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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

ADDENDUM

(a) Applicability of international law including the United Nations Charter

(a) General discussion

35. Some delegations emphasized the importance of Article 2 of the Convention of the High Seas and of Article 5 of the Continental Shelf in determining the international law applicable to the sea-bed. It was impossible to say, according to these delegations, that a vacuum existed and that international law was only partly applicable to the sea-bed; an examination of existing law, both conventional and customary would provide a legal framework for the development of international law on the sea-bed; the United Nations Charter undeniably provided a basis for such legal framework. As applicable guidelines in the Charter mentioned in this connexion, were those contained in its provision concerning the principle of sovereign equality, the maintenance of international peace and security, the peaceful settlement of disputes and the promotion of international co-operation. It was emphasized that the application of international law encompassed considerably more than the rules or principles designed specifically to regulate conduct on the high seas, such as the norms relating to the use of force among States, general principles of State responsibility, and the obligations to respect specific treaty provisions.

36. For some of the proponents of the concept of "common heritage of mankind" it was not sufficient to say that international law applied to the sea-bed and ocean

floor; the question was how international law applied, since existing law does not provide specific legal rules for the sea-bed and all it does is to require observance in the sea-bed of rules which govern the use of other areas of the marine environment; a régime for the sea-bed could not be developed on the basis of such rules and it was therefore obvious that a vacuum existed. According to this view, the same could be said about the United Nations Charter. The 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 marine environment. It was pointed out that the large and obvious lacunae in the law in this respect were best shown by the fact that the Committee had been charged with the task of elaborating new legal principles in this field of human relationships; at the same time the application of present international law would have the effect of permitting the indiscriminate exploitation of sea-bed resources and this would be contrary to the interests of the international community.

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

37. In the light of the views they had already expressed, delegations lent their support or argued against the formulas set forth in paragraph 14 of the report of the informal drafting group. None of them was deemed entirely satisfactory. The discussion centered on the formulation suggested for the consideration of the Sub-Committee in paragraph 18 of the report. While some delegations expressed their readiness to accept this formulation, other delegations doubted its adequacy. They argued that a distinction should be drawn between the norms applicable to the area and those applicable to the activities undertaken in the area so that while the former undeniably applied - so that such a reference would be superfluous - the latter were virtually inexistent. Consequently and because activities had not yet been undertaken in the area the only norms thus far existing were those concerning the laying of submarine cables and pipes. It was therefore unjustified to say that "all activities in this area shall be carried out in accordance with international law". The supporters of this view, suggested that, by analogy with the order of priority established in Article 38 of the Statute of the International Court of Justice, the formulation should mention first the principles of the declaration and then the general principles

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of international law which would apply to situations not specifically provided for in the declaration; reference to the Charter of the United Nations was not necessary in so far as with the exception of its "Purposes and Principles" the Charter had very little to do with the activities in the sea-bed.

38. Suggested formulations regarding "(2) Applicability of international law, including the United Nations Charter"

BELGIUM

Suggestions made at the 17th meeting held on 19 August 1969

At the second line of the formulation under paragraph 18 of the report of the Informal Drafting Group (A/AC.138/SC.1/4), replace the expression "including the Charter of the United Nations" by the words "in particular the purposes and principles of the Charter of the United Nations".

CZECHOSLOVAKIA

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

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

KENYA

Suggestion made at the 19th meeting held on 20 August 1969

The formulation in paragraph 18 of document A/AC.138/SC.1/4 could be replaced by the following text:

"All activities in this area shall be carried out in accordance with the principles of this declaration as well as the legal principles and norms to be internationally agreed but in such a manner as not to conflict with the existing principles of international law including the Charter of the United Nations."

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MALTA

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

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"Paragraphs 14 and 18: Activities in this area shall be undertaken in accordance with the relevant principles of international law, with the principles and purposes of the Charter of the United Nations, with the principles contained in this declaration and, as from the date of their adoption, with such legal principles and norms as may be agreed upon for the exploration and use of this area and for the exploitation of its resources."

THE UNION OF SOVIET SOCIALIST REPUBLICS

Suggestions made on 21 August 1969

"The activities of States on the sea-bed shall be carried out in accordance with international law, including the Charter of the United Nations and the legal principles and norms which will hereafter be agreed upon for the exploration, use and exploitation of the sea-bed."

(3) Reservation exclusively for peaceful purposes

(a) General discussion

39. The view was expressed that the reservation of the sea-bed and the ocean floor for exclusively peaceful purposes was one of the most urgent matters engaging the attention of the international community since unless steps were taken in the very near future to prevent the militarization of that area, the arms race would inevitably be extended to it. Various delegations emphasized the urgency of banning nuclear or other weapons as well as military bases and fortifications from the area beyond national jurisdiction. Some delegations stated that they had refrained from discussing this principle in view of the fact that discussions and negotiations were taking place on this subject in the Geneva Disarmament Committee.

40. A draft treaty submitted by the USSR to the Committee on Disarmament on 10 March 1969 was noted with appreciation, interest or approval. The draft treaty prohibits the use for military purposes of the sea-bed and its subsoil beyond the

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12-mile maritime zone of coastal States; and makes provisions for free access to all installations on the sea-bed and its subsoil by representatives of the parties to the treaty. Supporters of the draft treaty stated that it went beyond a general declaration in providing for verification and supervision of the banning of military activities.

41. Objections were raised to the argument that military activities in pursuit of peaceful aims were not incompatible with the use of the sea-bed exclusively for peaceful purposes. The view was expressed that such argument ignored international precedents and understandings developed since the Second World War. Reference was made in this connexion to previous discussions in the Disarmament Committee, General Assembly resolutions on atomic energy, the Treaty on Non-Proliferation of Nuclear Weapons, Article I of the Antarctic Treaty of 1959 and Article IV of the Outer Space Treaty. These precedents, it was contended, made clear that the United Nations had invariably understood the use of a given environment for exclusively peaceful purposes to mean its complete demilitarization, which included the prohibition of all military activities whatever their purpose. Proponents of this interpretation stated that there should be no departure from such practice in the case of sea-bed and the ocean floor; the expression "peaceful uses" should be defined along those lines in order to avoid ambiguity.

42. Other delegations reserved their position on this interpretation of the meaning of the expression "exclusively for peaceful uses" or stated that it in no way precluded defensive activities that are consistent with international law and the Charter of the United Nations.

43. It was pointed out that the rights of the coastal State under the Continental Shelf Convention were limited to exploring and exploiting the mineral resources of the shelf and therefore did not include the right of emplacing military installations; furthermore, the military use of the continental shelf would inevitably affect the peaceful exploration and use of the sea-bed. It was stated on the other hand that it could be assumed that States were not likely to ignore their security requirements simply because the Convention is silent or unclear on the subject.

44. It was emphasized that the implementation of the principle of peaceful uses of the sea-bed, the ocean floor and the subsoil thereof, beyond the limits

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of national jurisdiction, required the determination of the limits of such area.

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

45. On the discussion of the principle of the "reservation exclusively for peaceful purposes" there was agreement in the Sub-Committee that it was an essential part of any declaration or statement of principles to be adopted by the General Assembly. It was recognized that since the Geneva Disarmament Committee was endeavouring to elaborate detailed and technical formulations in this respect, the Sub-Committee could well limit itself to principles couched in general terms, without by this detracting from its mandate under General Assembly resolution 2467 A, paragraph 3. However, there was a difference of opinion as to the meaning of "use exclusively for peaceful purposes". Some of the formulations suggested or proposed referred to the question of the limits which are to be agreed for these purposes. In this connexion reference was made to paragraph 3 of General Assembly resolution 2467 A.

46. Suggestion formulations regarding "(3) Reservation exclusively for peaceful purposes"

BELGIUM

Suggestions made at the 17th meeting held on 19 August 1969

"1. The sea-bed and ocean floor beyond a coastal strip the limits of which are to be agreed on shall be reserved exclusively for peaceful purposes.

"2. An international treaty shall be concluded as soon as possible for the purpose of preventing an arms race from taking place in the area."

MALTA

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

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"Paragraph 19: This area shall be reserved exclusively for peaceful purposes without prejudice to the wider area which may be agreed upon."

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THE UNION OF SOVIET SOCIALIST REPUBLICS

Suggestions made on 21 August 1969

"The sea-bed and the ocean floor and the subsoil thereof beyond the limits of the maritime zone of coastal States, the boundaries of which are to be agreed upon in international negotiations on disarmament, shall be used exclusively for peaceful purposes; accordingly all military activities shall be excluded, and all forms of military use shall be prohibited."
