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

SUB-COMMITTEE I

Draft Report
(1st part)

1. Sub-Committee I, which was set up in March 1971, continued its work during 1972 in accordance with the agreement of 12 March 1971 on the organization of work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.
2. Sub-Committee I held two series of meetings during the year, the first in New York from 29 February to 29 March 1972, and the second in Geneva from 19 July to ... August 1972. In March it held 16 meetings; in July/August it held meetings. Representatives of the States members of the Committee and observers from the following countries attended these meetings: Barbados, Bhutan, Burma, Cuba, Dominican Republic, Haiti, Honduras, Ireland, Israel, Jordan, Khmer Republic, Malawi, Mongolia, Oman, People's Democratic Republic of Yemen, Portugal, Saudi Arabia, South Africa, Syria, Uganda. Representatives of the Specialized Agencies, IAEA and UNCTAD also attended the meetings.
3. At the end of the March session, the Chairman of Sub-Committee I informed the Chairman of the Committee of the progress made in the work of the Sub-Committee (A/AC.138/SC.I/L.11). At the end of the July/August session, at the meeting, the Sub-Committee adopted its report to the Committee.
4. The officers of Sub-Committee I were:

Chairman:	Mr. Paul Bamela Engo (Cameroon)
Vice-Chairmen:	Mr. S. M. Thompson-Flores (Brazil)
	Mr. G. Fekete (Hungary)
	Mr. C. V. Ranganathan (India)
Rapporteur:	Mr. H. C. Mott (Australia)

5. At its thirty-third meeting on 6 March 1972 the Sub-Committee adopted its programme of work for 1972. This programme, which was based on a working paper presented at the August 1971 session of the Sub-Committee, was formally adopted after the incorporation of certain amendments. The programme of work was:

Item 1: Status, scope and basic provisions of the regime based on the Declaration of Principles [resolution 2749 (XXV)].

Item 2: Status, scope, functions and powers of the international machinery in relation to:

- (a) organs of the international machinery, including composition, procedures and dispute settlement;
- (b) rules and practices relating to activities for the exploration, exploitation and management of the resources of the area, as well as those relating to the preservation of the marine environment and scientific research, including technical assistance to developing countries;
- (c) the equitable sharing in the benefits to be derived from the area, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked;
- (d) the economic considerations and implications relating to the exploitation of the resources of the area, including their processing and marketing;
- (e) the particular needs and problems of land-locked countries; and
- (f) relationship of the international machinery to the United Nations system.

6. In addition to various background documents, the Sub-Committee had before it the Comparative Table of Drafts, Treaties, Working Papers and Draft Articles, compiled by the Secretariat (document A/AC.138/L.10) and introduced to the Sub-Committee by the representative of the Secretary-General at the thirty-fourth meeting. A Report of the Secretary-General entitled "Additional Notes on the Possible Economic Implications of Mineral Production from the International Sea-bed Area" (A/AC.138/73), was introduced by the Under Secretary-General for Economic and Social Affairs at the forty-eighth meeting. The Secretary-General of UNCTAD made a statement at that meeting. At the request of the Sub-Committee both statements were issued as official documents (A/AC.138/SC.I/L.12 and 13). The Sub-Committee decided to request the Secretariat to prepare a list of relevant decisions taken at the last session of UNCTAD. This was issued as document A/AC.138/SC.I/L.14. The resolutions adopted by UNCTAD were also circulated.

7. The following papers were introduced:

- (a) Working paper submitted by the Netherlands concerning the concept of an intermediate zone (A/AC.138/SC.I/L.9)
- (b) Institutional problems concerning the sea-bed authority: The Council (submitted by the delegation of Italy) (A/AC.138/SC.I/L.15)
- (c) Archaeological and historical treasures of the sea-bed and the ocean floor beyond the limits of national jurisdiction (submitted by the delegation of Greece) (A/AC.138/SC.I/L.16)

A. Item 1 of the Programme of work

8. The Sub-Committee dealt with item 1 of its programme of work, the status, scope and basic provisions of the régime based on the Declaration of Principles, resolution 2749 (XXV), from its thirty-third to its fortieth meetings in March. Some 42 delegations participated in the discussion.

9. A common view was that the term "status of the régime" meant the legal nature of the régime. In this regard many speakers noted that Principle 9 of the Declaration of Principles required that the régime "shall be established by an international treaty of a universal character, generally agreed upon". They stressed the fact that the treaty should be of a universal character. Some delegations considered that a large number of ratifications should be required to bring the treaty into effect. Some delegations expressed the view that, to satisfy the provisions of Principle 9, the treaty should be open to participation by all States.

10. Some speakers agreed that the treaty should not confer sovereignty over the area beyond national jurisdiction upon the international machinery. They thought it would be more appropriate to speak here in terms of jurisdiction. The view was also expressed that even jurisdiction should not be conferred upon the international machinery and that none of the provisions of the treaty should give the machinery legal grounds to consider the sea-bed as owned or possessed by it.

11. Some speakers raised the question whether it would be possible to devise means of ensuring that States not parties to the instrument establishing the régime nevertheless respected the provisions of the treaty. Some speakers argued in this respect that instruments of international law could only bind States that were parties to them; in this connection the need for a widely acceptable treaty was noted.

12. The term "scope of the régime" was interpreted to mean the area of its application and the activities it should cover. Discussion of this point revealed divergences of view in regard to three basic issues:

- (a) the area to be covered by the régime
- (b) the resources to be covered by the régime
- (c) the activities in regard to the area and its resources to be covered by the régime.

13. Some delegations said that the definition of the area of application of the regime raised two questions. One was the problem of delimiting the area of the sea-bed that lay beyond national jurisdiction. Some delegations argued that a close link existed between the boundary that would eventually be drawn and the nature of the regime to be established and they felt that the international area should be as extensive as possible. They urged that the matter of sea-bed boundaries be considered at an early date.

14. The second was the problem of deciding whether the regime should apply only to the sea-bed and its resources or whether it should also apply to all of ocean space beyond national jurisdiction. Many delegations felt that the regime should apply only to the sea-bed, and argued that this would accord with the Declaration of Principles. A view was also expressed that the regime should have powers in regard to all of ocean space.

15. In this regard a number of speakers argued that the regime should not affect the recognized freedoms of the high seas, and the status as high seas of the waters above the area beyond national jurisdiction. They considered that rules of international law already existed in respect of the high seas, and the airspace above, which should be preserved. They also referred in this regard to principle 13 (a), which provides that nothing in the Declaration shall affect the legal status of the superjacent waters. Some speakers commented in this context that it might be necessary to find means of harmonizing the exercise of the rights of States in the waters of high seas with activities on the sea-bed under the regime, since some conflict between the two could occur.

16. Common ground seemed to exist that the regime should cover the non-living, that is the mineral, resources of the sea-bed. Some delegations felt, however, that it should also apply to the living resources of the sea-bed as well, and several speakers referred in this regard to the definition of natural resources contained in article 2 (4) of the Convention on the Continental Shelf, as deserving of consideration. A further

view was expressed that the régime might cover minerals in suspension in the sea-water and perhaps the living resources of the seas. Many others felt that this was not desirable.

17. As to the third point mentioned above, concerning the activities regarding the area and its resources that should be covered by the régime, it was noted that the declaration of principles states that all activities regarding the exploration and exploitation of the resources of the area and other related activities should be governed by the régime. Some speakers pointed out that this wording was imprecise and that further clarification would be necessary.

18. It was argued that even if the primary purpose of the régime were limited to the exploration and orderly exploitation of the mineral resources of the area, this objective could be effectively achieved only if an international machinery were created with competence and powers with respect to the maintenance of the territorial and jurisdictional integrity and the harmonization of uses of the area. It was stated that the régime should have the power to deal with scientific research and pollution not merely concerning or deriving from sea-bed activities but also in ocean space as a whole, together with the power to deal with the use of potentially dangerous technology in the marine environment.

19. Under this heading, however, many speakers felt that it would be necessary for the régime to have appropriate powers in regard to preservation of the sea-bed environment, including pollution emanating from sea-bed activities, and scientific research on the sea-bed. Some speakers argued that scientific research and subjects such as the laying of pipelines and cables were not appropriate for regulation by the régime since international law already existed that applied to them.

20. Several speakers pointed out that measures of arms control and disarmament should not be within the competence of the Authority because machinery covering those activities already existed. Other speakers believed it might be appropriate to give the authority competence as far as arms control activities were concerned. The view was expressed that the use of the sea-bed and the sub-soil thereof for military purposes should be prohibited and that specific measures in this regard had to be negotiated in the context of the disarmament talks. The sea-bed treaty was not to be construed in a manner prejudicial to any measures which had been or might be agreed upon in the process of such negotiations.

21. As regards the third of the concepts mentioned in point 1 of the programme of work, that of the basic provisions of the régime, delegations appeared generally to accept that it would be necessary to identify basic concepts that were acceptable to the international community and which could be transformed into treaty articles for the régime. It was generally agreed that the Declaration of Principles could serve a most useful purpose to this end. In spite of reservations, there appeared to be general agreement that some at least of the principles could be transformed without difficulty into treaty language.

22. Some delegations cautioned, however, that the purpose of the Declaration of Principles could not be achieved if the Principles were to be simply repeated in the treaty. While agreeing that some principles could form the basis of the future treaty, these delegations felt that the language of other principles was more in the nature of guidelines for the purpose of drafting articles. It was considered further that some of the concepts contained in the principles should be expressed with greater clarity and that others should be amplified in certain directions.

23. Among further points made during the discussion were the following. Many speakers urged that in the negotiations on the régime the need to bridge the gap between the developed and the developing countries should be kept constantly in mind and, as one means of helping towards the achievement of this objective, the question of the transfer of technology deserved emphasis. A view was expressed that, pending the entry into force of the treaty now under negotiation, a transitional international régime and machinery based upon the Declaration of Principles should be set up to govern all commercial research and experimental activities concerning deep-sea mining.

It was also argued that, in drafting treaty articles, the possibility should be kept in mind of varying the basis provided by the Declaration of Principles. A view was expressed that, if it proved impossible to negotiate agreed articles on aspects of the régime the practice of including alternative texts might be followed.

24. At the fortieth meeting of the Sub-Committee, the Chairman summarized the discussion and his summary, by decision of the Sub-Committee, was circulated as document

A/AC.138/SC.I/L.10.

25. The Sub-Committee agreed to a proposal by the Chairman to set up a Working Group on the international régime with a mandate to draw up, in the first instance, a working paper showing areas of agreement and disagreement respectively on the various issues.

The Working Group would thereafter attempt to negotiate questions of substance on the points where no agreement existed. The aim would be as much as possible to produce a set of agreed ideas. The drafting stage would be reached after further consideration; the aim then would be to produce draft treaty articles.

26. It was agreed that the Working Group would have 33 members but would be open-ended at this stage, to enable non-members to present proposals or those which had already done so to join in their examination. The following States were designated as members of the Working Group: Afghanistan, Algeria, Australia, Canada, Ceylon, Czechoslovakia, Ethiopia, Finland, France, Indonesia, Iraq, Iran, Japan, Kenya, Kuwait, Madagascar, Mali, Malta, Mexico, Morocco, Nigeria, Peru, Poland, Romania, Senegal, Trinidad and Tobago, Union of Soviet Socialist Republics, United States of America, Uruguay, Venezuela, Zaire, Zambia.

B. Working Group on the International Régime:

To follow.

C. Item 2 of the Programme of Work:

To follow.

D. Mineral production from the deep-sea area:

To follow.