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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

Synthesis

The debates during the two sessions of the Legal Sub-Committee and the informal consultations that have taken place during the intersessional period have been useful inasmuch as they have contributed towards the clarification of positions. They have furthermore, in what in fact should be considered a significant progress, been instrumental in steering the discussions of the legal sub-committee away from a generalized approach towards the task of devising specific formulas for a number of defined ideas. It is to be noted, however, that the multiplicity of formulations on a single point, whether those in the report of the informal drafting group or those proposed by the various delegations during the course of the second session, could prima facie be construed as denoting differences of opinion. While this might be the case with regard to certain elements, it is not so for a number of others; where various formulations contain similar ideas and do sometimes overlap. The variety of formulations is due in this connexion to differences in emphasis and as to scope. In certain instances it is to be observed that part of the membership of the Committee finds itself attached to particular concepts to which in varying degrees the other part does not concur.

At this stage of the Sub-Committee's deliberations it might be argued against the practicability of underscoring "areas of agreement" or "areas of disagreement", since none of the formulations have so been endorsed. Yet it could be considered suitable to attempt a synthesis of the related formulations in order to determine in so far as possible common denominators. These denominators could in no way be construed as an adequate basis for the elaboration of a balanced and comprehensive declaration of principles.

It appeared at the outset that the legal sub-committee accepted that there is an area of the sea-bed and ocean floor and the subsoil thereof which is beyond the limits of national jurisdiction, as had already been recognized by the ad hoc Committee in its report (para. 86).

Legal status

A common denominator on this item would be the concept that 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.

This concept though acceptable to many was not considered by others as sufficiently comprehensive and for whom the following idea would be a corollary that except as may be provided in an international regime, no State shall claim or exercise or grant exclusive rights over any part of this area.

The over-all concept that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction are part of the common heritage of mankind upon which a number of delegations believed that a declaration of principles should be based was not acceptable to all.

There however appeared a tendency among a section of the Sub-Committee to accept such a notion in a preambular part. But others who were in favour of this principle insisted that it finds its place in the operative part.

Applicability of International Law including the United Nations Charter

On this item it has not been possible to detect any common denominators. Two main trends have emerged however. On the one hand, the proponents of the adequacy of the present international law for application to the area and to which any declaration of principle would be complementary. On the other hand, the advocates of the necessity of elaborating a new regime for an area which is not sufficiently covered by existing International Law.

The following ideas could represent the two different approaches: that the activities in this area shall be governed by International Law including the Charter of the United Nations (in the interest of maintaining international peace and security and promoting international co-operation, scientific knowledge and economic development); or (and the legal norms which will hereafter be agreed upon for the exploration, use and exploitation of the sea-bed), and that the activities in this area shall be governed by the principles of this declaration as well as multilateral agreements covering the exploration, use and exploitation of this area taking into account the relevant principles of International Law.

Reservation exclusively for peaceful purposes

A common denominator in this regard has emerged in the sense that a declaration of principles would contain the following idea that this area shall be reserved exclusively for peaceful purposes.

There was however no agreement on the inclusion in the draft of any reference to the limits of this area or to the scope of the peaceful purposes.

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

An agreement seems to have emerged on the need for the establishment of a regime as well as on the use of the resources for the benefit of mankind irrespective of the geographical location of States and taking into account the special interests and needs of the developing countries. The qualification of that regime is still to be agreed upon as well as the scope of the

applicability. Whether the regime shall be legal, international or agreed upon or a combination of some or all of those elements remains to be decided upon. Similarly whether the regime shall apply to the area or only to the exploration, use and exploitation is a matter still to be settled. The content of such a regime is still under study and will in the future receive further consideration. It was underlined that the future regimen should provide for the most appropriate equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries through an effective international machinery which would regulate activities in the area, in particular control the development of resources in the area.

Freedom of scientific research

This item was generally acceptable as well as that of the conduct of scientific research for the promotion of international co-operation. There appeared the possibility of obtaining agreement on including those ideas in a declaration of principles which would be expressed as follows that freedom of scientific research in this area shall be assured to all without discrimination and States shall promote international co-operation in the conduct of scientific research, on the understanding that it should be made clear that prior communication of programmes and subsequent communication of results were essential elements and had to be stated as such to distinguish scientific research and exploration from commercial exploration. In this connexion, there is also still no agreement on the concept of the rights of the coastal States, and that such research should not be the basis for exploitation. The suggestion regarding strengthening research capabilities of the developing countries is still to be further considered.

Reasonable regard for the interests of States in their exercise of the freedom of the high seas

Question of pollution and other hazards and obligations and liability of States involved in the exploration, use and exploitation

It can be assumed that both concepts of reasonable regard for the interest of all States and non-infringement of the freedoms of the high seas are not contested. Furthermore, there exists general acceptance of the necessity for

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the adoption of appropriate safeguards against the dangers of pollution. The adoption of appropriate safeguards to conserve and protect the living resources of the area as well as of safety measures concerning all activities in the area were generally found unobjectionable.

The extent of the rights of coastal States with regard to activities undertaken in the area and the liability for damage caused by activities in the area still remain subjects for further consideration.
