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## GENERAL ASSEMBLY



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

#### Draft Report

(Part 2)

B. To follow

#### C. Item 2 of the Programme of Work

27. Discussion of item 2 of the programme of work, relating to the status, scope, functions and powers of the international machinery, began during the March session, when the Sub-Committee heard 42 speakers. It concluded during the July/August session, when the Sub-Committee devoted four meetings to hearing an additional 11 speakers.

28. Several delegations made the general point that a close relationship existed between items 1 and 2 of the work programme, in the sense that the status, scope and basic provisions of the régime would have to reflect themselves in the status, scope, functions and powers of the machinery.

29. It was a fairly common view that several basic questions would have to be dealt with before the Sub-Committee could reach a more advanced stage in its work. Among those questions were the areas to which the régime would apply and in relation to which the machinery would have regulatory authority; the resources which would be covered; and the range of powers and functions of the machinery.

30. Many delegations considered the question of limits in relation to the régime and machinery, speaking along the lines of views expressed in the discussion of point 1 of the programme of work, which are reflected in para. 13 of document A/AC.138/SC.I/L.18.

#### (a) Organs of the international machinery, including composition, procedures and dispute settlement:

31. Many speakers considered that the international machinery should be the executive and administrative arm of the régime, and that both the régime and machinery should be established by an international treaty or treaties of a universal character.

32. Many speakers contended that the machinery should have strong and clearly defined powers to enable it to achieve the primary purpose of the régime which, as set out in the Declaration of Principles, was to provide for the orderly and safe development and rational management of the international sea-bed area and its resources, and for expanding opportunities in the use thereof, and to ensure the equitable sharing by States in the benefits derived therefrom.

33. Some speakers considered that the machinery should have international legal personality and explained that by this they meant that it should have, for example, power to conclude agreements, to own and dispose of property, and to conclude contracts.

34. It was a common view that the basic machinery should consist of at least four kinds of main organs or procedures:

first - an Assembly, or plenary body, which would be the organ where all States parties to the treaty would be represented. Many speakers set forth their views on the powers that should be vested in the Assembly and it was possible here to note a degree of broad accord in the Sub-Committee. Many speakers, for example, argued in favour of giving each member of the Assembly one vote in its deliberations, but agreement did not seem yet to exist as to how decisions should be taken.

second - a Council, or executive body. Agreement existed that the composition of the Council should be such as to enable it to be representative and to operate effectively. There were differences however in regard to the size of the Council, the interests that should be represented therein, the manner in which the Council should be composed, and the decision-making process.

It was pointed out that current proposals before the Sub-Committee envisaged a representation on the Council of between 18 and 35 states. In regard to voting procedures, although many speakers considered that each state should have one vote, no agreement existed as to whether decisions should be taken by simple majority, or by some greater or otherwise qualified form of majority. It was argued that the composition and procedures must ensure adequate protection for those states whose positions will be most affected. A view was also expressed that decisions should be taken by consensus as far as matters of substance were concerned. Views were expressed against adopting the procedure of consensus or forms of privileged voting rights.

third - speakers appeared to agree that it would be necessary to establish an administrative service or secretariat.

fourth - many speakers said that it would be necessary to establish procedures for the settlement of disputes. Some considered that this should be in the nature of a separate tribunal, which would be established by the treaty along with the machinery. Others foresaw a role for the International Court of Justice; still others seemed to feel there might be a place both for a separate tribunal and for the International Court of Justice in the settlement process. A number of speakers favoured a procedure (perhaps including conciliation and mediation) leading to compulsory settlement of disputes, which some viewed as of critical importance, while other speakers favoured non-binding processes.

35. Other suggestions for the creation of major organs of machinery were made. One suggestion, for example, was for the establishment of an economic and technical commission, or similar body, which might have specific responsibilities in regard to the actual conduct of operations. Another suggestion contemplated the establishment of an operations commission, a rules and recommended practices commission and a boundary review commission. A further suggestion was for the creation of an enterprise, which would have the power to undertake all activities relating to exploration and exploitation, either directly or through a system of contracts for services or joint ventures.

36. The question whether the machinery should be empowered to conduct exploration or exploitation itself or whether it should be a licensing body in this regard was one on which a wide range of views were expressed.

37. Some representatives argued that the machinery should be responsible mainly for issuing licences to States for purposes of exploration and exploitation, as well as for certain activities associated with this function.

38. Other speakers contended that the machinery alone should have the power to explore and exploit in the international sea-bed area, for example, through a corporation or enterprise which would be part of the machinery, and which could make use of contractors or participate in joint ventures.

39. Still other speakers appeared to see a solution lying in a mixed system of some sort whereby the authority might both issue licences and have the power to explore and exploit itself, either directly or through agents engaged for the purpose.

40. A number of speakers, including some whose delegations favoured giving the machinery a power of direct operation, said that in the initial stages at least licensing would necessarily be one of the main functions of the machinery, because it would take time for this machinery to develop the capacity, both technologically and financially, to operate on its own. They saw this matter of timing as a practical problem, however, and one that could be resolved within the authority at an appropriate stage.

41. Some speakers argued that States should be the basic entity authorized to take part in sea-bed operations, and that States in turn could sub-license operators to carry out exploration and exploitation or undertake it themselves. In this context some delegations described the outlines of possible arrangements to ensure that there was an equitable allocation of licences to participating States. The view was also expressed that the machinery ought to grant licences directly to physical and juridical persons, and without interposing a State between itself and the individual operator. In this connexion it was stated that such physical and juridical persons could be sponsored by and under the supervision of a contracting party.

42. One delegation favoured a comprehensive approach to the problems of ocean space and looked forward to the creation, not of an agency or authority but of an institutional system. In the view of this delegation the institutional system should be competent not only to develop and manage ocean space and its resources beyond national jurisdiction for the benefit of mankind, but should also be competent to deal with a wide range of matters of international concern, including the preservation of the marine environment and the maintenance of law and order, in ocean space. In this connexion the delegation suggested the creation of a machinery comprising an Assembly, a Council controlling three main commissions, an international marine court and a secretariat.

43. Some other views expressed were that operations in the sea-bed must not result in any unjustifiable interference with other activities in the marine environment; that liability for damage was an important matter for consideration; that provision should exist to enlarge the powers of the machinery as its competence developed; and that powers would be necessary to control the effects of sea-bed production on land-based industries.

(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:

44. Several delegations considered that the treaty should allow for flexibility in regard to the formulation of rules and practices, so that these could be modified to keep pace with technology. It was argued in this regard that the treaty should specify the general parameters of the system of control for exploration and exploitation, and that rules and practices could be promulgated as necessary within those parameters. Some delegations noted that this raised questions concerning the scope of the régime and machinery, on the resolution of which could depend to some extent the rules and practices that would be applicable.

45. Some speakers put forward views as to the types of licences that might be issued and the areas and categories of minerals they should cover, and how the rules covering the grant of licences should be drawn up.

46. Some speakers stressed that a system of rules and practices, if it were to be satisfactory, would have to contain provision for security of title, so that operators could have a sound basis from which to work. Some also considered that the system would have to provide adequate incentives for operators to undertake activities of exploration and exploitation.

47. Many delegations made suggestions as to additional or complementary powers which in their view the machinery should possess, and which might be embodied in agreed rules and practices, such as, for example, the questions of inspections and safety measures, preservation of the marine environment, scientific research, and dissemination of information. Some other delegations expressed the view that scientific research was not an appropriate subject for regulation by the machinery.

48. In regard to the control of pollution, it was argued that the machinery's powers should not be limited to pollution emanating from sea-bed activities, but should extend more generally to pollution that might affect the sea-bed or the activities carried out there. The view was also expressed that, in considering the preservation of the marine environment, a practical approach to formulating a system of joint responsibility as between States and the international community would be to draw on the experience of States in the development of anti-pollution measures arising from control of exploration and exploitation of the continental shelf.

49. Several speakers referred to the concept of an intermediate zone on which a working paper had been presented in March (see para. 7 above). The view was expressed that in any such zone, the application of certain general international standards would be mandatory. Two examples of such standards would be the protection of the marine environment and the prevention of unjustifiable interference with other uses, such as navigation, of the superjacent waters.

- (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

50. Many delegations discussed this subject in their statements. Referring to the Declaration of Principles, they argued that the régime to be established should ensure the equitable sharing by States in the benefits derived from exploration and exploitation.

51. In this regard, the Sub-Committee had at its disposal the Secretary-General's study in document A/AC.138/38 entitled "Possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from the exploitation of the resources of the area beyond the limits of national jurisdiction". This considered the problem of arriving at an agreed method of sharing benefits, and demonstrated that certain basic decisions will have to be taken before that task can be accomplished. The view was expressed that it would be difficult to formulate meaningful, detailed views on the distribution of benefits in the absence of more precise data relating to the international area and its resources.

52. A fairly common point made during the discussion was that the term "benefits" comprised more than financial benefits, or revenues. A view was expressed that the concept encompassed raw materials and scientific information as well. The question of the provision of training and the transfer of technology was also raised under this general heading. Some delegations pointed out in this context the desirability of all participating states, irrespective of their geographical or economic situation, being able themselves to take part directly in the exploitation and exploration of the resources of the area. It was argued, in addition, that revenues should not be distributed in the form of aid, but directly as of right as their share of the common heritage to participating States for use as they deemed desirable.

53. As to the criteria for distributing benefits, one position, which was fairly widely taken, was that the developing countries deserved special consideration. A view was expressed that revenues should be distributed to participating States

according to their needs. It was argued also that the total revenues should be divided in the first instance into two portions, one for the developing countries and one for the developed countries, and that the portion for the developing countries should be a substantial one. Some speakers suggested the use of combined criteria of population and per capita income; another view was that distribution should be according to the inverse ratio of contributions to the United Nations itself. It was suggested that the basis of distribution of benefits adopted for any period of time should be reviewed once every five years, to permit adjustment in the light of changing circumstances.

54. It was stated in this regard that it would be possible to rely on existing international and regional development organizations for purposes of distribution. A contrary view was that it would be wrong to channel financial benefits to any international organizations of economic and technical assistance. Instead, some mechanism should be devised to ensure that the benefits accrued directly to States.

55. A further view was that the land-locked and shelf-locked States, which considered this question to be of great importance, should have their particular interests and needs borne in mind, in respect of distribution of benefits.

56. In regard to the concept of an intermediate zone the view was expressed that there could not be a truly equitable system of sharing unless there were also some provision for revenue sharing from important areas of the continental margin that contained valuable deposits of petroleum and gas. For this reason an intermediate zone including at least part of the continental margin would be necessary. The precise formula for determining the amount of international revenue from an intermediate zone was negotiable.

57. One delegation recalled its country's readiness to contribute to the international community a percentage of benefits accruing not from an intermediate zone but from the whole of the territorial sea-bed and the continental shelf.

(d) The economic considerations and implications relating to the exploitation of the resources of the area, including their processing and marketing

58. Consideration of this item raised issues that were clearly important for many delegations, whose representatives expressed concern that sea-bed production might upset marketing patterns and create difficulties for land-based producers of the commodities resources in question. Some speakers urged that the machinery should have the power to control the production, processing and marketing of the resources of the area. Some representatives appeared to envisage that any machinery set up for this purpose would function with the interests of the developing countries concerned in mind. They saw the machinery's powers in this regard as being extensive.

59. One suggestion was that, in addition to conferring powers of this nature on the machinery, a small unit for price stabilization should be set up. A further view was that control of production from the area beyond national jurisdiction could be achieved either through limiting the number of concessions granted, by setting aside a certain proportion of production, by a stabilization tax or by some means of compensation. Some delegations suggested the use of international commodity agreements which would cover both sea-bed and land-based production. There was also a suggestion for setting a ceiling for the production of minerals of which a surplus existed on world markets. It was stated that the methods and procedures used should be subject to constant review in the light of developments.

60. Other speakers saw a role for existing international organizations, such as UNCTAD, in minimizing any harmful effects of sea-bed production. The view was expressed in this connexion that the machinery should adopt, in consultation with and where appropriate in collaboration with, the competent organ or organs of the United Nations and the specialized agencies concerned, measures designed to minimize and eliminate fluctuations of prices of land resources and any adverse economic effects caused thereby. It was pointed out in this regard that the difficulties of establishing a system of international production or price control were likely to be formidable.

61. Another view was that, with the possible exceptions of cobalt, the projected expansion of world demand for the minerals concerned was such that any significant adverse impact on land-based production from the introduction of new sources of supply in the sea-bed need not be contemplated. The implications of trying to set up an international system of production or price controls were so weighty that any attempt to do so could only have an adverse effect on the achievement of the objectives of the sub-committee. Moreover, the objectives sought by the proponents of such a system could not be achieved in the absence of a system that involved land production as well. There was no need for a system of this kind and its consideration should not be permitted to impair other work. It was argued that, as regards processing and marketing, an attempt to deal with the complex factors involved could keep the sub-committee at work for many years, for these were part of a set of questions going beyond the scope of our endeavours.



62. Information was given about work being done by certain companies in the deep-sea area. It was stated that the procedures for recovering metal from nodules promised to become economically profitable in the near future and on the basis of the progress made there was reason to hope that minerals on the sea-bed could be exploited before 1980. Significant new resources would then become available to meet mankind's growing needs and to produce revenues for the international community. This showed the great importance of establishing a regime to ensure the orderly and rational development of those resources.

63. A number of delegations argued that States which have companies engaged in exploratory activities should give assurances that they would not undertake commercial exploitation of sea-bed resources in the area beyond the limits of national jurisdiction prior to the establishment of the regime. Some delegations suggested in this context that the Committee might unanimously reaffirm resolution 2574 D of the General Assembly. Other delegations reiterated reservations about that resolution.

64. The view was expressed that if it proved impossible to get early agreement on the regime and machinery it might be desirable to create transitional machinery which would have responsibility for regulating activities in respect of exploration and exploitation on the sea-bed beyond national jurisdiction pending the entry into force of the regime itself. Arguments against this view were expressed on the grounds that no consideration should be given to this matter until certain decisions were taken on the nature, scope and powers of the machinery. It was also stated that the establishment of transitional machinery might delay final agreement on the regime and machinery.

65. The Sub-Committee asked the Secretary-General to gather and make available to it recent material on the subject of activities being conducted in areas beyond national jurisdiction. This is contained in document A/AC.158/75, which the Under-Secretary-General for Economic and Social Affairs introduced at the forty-eighth meeting of the Sub-Committee (see paragraph 6 above). This report was the subject of a separate debate at the forty-ninth and fiftieth meetings of the Sub-Committee (see paragraphs .... below).

(e) The particular needs and problems of land-locked countries

66. Quite a few speakers commented on this item. Many delegations considered that the particular needs and problems of land-locked countries deserved sympathetic consideration. Some speakers made the point that many of the land-locked States were also developing States, and that developing land-locked States deserved special consideration in this context.

67. Some speakers also linked the problems of shelf-locked States with those of land-locked States. They argued that shelf-locked States, because they shared to a certain extent the problems of land-locked States, also merited special sympathetic consideration.

68. Various suggestions were put forward for dealing equitably with the problems of land-locked and also shelf-locked States. One was that land-locked States deserved special consideration from the point of view of representation on the organs of the machinery; some speakers added that shelf-locked States also deserved special consideration in this regard. It was argued that a distinction should be made between primarily coastal and primarily non-coastal States and that the two categories should be represented equally in the organs of the machinery. A further view was that land-locked States, and perhaps shelf-locked States, should be accorded some preference in the sharing of benefits.

69. Some speakers made more specific suggestions as to the means of approaching and handling the problems of land-locked countries. One view was that the international machinery should provide opportunities for training in marine technology and for those States to conduct activities of exploration and exploitation - either individually, in partnership with another State, as a member of a group of States, or in co-operation with the sea-bed authority.

70. It was argued, too, that the problem could be approached in a regional framework as well as at the global level, but that this aspect could not be usefully discussed until some agreement on limits had been reached. In this context the view was expressed that joint or regional ventures were subject to political arrangements which might not be feasible in all regions.

71. Some speakers, in considering the particular difficulties of land-locked States, saw these as falling under several headings: first, right of access to the international sea-bed area, including the transit of persons, minerals and equipment to and from coastlines, and adequate means of transport and communications; second, transit through the inland waters and territorial seas of coastal States; and third, the need for facilities on coastlines to permit activities of exploration and exploitation.

72. A view was expressed that the proposed treaty should declare that land-locked States had a right of transit through the territory, internal waters and territorial seas of coastal States to the international area for purposes of exploration and exploitation, leaving the precise manner of the exercise of this right to be worked out bilaterally. Coastal States, however, should be under an obligation to conclude such bilateral arrangements on a reasonable basis. A further view was that the principles of the Convention on the Transit Trade of Land-Locked States should be incorporated in the law of the sea as eventually negotiated.

(f) Relationship of the international machinery to the United Nations system

73. Most if not all of those who spoke on this item seemed to envisage that the régime and machinery would be established through an international treaty or treaties, which would thereby create a separate entity in the international arena.

74. Some speakers took the view that the authority should be in the United Nations system; others argued that it should remain outside that system. The latter category of speakers seemed to consider that the authority could not be subordinated to the United Nations or form part of the United Nations system as commonly conceived, but that some formal link should exist. It was also suggested that certain rules and procedures employed in the United Nations General Assembly might be suitable for use by the authority.

D. Mineral production from the deep-sea area

75. The Sub-Committee, at its 49th and 50th meetings, discussed the question of mineral production from the area of the sea-bed beyond national jurisdiction. This was in addition to an earlier discussion, during the March session, under item 2 (d) of the Sub-Committee's programme of work. This separate discussion is summarized in paragraphs       above.

76. The United Nations General Assembly, in its resolution 2750 A (XXV), had asked the Secretary-General, in co-operation with UNCTAD, to study the problems arising from the production of certain minerals from the area beyond national jurisdiction, to submit his report to the Sea-bed Committee, and to keep the matter under constant review. The Secretary-General's report (A/AC.138/36) was discussed at the session of the Committee in July/August 1971.

77. During the consideration of this matter at the March session in 1972 (see paragraphs       above), the Secretary-General was asked to include in a subsequent report information regarding the latest developments taking place in this field. Accordingly, the Secretary-General provided a report entitled "Additional Notes on Possible Economic Implications of Mineral Production from the International Sea-Bed Area". The Under-Secretary-General for Economic and Social Affairs introduced this report at the 48th meeting of the Sub-Committee (see paragraph 6 above).

78. During the discussion in the Sub-Committee an account was given of certain activities in the area of the sea-bed beyond national jurisdiction. Reference was made to proposed legislative action that would enable the issuance of licences for operations in the international sea-bed area. Reference was also made to a draft decision (A/AC.138/L.11) submitted in the Committee during the March session. It was suggested that States which were thinking of authorizing the exploitation of sea-bed resources should invite their nationals to exercise moderation and should not encourage them in their activities. The matter of deep-sea mining should be kept under constant review in the United Nations and UNCTAD Secretariats, in the Sea-Bed Committee and by UNCTAD itself.

79. It was argued that the probable increase in the supply of minerals from land deposits coupled with sea-bed production would inevitably tend to lower prices for those minerals. If it were decided to exploit the sea-bed for the benefit of mankind, means must be provided to ensure that the adverse effect on the developing countries should not outweigh the benefits they received. It was suggested that the sea-bed authority should have sufficient powers to control and regulate production so as to prevent or mitigate unfavourable effects on the economies of the developing countries. Further study of the question would be necessary.

80. Other delegations, although welcoming the Secretary-General's report, considered that it would be appropriate to adopt a cautious approach to some of the views it expressed. They indicated that they felt the report might give a misleading impression of the possible impact of mineral production from the international sea-bed area on world markets and on the economies of land-based producers. These delegations believed that production from the sea-bed was likely to be commercially feasible only at current prices and that minerals from the sea-bed were likely only to meet part of the expected increase in world demand. In their opinion the report contained some errors of fact and in some cases the authors had used data and drawn on published sources that were of questionable reliability.

81. These delegations argued that the existing state of knowledge and technology made it difficult to make firm predictions. They pointed out that, although a certain amount of experimentation was in progress, no commercially proven process of exploitation and metallurgy existed at present. Insofar as it was possible to make a judgement at this stage, however, they considered that it was unlikely that the exploitation of manganese nodules would depress the price of the metals concerned and

that therefore it would have no adverse effect on existing land producers. On the contrary, they contended that in the long run the development of new sources of supply would benefit the world, including those who were consumers of the metals in question.

82. Differing views were expressed on the question whether the current scale of activities in regard to mining on the deep sea-bed meant that exploitation, as opposed to research and exploration had already begun.

83. The view was expressed that all commercial research and experimental activities concerning deep-sea mining should be governed by a transitional international régime and machinery based on the General Assembly's Declaration of Principles, pending the entry into force of the international sea-bed convention now under negotiation. Views were also expressed against the establishment of such transitional measures before the question had been considered thoroughly, and decisions taken on important aspects on the grounds that this would prejudice the permanent régime and machinery and delay its establishment.

84. Some delegations recalled that, as already decided, the Secretary-General of the United Nations and the Secretary-General of UNCTAD would be keeping this subject under review and would be providing the Committee with additional information. They looked forward to examining further reports. A suggestion was made that future reports be organized to separate reliable source data from more speculative data. Similarly the interpretation of data should be separated from the data itself.

85. The Chairman reiterated an appeal he had made at the March session to the effect that the governments concerned could best assist the process of reporting by providing the Secretary-General with information available to them bearing upon the question. The Under-Secretary-General for Economic and Social Affairs echoed this appeal.