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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

I. BACKGROUND

A. Work of the Sub-Committee in 1971

1. Sub-Committee I was one of three sub-committees of the whole set up in accordance with an agreement reached on the organization of work of the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction during its session in March 1971. Under the terms of the agreement read out by the Chairman of the Committee at its 45th meeting, on 12 March, the following subjects and functions were allocated to Sub-Committee I:

"To prepare draft treaty articles embodying the international régime - including an international machinery - for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, taking into account the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked, on the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof beyond the Limits of National Jurisdiction, economic implications resulting from the exploitation of the resources of the area (resolution 2750 A (XXV)), as well as the particular needs and problems of land-locked countries (resolution 2750 B (XXV))."

2. The agreement of 12 March also stated:

"It is understood that the Sub-Committees, in connexion with the matters allocated to them, may consider the precise definition of the area of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction.

It is clearly understood that the matter of recommendations concerning the precise definition of the area is to be regarded as a controversial issue on which the Committee would pronounce. The Committee shall also decide on the question of priority of particular subjects, including the international régime, the international machinery and the economic implications of exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof beyond the limits of national jurisdiction, proceeding from resolution 2750 (XXV) and the relevant explanations made on behalf of its co-sponsors."

3. On 27 August, at the 66th meeting, the Chairman of the Committee read out the text of the following agreement on these outstanding issues, which the Committee adopted:

"The question of the international régime should receive a certain priority as explained by the co-sponsors of the original draft resolution later adopted as resolution 2750 C (XXV) and as implied in the terms of that resolution. This would mean, in the first instance, the allocation of more time to Sub-Committee I.

"While each Sub-Committee will have the right to discuss and record its conclusions on the question of limits so far as it is relevant to the subjects allocated to it, the main Committee will not reach a decision on the final recommendations with regard to limits until the recommendations of Sub-Committee II on the precise definition of the area have been received, which should constitute basic proposals for the consideration of the main Committee.

"The question of peaceful uses is allocated to the main Committee, it being understood that each of the Sub-Committees is free to consider it in so far as this question is relevant to its mandate".

4. Sub-Committee I held two series of meetings in Geneva in 1971, from 12 March to 26 March and from 19 July to 27 August. In March it held four meetings; in July/August it held 27 meetings. Representatives of the States members of the Committee attended these meetings as well as observer States. Representatives of the specialized agencies, IAEA and UNCTAD also attended the meetings.

5. The officers of Sub-Committee I in 1971 were:

Chairman:	Dr. E.E. Seaton (United Republic of Tanzania)
Vice-Chairmen:	Mr. S.M. Thompson-Flores (Brazil)
	Mr. G. Fekete (Hungary)
	Mr. C.V. Ranganathan (India)
Rapporteur:	Mr. A. Prohaska (Austria)

6. The Report of the Sub-Committee on its work in 1971, reproduced in the Report of the Committee to the General Assembly (document A/8421, supplement number 21, Official Records of the 26th Session), noted that the Sub-Committee completed during the year a general comprehensive debate on the matters referred to it. The views expressed in the Sub-Committee during the debate are summarized in paragraphs 59-83 of the Committee's Report.

7. At the end of the July/August session, the Chairman submitted a note (A/AC.138/SC.I/L.6) containing suggestions for the future work of the Sub-Committee. Following a discussion of the matter, the Sub-Committee agreed that at the beginning of its first session in 1972 it would begin the next stages of its work in relation to the matters referred to it. Accordingly it would give specific consideration to particular subjects with a view to clarifying them sufficiently, so that it could proceed to the drafting of articles on the issues identified in these specific debates.

B. Work of the Sub-Committee in 1972

8. Sub-Committee I held two series of meetings during 1972, the first in New York from 29 February to 29 March, and the second in Geneva from 19 July to 15 August. In March it held 16 meetings; in July/August it held 14 meetings. Representatives of the States members of the Committee attended these meetings as well as Observers. Representatives of the specialized agencies, IAEA and UNCTAD also attended the meetings.

9. The officers of Sub-Committee I in 1972 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)

10. At its 33rd 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 régime, 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.

11. The Sub-Committee held a specific discussion on both items of its programme of work, including the six sections of item 2. The report of the Sub-Committee on its work in 1972, reproduced in the Report of the Committee to the General Assembly (document A/8721, supplement number 21, Official Records of the 27th Session), summarizes the substance of this discussion.

12. At the 40th meeting of the Sub-Committee, the Chairman summarized the discussion on item 1 of the programme of work and his summary, by decision of the Sub-Committee, was circulated as document A/AC.138/SC.I/L.10. At the 55th meeting of the Sub-Committee, the presiding Vice-Chairman, on behalf of the Bureau, summarized the discussion on item 2 of the programme of work and his summary, by decision of the Sub-Committee, was circulated as document A/AC.138/SC.I/L.17.

Working Group on the international régime and machinery

13. The report of the Sub-Committee for 1972 states that the Sub-Committee agreed to a proposal by the Chairman to set up a Working Group on the international régime. It was agreed that the Working Group would have 33 members but would be open-ended 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, Czechoslovakia, Ethiopia, Finland, France, Indonesia, Iraq, Iran, Japan, Kenya, Kuwait, Madagascar, Mali, Malta, Mexico, Morocco, Nigeria, Peru, Poland, Romania, Senegal, Sri Lanka, Trinidad and Tobago, Union of Soviet Socialist Republics, United States of America, Uruguay, Venezuela, Zaire, Zambia.

14. During the March session of the Committee, the Working Group held two meetings, on 28 and 29 March 1972, at the first of which it elected Mr. C.W. Pinto (Sri Lanka) as Chairman. It held 20 meetings in July/August, in pursuance of the mandate conferred upon it by the Sub-Committee.

15. At the start of its meetings during the July/August session, the Working Group had before it an informal working paper which had been prepared as a preliminary attempt to reflect within a single paper, through the use of square brackets and alternative texts, areas of agreement and disagreement on matters relating to the status, scope and basic provisions of the régime, as these had been indicated in the debates in the Committee and in Sub-Committee I. The paper contained 21 texts on the following aspects of the status, scope and basic provisions of the régime based on the Declaration of Principles: limits of the area; common heritage of mankind; activities regarding exploration and exploitation of the resources of the area; non-appropriation and no claim or exercise of sovereignty or sovereign rights; no claim or acquisition of rights incompatible with the régime; non-recognition of claims inconsistent with the convention; use of the area by all States without discrimination; applicability of principles and rules of international law; benefit of mankind as a whole; preservation of the area exclusively for peaceful purposes; who may exploit the area; general norms regarding exploitation; scientific research; transfer of technology; protection of the marine environment; due regard to the rights and interests of coastal States; the legal status of superjacent waters; non-interference with other activities in the area; responsibility to ensure observance of the régime; and settlement of disputes.

16. The Working Group on 28 July completed a first reading of the texts, designed to ensure that the opinions of members were fully and accurately reflected. As a result of that first reading, the working paper was revised to take account of the opinions expressed. During a second reading of the revised texts, an attempt was made to narrow the areas of disagreement as far as possible and to merge alternative texts where there was no fundamental difference of approach. The result of the Group's work is annexed to the Sub-Committee's report for 1972. At the conclusion of its meetings for the year, the Working Group had completed its second reading of the following texts: the common heritage of mankind; activities regarding exploration and exploitation; non-appropriation or claim or exercise of sovereignty or sovereign rights, or of rights incompatible with the treaty articles, and the non-recognition of any such claims or exercise of rights; and use of the area by all States without discrimination.

17. The Sub-Committee agreed at its 61st meeting to a proposal by the presiding Vice-Chairman concerning the course of future work in regard to item 2 of the programme of work.

18. The Vice-Chairman said that in view, among other considerations, of the close links that existed between the two items on the Sub-Committee's programme of work - the régime and the machinery - representatives of the different regional groups had agreed to entrust to the Working Group on the international régime the task of dealing with the matters included in item 2 of the programme of work, on the international machinery, in accordance with the Group's procedures.

19. The Chairman said that it would be understood that the Group could decide at the appropriate time that the completion of the task relating to the régime would not be necessary before beginning work on the international machinery. The understanding concerning the distribution of membership among regional groups would remain the same, it being agreed that regional groups would be free to maintain or modify their membership, and the Working Group would be open to all members of the Committee who would wish to participate.

II. WORK OF THE SUB-COMMITTEE IN 1973

20. The Sub-Committee held two series of meetings during 1973, the first in New York from 7 March to 5 April and the second in Geneva from 3 July to August. In March/April it held seven meetings and in July/August it held meetings. Representatives of the States members of the Committee attended these meetings as well as Observers. Representatives of the specialized agencies, IAEA and UNCTAD also attended the meetings.

21. The officers of the Sub-Committee in 1973 were:

Chairman	Mr. Paul Banela Engo (Cameroon)
Vice Chairman	Mr. S.M. Thompson-Flores (Brazil)

at the March session:

Mr. R. Banyasz (Hungary, replacing Mr. Fekete)

Mr. P. Rao (India, replacing Mr. Ranganathan)

at the July/August session:

Mr. Endre Zador (Hungary)

Mr. C.V. Ranganathan (India)

Rapporteur	Mr. H.C. Mott (Australia)
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22. In addition to various background documents, the Sub-Committee had before it three reports prepared by the Secretary-General for the Committee in response to General Assembly resolutions 3029 B and C and in accordance with requests in the Sub-Committee during the March/April session:

(a) Document A/AC/138/87 - Economic Significance, in Terms of Sea-Bed Mineral Resources, of the Various Limits Proposed for National Jurisdiction

(b) Document A/AC/138/88 - Examples of Precedents of Provisional Application, Pending their Entry into Force, of Multilateral Treaties, Especially Treaties which have Established International Organizations and/or Régimes

(c) Document A/AC/138/90 - Sea-Bed Mineral Resources: Recent Developments

23. The following papers were introduced in 1973:

(a) Draft articles under item 23 of the list of subjects and issues, Archaeological and Historical Treasures, by Turkey (A/AC.138/SC.I/L.21)

- (b) Draft articles presented by Italy concerning the Composition of the Council (A/AC.138/SC.I/L.24)
- (c) Draft article on item 23 of the list of subjects and issues, Protection of Archaeological and Historical Treasures, presented by Greece (A/AC.138/SC.I/L.25)
- (d) [Draft articles submitted by Italy] (A/AC.138/SC.I/L.26)

24. An index of the documents submitted to the Sub-Committee for the years 1971 - 1973 is in Annex 1.

25. An index of statements in the Sub-Committee for the years 1971-1973 is in Annex 2.

26. At its meeting, on August, the Sub-Committee adopted its report to the Committee.

Discussions in the Sub-Committee

27. During its two sessions in 1973, the Sub-Committee devoted a number of meetings to discussions of individual subjects related to its mandate. These discussions are described in the following paragraphs.

28. A number of delegations commented on the subject of archaeological and historical treasures which was an item added to the mandate of the Sub-Committee following the acceptance of the list of subjects and issues. One representative recalled that his delegation had submitted a working paper on this subject at the previous session of the Sub-Committee (A/AC.138/SC.I/L.16) and described the provisions of this paper. A brief discussion ensued in which a number of delegations commented on the subject. Another delegation submitted a draft article (A/AC.138/SC.I/L.21) which was also the subject of comments. Subsequently, during the July/August session, a further draft article was submitted (A/AC.138/SC.I/L.25).

29. At the 64th meeting of the Sub-Committee on 17 March, a delegation requested that the Secretary-General should prepare a study of the potential applicability to the Committee's present work of the various ways in which the question of the provisional entry into force of multilateral treaties has been dealt with in the past. He asked that the study should be completed before the July/August session of the Committee and that it should be referred to Sub-Committee 1 and possibly to the Working Group for discussion. Following consultations and discussion in the Sub-Committee, the proposal

was subsequently issued in writing (A/AC.138/SC.I/L.19). At the 66th meeting the Sub-Committee adopted the following recommendation to the Committee:

"Sub-Committee I recommends to the Main Committee that the Secretary-General be requested to describe factually, for the Sub-Committee's use at its summer session in 1973, examples of precedents of provisional application, pending their entry into force, of all or part of multilateral treaties, especially treaties which have established international organizations and/or régimes.

"This recommendation is not a pronouncement on, nor does it prejudice in any way, the nature, characteristics, forms or structure of the régime and machinery for the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction which are to be established, in the general context of the Law of the Sea to be considered at the forthcoming Conference. It does not constitute a recommendation on the advisability of the concept of provisional application of the régime and machinery, or on the relevance of past precedents. Nor does it prejudice the question whether only that part of a treaty relating to the régime and machinery concerning the sea-bed area beyond the limits of national jurisdiction and its resources would apply provisionally or whether provisions relating to other questions of the Law of the Sea would also apply provisionally. These questions have not been discussed by the Sub-Committee."

30. Another delegation recalled resolution 2750 A (XXV) and asked the Secretary-General to provide for the July/August session a brief report on new economic and technological developments relating to sea-bed exploitation and subsequently to prepare a more comprehensive study for the Conference. The Sub-Committee endorsed this request.

31. During the March/April session, the Chairman of the Working Group reported to the Sub-Committee on the progress made in the Group. By decision of the Sub-Committee his statements were reproduced in extenso in the records of the 64th and 67th meetings. His reports contained personal views and were not binding on any delegation. A number of delegations also commented on developments in the Working Group.

32. On 5 April at the 68th meeting of the Sub-Committee the Chairman made a statement summarizing the work done by the Sub-Committee and its Working Group during the session in March/April, which by decision of the Sub-Committee was circulated as

document A/AC.138/SC.I/L.23. In his statement the Chairman suggested that the Working Group's texts on the status, scope and basic provisions of the régime should be circulated as a document of the Sub-Committee. The Sub-Committee agreed to this proposal and the texts were circulated as document A/AC.138/SC.I/L.22.

33. At the session in July/August, and pursuant to decisions of the General Assembly and of the Committee at its session in March/April (see paragraphs 29 and 30 above), the Sub-Committee had before it the three reports mentioned in paragraph 22 above.

34. A number of delegations commented on the report on the economic significance, in terms of sea-bed mineral resources, of the various limits proposed for national jurisdiction (A/AC.138/87). Speakers generally appeared to agree that the report contained material of importance for the work of the Sub-Committee in relation to the international régime and machinery, because of the information it provided as to the likely extent and location of sea-bed resources.

35. Some speakers commented on the report of the examples of precedents of provisional application, pending their entry into force, of multilateral treaties (A/AC.138/88). Speakers generally appeared to agree that this was a useful report which could be taken into account at a further stage of the work of formulating the new law of the sea.

36. Several speakers referred to the report concerning recent developments in regard to sea-bed mineral resources (A/AC.138/90). The view was expressed that the report contained some incorrect information, deriving from published sources, about the part played by one Government regarding activities related to sea-bed mineral resources. A number of delegations referred to a newspaper report about plans for mining on the deep ocean floor. The view was expressed that activities of this kind led to the conclusion that it was urgently necessary to negotiate the differences between States and to hold the Conference; that further study of the provisional application of the Convention emerging from the Conference would be necessary; and that the Secretary-General should submit well in advance of the Conference a final report dealing with the economic consequences of future exploitation for the economies of developing land-based producers of minerals. It was also stated in this regard that the position of another delegation on interim mining legislation and sea-bed nodule exploitation

remained as outlined in the March/April session. According to this view, as well, it was necessary to proceed urgently with the work of the Committee so that when exploitation took place it would do so under agreed international arrangements.

37. The Chairman of the Working Group, in accordance with the practice originated at the March/April session, made periodic reports to the Sub-Committee on the progress made in the Working Group during the July/August session. These reports, which contain useful material in regard to the activities of the Working Group, but which were the personal views of its Chairman and not binding on any delegation, were by decision of the Sub-Committee reproduced in extenso in the records for the meetings.