



UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/AC.138/SC.1/9  
21 August 1969

ORIGINAL: ENGLISH

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

DRAFT REPORT

1. At its first meeting, held on 6 February 1969, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction decided to establish a Legal Sub-Committee and a Technical and Economic Sub-Committee, both as sub-committees of the whole.

2. Also at its first meeting the Committee elected the following officers of the Legal Sub-Committee:

Chairman	Ambassador Galindo Pohl (El Salvador)
Vice-Chairman	Mr. Alexander Yankov (Bulgaria)
Rapporteur	Mr. Halim Badawi (United Arab Republic)

3. At its fourth meeting, held on 10 March 1969, the Committee approved the proposal on organization of work (A/AC.138/8) submitted by the Chairman. The following items were accordingly assigned to the Legal Sub-Committee:

"(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 regime should satisfy in order to meet the interests of humanity as a whole.

"(ii) Legal implication of:

- (a) all other questions mentioned in the terms of reference of the Committee as contained in resolution 2467 A (XXIII); and
- (b) the reports submitted by the Secretary-General pursuant to resolutions 2467 B, C, and D (XXIII) and 2414 (XXIII)".

It was agreed that the Sub-Committees would be free to determine their order of business. It was also agreed to request each Sub-Committee to prepare and adopt its report, containing its recommendations, for submission to the main Committee.

4. At its first meeting, held on 12 March 1969 the Legal Sub-Committee adopted the agenda for the session (A/AC.138/SC.1/2).

5. On the basis of a note by the Chairman (A/AC.138/SC.1/1) and proposals submitted by various delegations, the Sub-Committee adopted at its third meeting on 14 March 1969 the following programme of work (A/AC.138/SC.1/3):

"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 regime should satisfy in order to meet the interests of humanity as a whole.'

"A. To study in the context of appropriate provisions of resolution 2467 A (XXIII) the elaboration of legal principles relating to:

- (1) legal status;
- (2) applicability of international law, including the United Nations Charter;
- (3) reservation exclusively for peaceful purposes;
- (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 developing countries;
- (5) freedom of scientific research and exploration;
- (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;
- (8) other questions;
- (9) synthesis.

"B. Norms."

/...

6. In adopting its programme of work, the Sub-Committee requested the Chairman to draw up a statement containing the understanding reached by the Sub-Committee with respect to the inclusion in the programme of work of certain additional items. At the tenth meeting the Chairman read out the statement requested of him, which was as follows:

"During the discussion of the programme of work, on the basis of document A/AC.138/SC.1/1, some delegations proposed that references to certain subjects should be added to the programme.

"At its third meeting the Sub-Committee requested that I should, after appropriate consultations, make a statement concerning those subjects which had not been specifically mentioned in the programme.

"Having carried out the appropriate consultations, I am in a position to state the consensus of the Sub-Committee as follows: subjects mentioned in the report of the Ad Hoc Committee and matters which appear in the draft resolutions which were submitted to the First Committee and which were passed on to the Sea-Bed Committee as background material may be discussed by any delegations wishing to do so, and the Sub-Committee will give them due consideration.

"The programme, with its division by subjects, is not restrictive in nature, does **not** interpret General Assembly resolution 2467 A (XXIII) and makes no prejudgement concerning the positions delegations may adopt on questions of substance.

"With the consent of the Sub-Committee, I shall request the Secretariat and the Rapporteur to include this statement in the summary record of today's meeting and in the report of the Sub-Committee, respectively."

7. As requested by the Chairman of the main Committee, the Legal Sub-Committee gave consideration to General Assembly resolutions 2478 (XXIII) and 2292 (XXII) which required the Committee to consider dispensing with summary records. In view of the delicate nature of its work and the heavy responsibilities which it entailed for the delegations concerned, the Sub-Committee decided not to dispense with summary records.

8. Following consultations with the Chairman of the main Committee, the Sub-Committee at its eleventh meeting decided to present a single report to the Committee, covering the results of its deliberations during its March and August sessions.

/...

9. In the debates during the March session reference was made to the draft resolutions and amendments submitted to the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor or to the First Committee at the twenty-third session of the General Assembly. The text of the draft resolutions and amendments were contained in the Annex to a working paper prepared by the Secretariat, entitled "Proposals and Views relating to the Adoption of Principles" (A/AC.138/7). A draft resolution suggested by the delegation of Malta (A/AC.138/11) was also referred to in the debates.

10. The Legal Sub-Committee met between 12 and 26 March 1969 at United Nations Headquarters in New York. It held eleven meetings. It met again between 11 and August 1969 during which period it held additional meetings.

11. At the close of the March session some delegations felt that one of the most striking features of the debate had been the widespread support for an early statement of basic principles. The view was expressed that since the differences between the proposed principles was not so great, efforts to reach agreement should continue. For this purpose, it was suggested, that the proponents of each set of principles should establish a working group before the summer session of the Committee and try to arrive at an agreed formulation of first principles; the chairman of the Sub-Committee could serve as a focal point for the consultations. The main Committee agreed at its sixth meeting, held on 28 March 1969 that the Chairman of the Legal Sub-Committee would hold informal consultations with delegations with the view to reaching agreement on legal principles before the session scheduled for August. Such consultations took place during the months of June and July. In the absence of the Sub-Committee's chairman and vice-chairman, Mr. Felipe Vega Gomez of the Mission of El Salvador and later Mr. Dimitar T. Kostov of the Mission of Bulgaria presided over the consultation meetings. An informal drafting group consisting of the representatives of Brazil, India, Libya, Norway, the Union of Soviet Socialist Republics and the United States of America held several meetings to consider the formulations proposed on all items of the programme of work adopted on 14 March 1969. It produced a paper entitled "Report of the Informal Drafting Group on the Formulations proposed under the Programme of Work (A/AC.138/SC.1/3)", document A/AC.138/SC.1/4, which is annexed to this report.

12. At its twelfth meeting, commencing the August session the Sub-Committee adopted the agenda for the session (A/AC.138/SC.1/5). At the same meeting it also

/...

adopted the following programme of work (A/AC.138/SC.1/6) which had been suggested by the acting chairman, Mr. A. Yankov:

1. Consideration of the "Report of the Informal Drafting Group on the formulations proposed under the programme of work (A/AC.138/SC.1/3)", document A/AC.138/SC.1/4
  2. Consideration of the legal aspects of the report submitted by the Secretary-General pursuant to resolution 2467 C (XXIII) regarding international machinery (A/AC.138/12 and Add. 1)
  3. Consideration of the legal aspects of a long-term and expanded programme of oceanic exploration and research (note by the Secretary-General, document A/AC.138/14 and Corr.1)
  4. Consideration of the report of the Legal Sub-Committee to the Committee for the 1969 period of its work.
13. The Sub-Committee, having approved its programme of work, agreed that the report of the informal drafting group would constitute the basis for the discussion concerning the formulation of principles.
14. The subjects discussed by the Sub-Committee at both sessions will be dealt with in the next paragraph of this report under the relevant items of the report of the informal drafting group since, with the exception of the introductory part of the programme of work of the March session (operative paragraph 2 (a) of resolution 2467 A (XXIII)) all items dealt with therein coincide with the nine items of the programme of work for the March session.

Operative paragraph 2 (a) of resolution 2467 A (XXIII) -- "To study the elaboration of legal principles and the 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."

15. Some delegations felt that at that stage of the Sub-Committee's work only first principles should be considered, as they would serve as a foundation for a more substantial structure to be elaborated upon later; initially only those basic

/...

principles which gave rise to lesser difficulties might be drafted. It was suggested that in any case the principles should be few, broad and flexible as the committee was dealing with an undefined area, the possible uses of which could not yet be foreseen. Another view was that the principles should not be too wide or too flexible if they were to provide any real guidance to the international community and avoid ambiguities which would later give rise to conflicts. A third view was that the principles had to be meaningful and essential and to take into account the needs and aspiration of the developing countries.

16. The view was expressed that from a practical viewpoint it was necessary that the adoption of principles by the General Assembly should have unanimous support or at least the support of a substantial majority, including that of the principal maritime powers and of States having special maritime interests. Some delegations expressed preference for a declaration possessing binding force, to be adopted by the General Assembly in the exercise of its powers under Article 13, paragraph 1.a of the Charter. It was also suggested that some or all of the principles to be contained in the General Assembly declaration or recommendation should be eventually given form in an international convention.

17. The suggestion was made that the same procedure followed with respect to Outer Space might be followed by the Sub-Committee: a limited number of basic principles could at an early date be recommended for adoption by the General Assembly, while awaiting agreement on a fuller declaration of principles which would eventually provide the basis for an international treaty or treaties.

A. To study in the context of appropriate provisions of resolution 2467 A (XXIII) the elaboration of legal principles relating to:

(1) Legal Status

(a) General discussion

18. According to some delegations both concepts of res nullius and res communis were of little practical value for the determination of the legal status of the area of the sea-bed and ocean floor beyond the limits of national jurisdiction. It was also pointed out that the occupation and coastal State theories were legally untenable and politically unacceptable.

/...

19. It was suggested that in the absence of a legal theory or concept generally accepted as applicable to the area, the notion of the "common heritage of mankind" would provide the basis for individual principles concerning the area. Accordingly, all the rules and guidelines for activities in the sea-bed should be based on that notion. Its elements and consequences were: the notion of trust and trustees; indivisibility of the common patrimony; the regulation of the use of that heritage by the international community and the equitable distribution of benefits among those with an interest in the common property; freedom in access and use by all interested; and the principle of peaceful use.

20. It was also pointed out that the concept of "common heritage of mankind" implies an international machinery for the legal regulation and management of the resources of the sea-bed on behalf of the international community.

21. Certain delegations expressed the view that the new legal order should be governed by the "good of mankind" or "the common interest of mankind", the word "interest" preferred to the word "heritage" which might give rise to serious difficulties in the formulation of legal norms.

22. On the other hand, it was stated that the concept of "common heritage of mankind" was contrary to existing norms and principles as well as devoid of legal content; besides, it was also open to various interpretations.

23. Some delegations considered that a practical solution based on international law would be provided by the provisions of the Convention on the High Seas according to which the high seas were open to all nations on equal terms and no State could validly purport to subject any part of them to its sovereignty.

24. Reference was also made to the principle that "no state may claim or exercise sovereign rights over any part of this area, and no part of it is subject to national appropriation by claim of sovereignty, by use or by occupation, or by any other means". This principle was recognized in regard to their respective fields in the Antarctica and Outer Space treaties and according to existing rules of international law would not preclude any nation from exploring or exploiting these areas. Therefore, it was contended, there should similarly be a clear distinction between non-appropriation of the sea-bed on the one hand and exploitation or use of it on the other.

25. It was however pointed out that acceptance of the non-appropriation principle would be of no practical value if it were linked with an unqualified concept of freedom of exploration and exploitation, since it would only benefit the very few countries which have the capability of exploiting the sea-bed resources, without due compensation to the international community as a whole and the developing countries in particular.

26. The view was emphasized that pending the establishment of international arrangements for the orderly development of sea-bed resources, the exploration and exploitation of such resources could be continued without being accompanied by any claim of national sovereignty over that area. This view was contested.

(b) Consideration of the report of the informal drafting group

27. The Sub-Committee examined each of the eight elements listed under the item and the respective explanations included in the report. Some delegations held the view that only general principles should be included in a draft declaration: corollaries or detailed formulations inevitably gave rise to divergencies and impeded obtaining the necessary support for a draft declaration. However it was pointed out that a more comprehensive declaration was needed in order to safeguard the interest of mankind. Other delegations considered most of the elements listed as necessary to delineate the legal régime of the sea-bed.

28. With regard to the concept of "common heritage of mankind" arguments for or against it were reiterated. It was said that this expression lacked legal content, was imprecise, and being novel could not be interpreted on any generally accepted basis. It was argued on the other hand that once it had been enshrined in a declaration the concept would have universal validity as had been the case with the similar expression "province of all mankind" used in the outer space treaty; furthermore, new technology and problems required the development of new concepts. It was further argued that that concept was the basis on which a formulation of a declaration of principles should be elaborated. Some delegations doubted whether a general concept was required or desirable at that stage of the Sub-Committee's deliberations since the particular features of the régime for the area would have first to be weighed and agreed upon; such process of analysis and agreement logically preceded the question whether there is any general concept by which all the aspects of the legal status of the area may be summarized.

/...



29. It was suggested that the concept of "common heritage of mankind" could be included in the preambular part of a draft declaration of principles. On the other hand it was emphasized that it would be more desirable to mention this concept in the operative part of the declaration.

30. Elements ii, iii, iv and v were dealt with together since they were closely interrelated. While the principle of non-appropriation and the prohibition of the exercise of sovereignty on the area were found generally acceptable, some delegations however expressed the view that this acceptance would be conditional upon the general agreement on a declaration of principles. Certain doubts were expressed on the references to jurisdiction and property. Various formulations were put forward amending, eliminating or containing these four elements.

31. Elements vi and viii were regarded by some delegations as being more suitable for inclusion under item 4 (use of the resources for the benefit of mankind as a whole); other delegations were of the view that element vi was inseparable from the concept of "common heritage of mankind" and should therefore be retained in item 1.

32. Element vii "this area should be considered separately from the superjacent waters of the high seas" gave rise to the observation that it suffered from obscurity and could lend itself to various interpretations. One interpretation was that the formulation would apply once a régime for the sea-bed had been established, although the existing law of the sea would continue to be relevant in so far as the régime of the sea-bed ought to respect the rules which govern human activities in the other areas of the sea. Some delegations expressed doubts as to the adequacy of a separate treatment for the sea-bed and the superjacent waters since these areas constituted an organic unity. For other delegations, while the régime governing the sea-bed would have to be considered in relation to the régime governing the superjacent waters, the Committee's terms of reference did not cover the superjacent waters and the status of those waters should therefore not be mentioned in the enumeration of legal principles concerning the sea-bed. It was suggested that in any event element vii belonged to item 2 (applicability of international law). It was also said that although element vii is a prerequisite, its inclusion in the declaration is not essential.

/...

33. The view was expressed that item 1 omitted two important elements: (1) the recognition that there exists an area of the sea-bed and the ocean floor and subsoil thereof which lies beyond the limits of national jurisdiction and (2) the recognition of the need for an internationally agreed and precise boundary for the area. It was noted that existing uncertainty as to where such a boundary should be drawn may be a serious obstacle to the formulation of legal norms regulating questions concerning the exploitation of the sea-bed.

Formulations suggested or formally proposed  
regarding "Legal Status"

BELGIUM

(i) Suggestions made at the 15th meeting, held on 15 August 1969

I. No one may undertake the exploitation of the sea-bed unless authorized to do so by a State or an intergovernmental organization.

II. The appropriation of the resources of this area shall be effected in accordance with the régime to be established on the basis of the principles contained in this declaration.

(ii) Proposals submitted at the 17th meeting, held on 19 August 1969  
(A/AC.138/SC.1/7)

"The activities of non-governmental organizations and of private persons in the area must be authorized and kept under constant surveillance by a State or an intergovernmental organization."

BRAZIL

Suggestions made at the 16th meeting, held on 18 August 1969

1. The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction shall not be subject to national appropriation by any means and no State shall exercise or claim sovereignty or sovereign rights over any part of it;

2. Except as might be provided in an international régime to be established, no State shall claim or exercise jurisdiction or exclusive rights over any part of this area and no one shall acquire property over any part of it.

CZECHOSLOVAKIA

Suggestions made at the 16th meeting, held on 18 August 1969

(In the Preamble of the future Declaration):

"The General Assembly

Affirming that there exists an area of the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, hereinafter described as "this area", a precise boundary of which should be agreed upon",

(In the operative part of the future Declaration):

"Declares

1. No State may claim or exercise sovereignty or sovereign rights or jurisdiction over, nor grant exclusive rights to, any part of this area.

2. No part of this area is subject to any appropriation - either by States or by nationals - by use or occupation or by any other means.

MALTA

Suggestions made at the 18th meeting held on 20 August 1969

Paragraph 5 (ii): This area or any part thereof\* is not subject to national appropriation by any means whatsoever.

Paragraph 5 (iii): No State may claim or exercise sovereignty over this area or\* any part thereof.

Paragraph 5 (iv): Except as may be provided in an international régime, no State shall claim or exercise jurisdiction or grant exclusive rights over any part of this area.

Paragraphs 5 (v) and 5 (viii): Unnecessary

NORWAY

Suggestions made at the 14th meeting held on 14 August 1969

1. There exists an area of the sea-bed and the ocean floor and subsoil thereof which lies beyond the limits of national jurisdiction.

2. The General Assembly:

Affirming that there is an area of the sea-bed and ocean floor, and the subsoil thereof, which lies beyond the limits of national jurisdiction;

Declares that .....

3. The General Assembly:

Considering this area to be part of the common heritage of mankind.

4. No State may claim or exercise sovereignty or sovereign rights over nor grant exclusive rights to any part of the sea-bed and ocean floor or its subsoil beyond the limits of national jurisdiction.

---

\* Underlined words added to formulation in document A/AC.138/SC.1/4.

5. The sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction are not subject to national appropriation, nor may any State, entity or person acquire property rights over any part of this area whether by use, occupation or by any other means.

6. The General Assembly:

Affirming that.....

Affirming that the exploration, use and exploitation of this area shall be carried out for the benefit of mankind;

Affirming that there shall be no discrimination in the availability and administration of this area for the exploration, use and exploitation by all States and their nationals in accordance with international law.

THE UNION OF SOVIET SOCIALIST REPUBLICS

Proposals submitted on 21 August 1969 (A/AC.138/SC.1/8)

1. There is an area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction, a mere precise boundary of which shall be established.

2. The sea-bed and ocean floor beyond the limits of national jurisdiction is not subject to national appropriation and no State may claim or exercise sovereignty or sovereign rights over any part of the sea-bed; no one may acquire property rights over any part of the sea-bed by use, occupation of any other means.

-----