless of whether the coastal State considers the exploitation to have occurred on its 'continental shelf'."
- (d) "A

Considering that the Geneva Convention of 1958 has given an open-ended definition of the continental shelf;

B

Concerned that such open-ended definition might be interpreted as permitting coastal States to extend their national jurisdiction without any distance limitation.

C

Believing that in order to avoid such extensive interpretation, a precise sea-ward limit should be established as soon as practicable by means of international agreement."

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A view was reiterated that the question of boundary does not fall under the competence of the Committee and should be properly considered in another forum. It was also stated that the determination of the boundary should be decided after an agreement had been reached on the legal status of this area. A view was also expressed that agreement on the question of clarifying the boundary was a necessary concomitant of agreement on other aspects of the declaration of principles. A view was also expressed that an effective attempt was necessary to come to an agreement on the limits of national jurisdiction in keeping with international law.

(iii) State responsibility: A proposal made in this respect is listed below:

"States shall bear international responsibility for the activities of their nationals in this area and for assuring that such activities are carried out in conformity with the principles set forth in the present declaration, and the principles and norms of an international regime to be established."

A view was expressed that due account should be taken of the case of persons carrying out activities under the authorization of a State other than that of their nationality.

(iv) Implementation of the principles of declaration: A proposal made in this regard is given below:

"The United Nations, in co-operation with the specialized agencies and the IAEA, shall take adequate measures to ensure the observance of these general principles and guidelines and the implementation of the objectives set forth in this declaration."

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