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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

DRAFT REPORT

ADDENDUM

- (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

(a) General discussion

47. It was pointed out that the Committee had been entrusted with the task of studying the establishment of an international legal régime for the sea-bed beyond the limits of national jurisdiction, and that that task implied in itself the use and exploitation of the area by all, without discrimination. It was further emphasized that the special interests and needs of the developing countries should, accordingly, be built into the very fabric of the régime, as this should not aim at the attainment only of equality of opportunity but must secure equality in actual use and exploitation of the resources of the sea-bed. In any case, a most fundamental objective for the Committee's task was to avoid creating situations which may be detrimental to the technologically less developed countries, or in any way stifle them or destroy the incentives for their activities.

48. A view was expressed that in order to make any set of principles a balanced and coherent statement, it should place land-locked States on an equal footing with coastal States. Another view was that the problem of the protection of the territorial waters and of the waters beyond the limits of national jurisdiction of the developing countries should be mentioned, as many of such countries did not possess an adequate fleet or striking force and were often unable to enforce respect for those areas.

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

49. With regard to the scope of application of the words "exploration, use and exploitation" two different views have been expressed. Some delegations held the view that it was unrealistic to apply these words to the area as a whole and that it should only apply to the resources of this area. On the other hand, those who contended that the scope of applicability of the exploration, use and exploitation should be the area itself based themselves on the language of resolution 2467 A (XXIII). In addition, some of those who supported that view interpreted the expression "use of the resources for the benefit of mankind" as limited to resources other than fishing since these were clearly covered by the relevant convention on the law of the sea.

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50. It was emphasized that all the formulations pertaining to this item tended to consider an international régime as an essential prerequisite for the purpose of exploration, use and exploitation of this area. A difference of opinion however arose on whether the international régime should be qualified by the word "legal" since certain delegations argued that the term "agreed" would be sufficient. It was furthermore argued that any régime that is established has to be formulated in legal language, and embodied into multilateral agreements.

It is with this understanding that it would be considered as a legal régime without necessarily attaching too much importance to the use of the word "legal".

51. During the discussion of the specific elements of paragraph 25 of the report some delegations emphasized the contents of sub-paragraph (ii) ("Economic incentives") while considering that reference to international machinery in a statement of principles was not desirable; others emphasized the contents of sub-paragraph (iii) ("International machinery") and the central role which in their opinion international machinery should play in a régime for the area, whether or not such international machinery was mentioned in a first declaration of principles.

52. Doubts were voiced as to the adequacy in a régime for the exploitation of sea-bed resources of the provision in sub-paragraph (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").

53. The view was expressed that sub-paragraph (vi) ("Accommodation among the commercial and other uses of this area and the marine environment") belonged more properly to item 6 ("Reasonable regard to the interests of other States in their exercise of the freedom of the high seas").

54. It was suggested that the provisions in paragraph 25 needed to be condensed particularly those in sub-paragraphs (iv) to (viii).

55. Some delegations considered that the various elements of this item required a much closer examination because of their serious implications and the fact that the report of the Secretary-General on international machinery (A/AC.138/12 and Add.1) had not yet been studied in depth by the Sub-Committee.

56. A suggestion was made that a statement of principles should contain a commitment to the establishment of an internationally agreed régime and that it should spell out in general terms the more salient features of such a régime.

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57. Suggested formulations regarding (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

INDIA

Suggestion made at the 21st meeting, held on 22 August 1969

Any freedom laid down in the Convention of the High Seas shall apply to the sea-bed only so far as provided by the régime to be set up.

MALTA

Suggestions made at the 22nd meeting, held on 22 August 1969

Paragraph 21. Delete "and for the promotion of economic development".

Paragraphs 22-25

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

(a) effective international co-operation in the regulation of activities in this area, more particularly effective international co-operation in the exploration, use and efficient exploitation of this area, in the orderly and rational development of its resources, in the accommodation between its different uses and between these and the uses of the superjacent waters in a manner reflecting the interests of the international community and in the adoption and reflecting of effective safeguards against ocean pollution

(b) effective international co-operation in the settlement of disputes and conflicts

(c) effective international co-operation to minimize the possible adverse economic effects of the exploitation of the resources of this area and to develop procedures for the equitable application of the financial proceeds resulting from the exploitation of the resources of this area taking into account the special needs and interests of poor countries.

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USSR

Suggestions made at the 21st meeting, held on 22 August 1969

1. The exploration and use of the sea-bed and the ocean floor shall be carried out for the benefit and in the interests of mankind as a whole, irrespective of the geographical location of States.

2. Subsequently, a special legal régime regulating the exploitation of the resources of the sea-bed and the ocean floor shall be worked out.

USA

Suggestions made at the 21st meeting, held on 22 August 1969

1. Establishment of a régime

"There shall be established, as soon as practicable, an internationally agreed régime governing the exploration and exploitation of the resources of this area."

2. Element (viii) (Protection for Prior Investments)

"The régime shall provide due protection for the integrity of investments in exploitation of this area undertaken prior to establishment of its boundary."

(5) Freedom of Scientific Research and Exploration

(a) General discussion

58. The importance of this principle was emphasized in connexion with article 2 of the Geneva Convention on the High Seas and article 5 of the Convention on the Continental Shelf. Some delegations pointed out that the principle of the freedom of scientific research does not give in itself the exclusive right of economic exploitation of the resources of the area or provide the basis for freedom of economic exploration and exploitation. It was also pointed out that this particular freedom should entail the obligation to make results of scientific activities available to other States.

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

59. During the discussion on the elements listed in paragraph 26 of the report, the members of the Committee stressed the fundamental importance of scientific research conducted in the sea-bed and the need to promote international co-operation conducive to such research.

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60. Although the principle of freedom of scientific research was unanimously adhered to, there was a difference of opinion as to the adequacy of establishing certain criteria designed to distinguish between pure scientific research and scientific research with commercial objectives. Thus, some delegations supported elements (ii) ("Communication beforehand of programmes of scientific research") and (iii) ("Communication of results of scientific research") which for them constituted either necessary preconditions or were an integral part of any formulation pertaining to freedom of scientific research. For these delegations an unconditional freedom of scientific research was susceptible of abuse, no freedom was absolute, and with respect to the marine environment freedoms must be exercised with reasonable regard to the interests of other States. Other delegations were of the view that freedom of scientific research exists and should exist as a matter of principle and not as a conditional right; they, accordingly supported element (i) (freedom of scientific research without discrimination and avoidance of interference with such research), pointing out that scientific research and international co-operation in such research must not be impeded by any obstacles erected by elements (ii) and (iii). For some of these delegations a rigid publication requirement was unrealistic since this requirement could not in all cases be imposed without disrupting, as to method and timing, the elaborate system for disseminating information used by the oceanographic community; also, element (v) (Encouragement by States of their nationals to follow the practices concerning communication of information regarding programmes and results) had to be taken together with elements (ii) and (iii) since in some States private scientific institutions had a long tradition of independence.

61. Element (iv) (Promotions of international co-operation) was found unquestionable.

62. Some delegations expressed the view that in element (vi) ("No rights of sovereignty or exploitation are implied in the carrying out of scientific research") the reference to rights of sovereignty was unnecessary since the sea-bed was not subject to sovereignty or sovereign rights (I Legal Status, element (iii)).

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63. Some delegations emphasized the importance of making a distinction between the scientific research of the marine environment directed to obtaining a wider knowledge of the environment and the exploration as a preliminary step leading to commercial exploration. They pointed out in this respect that the title of item 5, which states freedom not only of scientific research but also of exploration, seemed to be misleading. Other delegations stated that there is no difference in concept between research and exploration and that their national legislation did not establish any distinction between the two.

64. Suggested formulations regarding "(5) Freedom of scientific research and exploration"

MALTA

Suggestions made at the 22nd meeting held on 22 August 1969

There shall be freedom of access to this area for the purpose of fundamental oceanographic or other scientific research carried out with the intention of open publication. The undertaking of such research shall not confer special rights over any part of this area and its results shall be made available to all States without discrimination.

States shall promote international co-operation in the conduct of scientific research concerning this area and shall encourage the participation in such research of nationals of countries that are technologically less advanced in maritime matters.

NORWAY

Suggestions made at the 22nd meeting held on 22 August 1969

Freedom of scientific research without discrimination is recognized in this area and its subsoil. In order to promote international co-operation in this field States shall inter alia publish beforehand in a timely fashion their plans for such scientific research; make the results of their research available, and to the extent practicable promote and participate in common research programmes.

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THE UNITED KINGDOM

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

There shall be no restriction on the freedom of scientific research in or concerning the sea-bed and subsoil beyond the limits of national jurisdiction, nor shall the exploration of this area and the exploitation of its resources result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

States shall promote international co-operation in the conduct of scientific research in or concerning this area, and shall take appropriate measures to ensure the widest possible accessibility of the results of such scientific research.

THE USSR

Suggestions made at the 21st meeting, held on 22 August 1969

Freedom of scientific research on the sea-bed and the ocean floor shall be assured and States shall promote international co-operation in the carrying out of such research.

THE UNITED STATES

Suggestions made at the 21st meeting, held on 22 August 1969

In order to further international co-operation in the scientific investigation of the deep ocean floor, States shall:

- (a) make timely dissemination of plans for and results of national scientific programmes concerning this area;
- (b) encourage their nationals to follow similar practices concerning dissemination of such information;
- (c) encourage co-operative scientific activities regarding this area by personnel of different States.



YUGOSLAVIA

Suggestions made at the 22nd meeting, held on 22 August 1969

This area shall be open without discrimination to scientific research for peaceful purposes, and States shall promote international co-operation in this research so as to enable all countries to have access to it, disseminate its results which must be made available to all without discrimination, bearing in mind that scientific research does not imply any right to exploitation or provide a basis for a claim of sovereignty.

- (6) Reasonable regard to the interests of other States in their exercise of the freedom of the high seas
- (7) Question of pollution and other hazards and obligations and liability of States in the exploration, use and exploitation

(a) General discussion

65. In connexion with this concept reference to article 2 of the Convention on the High Seas was made. The position of coastal States and the protection of their interests was mentioned in connexion with article 6 of the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas.

66. It was pointed out that the provisions of the Convention for the Prevention of Pollution of the Sea by Oil of 1954, and the Geneva Convention on the High Seas were too narrow and lacked effective means of implementation against new sources of pollution. A suggestion was made that attention should be given to the question of possible assistance to persons in distress and that international arrangements for the assistance to and rescue of aquanauts should be worked out. The need to establish regulations on liability for pollution and other hazards was emphasized by several delegations. It was suggested that in order to make any set of principles more balanced and coherent it should include the principle of liability for damages caused by activities in the exploration, use and exploitation of the sea-bed and ocean floor.

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

67. The substance of elements (i) ("Reasonable regard for the interest of all States ") and (ii) ("Non-infringement of the freedoms of the high seas; and no unjustifiable interference with the exercise of such freedoms") received the general support of delegations although some of them stated that a closer consideration of the elements was necessary before legal principles are formulated. It was recalled that a formulation on the concept of accommodation between different uses of the area and the marine environment which had been included under sub-paragraph (vi) of paragraph 25 in item 4 belonged more properly to item 6.

68. As regards element (iii) ("Adoption of appropriate safeguards against the dangers of pollution and other harmful effects on the marine environment"), (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") and (v) ("Adoption of safety measures concerning all activities in the area") suggestions were made concerning the precise language in which the elements should be expressed. Emphasis was placed on the urgent need for international safeguards against pollution in the marine environment.

69. Element (vi) ("Rendering of assistance in case of mishap, distress or danger") was viewed by some delegations as probably unnecessary in the light of article 12 of the Convention on the High Seas concerning the obligation to render assistance. According to these delegations there was no reason why such provision should not apply to mishaps, distress or danger occurring in the sea-bed.

70. As regards element (vii) ("Damage caused by activities in the area (undertaken without appropriate safeguards) shall entail liability"), the view was expressed that drafting of detailed provisions on liability, (including State liability which is dealt with under items 8 and 9 of the report) required considerable study because of its complexity. Some delegations expressed an inclination to favour strict liability, as opposed to liability arising from activities undertaken without appropriate safeguards or authorization. The suggestion was made that pending the elaboration of a precise or detailed provision, the principle of liability for damage be formulated in general terms.

71. Some delegations had doubts concerning the meaning of element (viii) ("Consultations with coastal States closest to the area in which any activities

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occur, lest their rightful interest be harmed"). They stated that if the purpose of the formulation was to entitle the coastal State to a preferential share of the benefits derived from exploitation of resources discovered beyond its national jurisdiction, such purpose would be incompatible with the principle that all nations have equal access to those resources. Other delegations regarded element (viii) as fully compatible with article 6 of the Convention on Fishing and Conservation of Living Resources of the High Seas.

72. Element (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") gave rise to misgivings expressed by some delegations concerning the possibility that the measures taken by the coastal State may result in the exercise of jurisdiction in an area beyond the limit of national jurisdiction, in violation of the principles of the freedom of the high seas. Some delegations suggested that this element should be formulated together with element (iii) (Pollution).

73. Element (x) ("Procedures to be followed in the event of anticipation of possible harmful interference with other activities") was considered unclear by some delegations. Others suggested that if a statement of principles were shorter and less detailed, inclusion of this element would not be necessary.

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74. Suggested formulations regarding "(6) reasonable regard to the interests of other States in their exercise of the freedoms of the high seas", and "(7) question of pollution and other hazards, and obligations and liability of States involved in the exploration, use and exploitation"

ICELAND

Suggestions made at the 20th meeting, held on 21 August 1969

- (iv) Appropriate safeguards shall be adopted against the dangers of pollution arising from the exploration and exploitation of the resources of the sea-bed and ocean floor, and against other harmful effects on the marine environment, in particular on its living resources;
- (vii) Damage caused by activities in the area shall entail liability;
- (ix) Coastal States shall have the necessary rights to take appropriate measures for the protection of living and other resources in their coastal areas against pollution which has occurred outside their national jurisdiction;

MALTA

Suggestions made at the 22nd meeting, held on 22 August 1969

Activities in this area shall be undertaken with reasonable regard to the interests of all States and without unjustifiable interference with navigation, fishing, conservation of the living resources of the sea or the laying and maintenance of cables and submarine pipelines nor shall such activities result in any interference with fundamental oceanographic or scientific research carried out with the intention of open publication.

Activities in this area shall be undertaken only with the observance of effective safeguards against the dangers of ocean pollution, including radioactive pollution, and other harmful effects on the marine environment.

States shall co-operate in providing assistance, when requested, in the event of accident or emergency resulting from activities in this area.

States shall bear international responsibility for the activities of their nationals and of persons authorized by them to undertake activities in this area. States shall ensure that such activities are undertaken in conformity with the principles and purposes of the Charter of the United Nations and of the principles set forth in the present declaration.

NORWAY

Suggestions made at the 22nd meeting, held on 22 August 1969

(Item 6)

"In the exploration, use and exploitation of this area and its subsoil:

"(a) There shall be no infringement of the freedoms of the high seas, and no unjustifiable interference with the exercise of such freedoms, in particular in reference to navigation, fisheries, the laying and maintenance of cables and pipelines, the conservation of the living resources of the seas and the freedom of scientific research.

"(b) States and their nationals shall have reasonable regard for the interest of other States and their nationals."

(Item 7)

"Appropriate national and international measures shall be taken to ensure that activities carried out in this area and its subsoil do not cause pollution or harmful effects or hazards to the areas concerned and their subsoil or to the marine environment.

"Appropriate national and international measures shall be taken as to conserve and protect the resources of the areas concerned and their subsoil and the living resources of the marine environment."

THE USSR

Suggestions made at the 21st meeting, held on 22 August 1969

(Item 6)

The activities of States in connexion with the sea-bed shall not infringe recognized freedoms of the high seas and shall not interfere with navigation, fishing, scientific research or the safeguarding of the living resources of the sea.

(Item 7)

Appropriate national and international measures shall be taken to ensure that activities carried out on the sea-bed do not cause pollution of the marine environment and other harmful effects, particularly radio-active contamination.

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YUGOSLAVIA

Suggestions made at the 22nd meeting, held on 22 August 1969

Sub-paragraph 28 (viii) of the report of the informal drafting group should read:

Consultations with coastal States whose jurisdictional parts of the sea-bed are adjacent to the area in which any activity occurs.

(8) Other questions

(9) Synthesis

(i) Existence of an area

6. Reference was made to a proposed principle which provides that: "There is area of the sea-bed and ocean floor and the subsoil thereof, which lies beyond the limits of national jurisdiction." It was pointed out that this proposed principle appeared to merit general support and that being a far-reaching proposal the Sub-Committee should not minimize the progress which that general support represented; the principle amounted to acknowledging that claims cannot be unlimited under the Continental Shelf Convention or under general international law, and it should be recorded as agreed. On the other hand, the view was expressed that it was not necessary to state in a declaration of principles a fact which had obviously been taken for granted since the Committee was studying the elaboration of legal principles precisely for that area.

(ii) Question of boundary

76. During the discussion preceding the adoption of the programme of work for the March session, a proposal had been made to add the following item: "The question of the definition of the boundary between that area of the sea-bed and the ocean floor lying beyond the limits of national jurisdiction and the area which falls under national jurisdiction." As a result of consultations the Sub-Committee reached an agreement as regards this item and requested the Chairman to draw up a statement embodying that agreement. (See paragraph 6 of this report.)

77. Some delegations pointed out that General Assembly resolutions 2340 (XXII) and 2467 (XXIII) dealt in a deliberately chosen and clear language only with the

area "underlying the high seas beyond the limits of present national jurisdiction", thus excluding from the mandate of the Committee (and of the Legal Sub-Committee) the framing of recommendations concerning the question of such limits or the advocacy of the revision of such limits. For these delegations the area upon which national jurisdiction applies had already been determined by the States concerned, or could be sufficiently determined in the case of the continental shelf by using the combined elements of "adjacency" and "exploitability" contained in article 1 of the Convention which had simply embodied a principle of customary law; in any event attempts to limit national jurisdiction infringed upon the sovereignty and security of States, matters which are of the greatest importance for the States concerned.

78. Other delegations stated that it was obviously beyond the powers of the Sub-Committee, the parent Committee or the General Assembly itself to exercise judicial or quasi-judicial powers to determine the extent of the jurisdiction of any given State or group of States, and that for this reason such functions had been excluded from the mandate of the Sub-Committee and that of its parent Committee. It was further stated, however, that there was an intimate relationship between the question of the nature of the régime to be established and that of the limits of the area to which it is to apply and accordingly real progress would not be made unless work proceeded simultaneously on both questions. In support of this view, it was suggested that the position of many countries concerning the nature of the solutions envisaged for the régime may be governed to a large extent by the determination of the actual area in question. The Sub-Committee should, according to this view, lay the foundations for the elaboration of generally agreed principles for the subsequent delimitation of the area. It was also suggested that while the actual definition of a boundary was the function of some other body, the Legal Sub-Committee would certainly have to express some opinion on the appropriateness of the boundary in question and to draw the attention of the General Assembly and of Governments to the problem; the Committee was at least morally bound to call the attention of the General Assembly to the fact that the definition of the continental shelf contained in the Geneva Convention lends itself to interpretations susceptible of affecting the limits of the area which the Committee had been entrusted to study. A view was expressed

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that while the Sub-Committee was not competent to decide on questions concerning limits, it should recommend that action be taken to cordon off the territorial sea either within an internationally uniform width or alternatively, taking into account the different geographical features of particular coastal regions.

79. On the other hand, it was pointed out that the obstacles for an early agreement on internationally agreed precise boundaries should not inhibit progress in the elaboration of legal principles guiding the activities of States in the exploration and use of the sea-bed; similar difficulties in reaching agreement on the definition of outer space and the exact delimitation of its boundaries had not prevented the adoption of a declaration of legal principles governing the activities of States in outer space and the codification of these principles.

80. It was suggested that an international conference may be required to work out agreed principles for the delimitation of the area beyond national jurisdiction. One view was that the conference should consider only the revision of the Continental Shelf Convention and the legal régime for the area beyond the continental shelf, entirely excluding questions relating to the living resources of the high seas. Another view was that the conference should consider the revision of both the Geneva Convention on the Continental Shelf and the Geneva Convention on Fishing and Conservation. The view was emphasized that a conference convened to determine principles for the delimitation of the area beyond national jurisdiction should be preceded by careful preparatory work including studies by experts, in order to ensure the likelihood of agreement on this complex question. Caution was advocated in order not to disregard prevailing legal and political realities and rush headlong into maximum disagreement and conflict; the principles of customary law embodied in the Convention on the Continental Shelf and the substantial national and international body of law based on the Convention could not be ignored or hastily put aside; in this respect it was recalled that a number of States were parties to the Geneva Convention on the Continental Shelf and that many States, whether parties to the Convention or not, had been guided by the principles of the Convention in enacting legislation or concluding bilateral agreements for their off-shore submerged lands; in the meantime the Sub-Committee should concentrate on elaborating legal principles on the basis of which further work could proceed.

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81. It was suggested that pending clarification of the boundaries of the sea-bed area situated outside the limits of national jurisdiction, a moratorium or freezing of claims of coastal States might be desirable.

(iii) State responsibility

82. The discussion on this question was of a general character. Some delegations dealt with this question within the more comprehensive subject contained in element (vii) of items 6 and 7. The view was expressed that it was essential that States bear responsibility for the activities of their nationals. It was suggested that several factors would have to be taken into account to give the formulation a more precise form: the case of persons carrying out activities under the authorization of a State other than that of their nationality; activity in the area carried out by international organizations; and the existence of rules of international law concerning the international responsibility of States for the actions of their nationals.

(iv) Implementation of the principles of the declaration

83. The suggestion was made that it was premature to consider proposals concerning this question.

84. Suggested formulations regarding "(8) other questions" and "(9) synthesis"

CZECHOSLOVAKIA - See suggested formulations regarding legal status.

MALTA

Suggestions made at the 22nd meeting, held on 22 August 1969

Preambular paragraphs:

Considering that customary international law is ambiguous and that the 1958 Geneva Convention on the Continental Shelf does not precisely delimit the area over which a coastal State exercises sovereign rights for the purpose of exploration and exploitation of natural resources.

Affirming nevertheless that there can be no doubt that there exists an area of the sea-bed and ocean floor and the subsoil thereof underlying the high seas which lies beyond national jurisdiction (hereinafter referred to as "this area").

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THE USSR

Suggestions made at the 21st meeting, held on 22 August 1969

States shall bear international responsibility for their national activities on the sea-bed, irrespective of whether those activities are carried out by governmental organs, non-governmental organizations or private persons.

Note: See also suggested formulations regarding legal status.

Item 2 of the programme of work: 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)

Item 3 of the programme of work: 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)

85. Owing to insufficiency of time the Sub-Committee decided to postpone consideration of these two items until its next session.

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