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COMMITTEE ON THE PEACEFUL USES OF THE
SEA-BED AND OCEAN FLOOR BEYOND THE
LIMITS OF NATIONAL JURISDICTION
Economic and Technical Sub-Committee

DRAFT REPORT OF THE ECONOMIC AND TECHNICAL SUB-COMMITTEE

(PART II)

Consideration of the economic and technical aspects of the report
submitted by the Secretary-General pursuant to resolution
2467 C (XXIII); study of possible régimes for the exploitation of
the resources of the sea bed and the ocean floor beyond the limits
of national jurisdiction

118. During its meetings of 15, 18, 19 and 20 August 1969, the Economic and Technical Sub-Committee gave consideration to this item. It based its deliberations on the report of the Secretary-General "Study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction and the use of their resources in the interests of mankind" (document A/AC.138/12 and Add.1). References were also made to "The report of the Commission on Marine Science, Engineering and Resources" (Stratton Commission report), and to the final report of the New England Assembly on uses of the seas.

119. The report of the Secretary-General was generally commended as an excellent analysis of the various forms of machinery which could be set up to govern exploration and exploitation of sea-bed resources. It was felt, however, that the economic and technical aspects of the machinery could have been elaborated more fully and that, from the three alternatives considered (registry, licensing and operational agency), only the first had been covered in an over-all comprehensive manner. It was suggested in this context to follow up the analyses contained in the study in order to render the report more complete.

120. In discussing the report of the Secretary-General it was generally observed that the consideration given to this item could at this stage only be of a preliminary and tentative nature, due to the complexity and importance of the problem and the lack of time which was afforded to delegations and Governments to study the documentation.

121. It was generally accepted that some kind of international machinery will have to be a part of any international régime governing the exploration and exploitation of the resources of the sea-bed. The view was expressed that such machinery should act as a trustee for the international community.

122. The terms used in the report of the Secretary-General describing different models of international machinery, namely the system of registration, the licensing system and the operational agency were considered useful to categorize alternatives within a spectrum which ranges almost continuously from mere registry of claims with no agreed-upon criteria all the way to extremely complex and cumbersome machinery at the other extreme.

123. In view of the possibility to devise a wide range of solutions involving elements and combinations of each of the three models described, it was felt necessary to avoid fixed or immutable positions on what type of system is, or is not suitable, but rather to concentrate attention on the criteria which any international machinery should meet in order to be acceptable and effective.

124. Part of any international machinery will have to be an international registry of claims. This registry would neither have to be complicated nor costly and would meet substantial prerequisites for the orderly development of sea-bed resources.

125. It was felt that a mere registry system would lack the authority necessary to protect the interests of mankind as a whole and of the developing countries in particular, since it is confined to the purely passive role of recording activities which were initiated and notified by States. Furthermore, a registration of activities on a "first come, first registered" basis, which seems clearly to be in favour of the technically most advanced countries and overlook the interests and needs of developing countries would also be likely to give rise to disputes.

A confused race for claims would, according to this view, only be avoided if the régime also comprises other elements:

- (a) There is a need for internationally agreed criteria,

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(b) Governments should be responsible for adherence by their nationals to these criteria,

(c) The criteria should include adequate procedures for verifying compliance.

126. During the consideration of the second alternative, namely the licensing mechanism, it was pointed out that the international machinery should not be set up for the sole purpose of licensing the development of sea-bed resources, but rather regulate, co-ordinate, supervise and control all activities relating to the exploration and exploitation of the resources of the sea beyond national jurisdiction. According to this view, it would have, e.g., to promulgate safety standards for the exploration and exploitation of the sea-bed resources, propose development plans and make its own budget, providing for its own administrative and other legitimate expenses; settle disputes between Member States, provide technical assistance to the developing countries so that they may participate in the actual exploration and exploitation of the resources of the sea-bed, apportion revenues accruing from fees, royalties or grants and take appropriate measures to protect the developing countries against the fluctuation of world prices of primary products.

127. It was suggested that the international machinery should have the right to grant or refuse a licence depending on the extent to which the applicant conforms to the criteria laid down. But, it should also be in a position of bargaining to ensure that the maximum possible is obtained by way of royalties for channelling to the developing countries. The attractiveness of a bid must be evaluated to a great extent in the light of what the operator is willing to pass on to the institution as royalty.

128. It was also stated that the possibility of operations by an international agency carrying out itself marine mineral development should be kept in mind as a future possibility, although the practical feasibility of such a system was very unclear at this stage.

129. In this context the view was furthermore expressed that the concept of an international agency empowered to explore, exploit, refine and market sea-bed resources itself or through sub-contractors would be harmful to the interests of developed and developing countries alike. Such an operating organization would, among other things: (a) require a large initial capitalization; (b) meet and

even generate conflicts in the marketing of its mineral products, since it would act as a producer and an exporter only and hence try to unduly influence prices under the pressure of the international community to return a profit; (c) present problems regarding the distribution of profits to investors vis-à-vis the international community; (d) present problems with respect to the use of patents and industrial or trade secrets; (e) force the international community into taking huge risks instead of allowing the risks to be taken by others and benefiting from the success where it is achieved; (f) essentially deny to developing countries the benefits of service and supply industries surrounding the mining and refining activity, the technologic spillover, social benefits coming from developing skills and knowledge, as well as manufacturing industries, while delaying at the same time their participation in sea-bed exploration.

130. An international régime of which the international machinery will be a part should provide inter alia the essential working guidelines for its operation.

These should include provisions regarding:

- (1) Criteria establishing the eligibility and capability of the claimant to exploit sea-bed resources and criteria governing minimum performance requirements.
- (2) Criteria covering such matters as working obligations, the types of resources to be exploited under a title, the size of the claim, the duration and termination of the title, the accommodation of multiple uses of the sea-bed and the water column, and the relation between exploration and exploitation rights.
- (3) Procedures to verify compliance with the established operational standards.
- (4) Criteria governing conservation, safety and anti-pollution measures.
- (5) The equitable application of benefits and the channelling of royalties.
- (6) The negotiation and conclusion of lease contracts.
- (7) International control of the activities and the effects of violations, including cancellation of title.
- (8) Utilization problems, i.e., when a deposit extends across the borders of a licensed area.
- (9) Effective procedures for settlement of disputes.
- (10) Rules governing the liability for damages arising from exploitation of sea-bed resources.
- (11) Active participation of developing countries

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131. It was suggested that this Sub-Committee should identify as one of the main tasks of its next session that of devising a code regarding conditions of title arrangements (area, period of tenure, royalties, etc.) and a system of operating and supervisory procedures. National experience shows that the development of such a code will be an arduous and time-consuming task.

132. It was also said that the régime should ensure

- a rationally planned exploitation of sea-bed resources influencing, by way of its licensing programme, the over-all volume of production so as to maintain stability of prices and market conditions for land and sea producers alike;
- an equitable distribution of income according to the principle of maximum benefit to mankind;
- a fair return to investors and adequate remuneration to concerns engaged in various operations;
- the allocation of a certain percentage of income to the United Nations in order to increase its resources and enable it to expand its technical assistance activities.

133. The objectives of the international régime and international machinery are to serve mankind as a whole; it should therefore meet the following criteria:

- promote sea-bed exploration and development;
- provide protection for the integrity of investments as well as an opportunity for a reasonable return on risk investments;
- provide for the payment of royalty on production thus allowing the international community to share in the benefits;
- help the developing countries acquire the capabilities that will enable them to participate directly in sea-bed development;
- be accepted by the nations of the world.

134. The view was expressed that a flexible concept of international machinery would be a realistic approach at this stage. A simple and effective machinery could be designed to serve anticipated needs and offer the best possibility for the development of revenue for international purposes. A more sophisticated machinery may need to be established later in the light of subsequent developments.

135. It is likely that at the outset the organization would be able to do no more than act as a registry of activities and at the very most as a licensing agency. It is also expected that in the first years the new authority will have neither the expertise nor the equipment nor the financial backing to conduct its own exploration and exploitation of the sea-bed. But this is no argument against giving it the powers needed to discharge other functions. It was therefore suggested that the international machinery should be constituted so as to be able to undertake the most diverse tasks, including functions with regard to adoption and implementation of appropriate standards and other regulatory matters. Therefore, the instruments constituting the new international machinery should establish it in such a way as to be legally, organizationally and technically equipped to perform its function as trustee or administrator of the common heritage of mankind.

136. The question of machinery needs to be regarded simultaneously with, and in the light of, the legal régime which will have to be elaborated to govern activities on the sea-bed outside national jurisdiction. The type of machinery will unquestionably be dependent upon the type of régime agreed upon. Moreover, the nature of the régime or arrangements to apply in the area may be affected by the eventual determination of the limits of the area beyond national jurisdiction.

Final decision on the exact scope and functions of the machinery may, therefore, have to wait until a reasonable solution to the problems of the régime governing the development of marine mineral resources in the interests of mankind, and an agreement on the question of the limits of the area beyond national jurisdiction is in sight. Discussion, as distinct from decision, on the question of machinery should however not be held up until these complex problems will be settled.

137. It has been pointed out that even the implementation of the very modest functions attached to the concept of a registry of claims would require some sort of institutional arrangements.

It was also mentioned that the concept that the sea-bed and ocean floor as a common heritage of mankind is in fact compatible with various forms of machinery and is not necessarily to be identified with the exercise of rights by an international body only.

The principle of the common heritage of mankind should, however, not give rise to a mushrooming international bureaucracy the very dimensions of which could make it irresponsible and irresponsive to the aspirations of States. International machinery will be required but one should avoid the degree of complexity which would consume almost entirely the part of the proceeds from the production of sea-bed resources which are destined for the world community as a whole.

138. Any machinery must command the support and confidence of the Governments of all the nations of the world who create them - developing and developed, socialist and capitalist, large and small, coastal and land-locked: equally the régime must instil confidence in the minds of operators - be they governmental or private - that titles granted or registered are effective and can, and will, be supported, and that decisions (both administrative and operational) are given justly, impartially and with proper expedition.

139. In order to avoid extensive claims, international machinery for the sea-bed could perhaps devise a system of quotas of registration or a predetermined ceiling on the number of registrations each State is entitled to make.

It was, however, also stated that instead of limiting the number of claims or the total average to be held by an organization or a nation - which would discourage exploitation - provisions should discourage a producer from holding more ground than he needs and require him to achieve production if he wants to hold his claims after a reasonable period.

140. It was also stressed that the international machinery should ensure that production of sea-bed minerals should not unduly affect the price level of minerals obtained on dry land. Another opinion held that the effects of machinery which would introduce more sweeping international controls would run counter to the interests of both the developing and the developed countries. Instead of controlling production so as to protect the markets of land producers, ways should be sought to solve the problems of fluctuating prices and demands regardless of where the minerals originate, i.e., in the context of world mineral production and trade - instead of discouraging sea-bed exploitation through additional strictures.

141. It was pointed out that preferential rights should be granted to the coastal State for the exploitation of deposits located partly beyond its national jurisdiction. The granting of preferential rights of that kind should however in no way prejudice the delimitation of the area of national jurisdiction or be used to reduce the area of the sea-bed where the coastal State exercises sovereign rights.

142. Supervisory procedures should allow for the participation of the coastal State in the case of activities in areas adjacent to the limits of national jurisdiction.

143. The possibility of registration of claims by intergovernmental agencies referred to in the Secretary-General's report was felt especially important for developing countries which could through such a procedure pool their resources in regional ventures.

144. It was suggested that any future regulation should include an obligation on the part of the operator to provide the most detailed possible scientific and technical information; in that connexion the precedents established in article XI of the Outer Space Treaty and article III of the Antarctica Treaty were recalled.

145. One function of an international machinery should be to ensure that the proceeds derived from activities with respect to the sea-bed shall be applied in an equitable manner, taking into account the paramount need to accelerate thereby as far as possible the economic growth of the developing countries.

146. A broad range of methods of channelling benefits in the interest of the international community should be considered; this task could be entrusted either to the future international machinery itself or to some United Nations organ.

147. In this connexion consideration might be given to channelling the proceeds to developing countries as project assistance through existing international or regional agencies which already have developed expertise in the field of project evaluation, implementation and supervision. It was argued however that since the benefits should accrue to developing countries as a consequence of the concept of the common heritage of mankind, they should not be distributed as a form of economic assistance.

148. At the end of the discussion of this item, the following observations were made:

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(a) With the exception of some minor criticisms, the report of the Secretary-General has been commended as an excellent study. It was also suggested to follow-up the analysis contained therein in order to render the report more complete.

(b) In general, it has been recognized that some form of international machinery will have to be a part of an international régime set up to govern and promote the exploration and exploitation of sea-bed resources.

(c) It was stressed, however, that any institutional arrangement - which will have to be acceptable to the world community as a whole - should not give rise to a heavy international bureaucracy which would offset the expected advantages.

(d) Amongst the three systems listed in the Secretary-General's report, the concept of an operational agency was considered in a separate context. Some delegations felt strongly that this system was practically not feasible; others insisted that it should be kept in mind as a future possibility.

(e) The two other alternatives, registry and licensing systems, were considered as elements within a broad range of possibilities, one being the more refined version of the other. Other delegations maintained that there was an essential difference between a registry system and a licensing authority.

(f) The registry has been considered as an acceptable system on the understanding that it would be complemented by internationally established criteria to be adhered to and adequate procedures to verify compliance with such criteria.

(g) Other delegations felt that a registry system would lack the necessary authority to protect the interests of mankind as a whole. According to their view, even a licensing system would only be adequate if it were endowed with the powers to regulate, supervise and control all activities relating to the exploration and exploitation of the resources of this area.

(h) Several economic and technical requirements, criteria and procedures which would have to be included in any such institutional arrangement were put forward. In this context it was suggested that the Economic and Technical Sub-Committee should elaborate at its next session a code regarding conditions of title arrangements and a system of operating and supervisory procedures.

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(i) Most delegations stressed that they could offer only preliminary views. It was also felt that final consideration of the question of international machinery would have to wait until it is possible to view a solution to other problems, namely the question of the basic principles of the régime and the definition of the limits of the area beyond national jurisdiction.

(j) A flexible concept of the international machinery was suggested: a system which would meet present needs and which would allow for expansion if a more sophisticated machinery would be needed later on.
