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

REPORT OF SUB-COMMITTEE I

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 1/ attended these meetings. 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:

1/ The observers were: 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.

- 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. Several delegations expressed the view that to satisfy the provisions of Principle 9, the treaty should be open to participation by all States; but, several other delegations did not consider it appropriate to discuss this question at this stage.

10. With regard to the power that should be conferred by the treaty on the international authority over the area located beyond the limits of national jurisdiction, there was a divergence of opinion. Some delegations supported the view that the international authority should exercise sovereignty over the area and its resources on behalf of the international community and as a consequence of the fact that the sea area is the common heritage of mankind. Other delegations were of the view 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. Many speakers considered it essential to devise means of ensuring that States not parties to the instrument establishing the régime nevertheless respected the provisions of the treaty. Several of these speakers said that this was necessary in view of the objective character of the common heritage concept. Some speakers argued in this respect that instruments of international law could only bind States that were parties to them; in this connexion the need for a widely acceptable treaty was noted. It was also noted that proposals based on the Declaration of Principles mentioned above were before the Committee under which claims inconsistent with the treaty would not be recognized.

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 régime raised two questions. One was the problem of delimiting the area of the sea-bed that lay beyond national jurisdiction. The view was restated that the international area should be as extensive as possible and that the matter of sea-bed boundaries be considered at an early date. The view was also restated that in accordance with Preambular paragraph 7 of resolution 2750 C, priority should be given to the international régime and in this light the question of limits should be examined. Some delegations argued that a close link existed between the boundary that would eventually be drawn and the nature of the régime to be established. These delegations considered that the international area should be as extensive as possible, it being understood that sufficiently broad powers would be conferred upon the authority to enable it to attain its objectives. Other delegations referred to the relationship that exists between the limits of the sea-bed and the limits in other maritime spaces and the consequent need to deal with them jointly, as was agreed in the Committee when it organized its work; they also highlighted the relationship that exists between all the limits and régimes which are applicable to ocean space.

14. The second was the problem of deciding whether the régime 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 régime should apply only to the sea-bed and its resources and argued that this would accord with the Declaration of Principles. A view was also expressed that the régime should have powers in regard to all of ocean space.

15. A number of speakers argued that the régime 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 waters superjacent to the area or that of the air space above those waters". A number of speakers argued that the régime should deal with all necessary aspects of the administration of the sea-bed and ocean floor beyond national jurisdiction, and its resources, leaving unaffected, both as regards their substance and area of applicability those freedoms of the high seas not regulated by the provisions of the future Convention. 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 régime, since some conflict between the two could occur.

16. A number of delegations felt that the régime should cover both living and non-living resources of the sea-bed. Some delegations felt however that it should only apply to the non-living resources. Several speakers referred to the definition of natural resources contained in Article 2 (4) of the Convention on the Continental Shelf as deserving 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 shall be governed by the international 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 for the marine environment. Furthermore a number of delegations noted that the activities of the régime should be confined to the sea-bed and should not touch upon the activities of States in the waters covering the sea-bed nor in the oceans as a whole. 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, 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.

19. 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.

20. Some delegations considered that before the aim of complete prohibition and thorough destruction of nuclear weapons is realized, the demand for banning nuclear tests will only suit the purpose of consolidating the nuclear monopoly by the big nuclear powers. At present, the activities of nuclear submarines in the international sea-bed area and in the sea-bed area of other countries should, first of all, be prohibited, and the emplacement of nuclear weapons and of all other weapons in the said sea-bed area should also be prohibited.

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 based on the Declaration of Principles, which could be transformed into treaty articles which would be as widely accepted as possible. 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. In spite of reservations, there appeared to be general expectation 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.

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. The view was also expressed that to consider the common heritage and machinery before decisions have been taken with respect to certain vital points of the definitive régime and machinery would be inappropriate to the extent that it would tend to prejudge those points. 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 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

27. During the spring 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 (Ceylon) as Chairman. It held a further 20 meetings in July/August, in pursuance of the mandate conferred upon it by the Sub-Committee.

28. 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 twenty-one 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.

29. The Working Group completed on 28 July 1972 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 texts as so revised, 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 contained in annex I to this report. At the conclusion of its meetings, 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.

30. It should be noted that (a) the Group did not discuss the subject matter proposed for inclusion in text 1; (b) that it did not consider headings or marginal notes, or the question of the eventual position of texts; (c) that some members of the Group expressed reservations as to whether certain of the subjects dealt with in the texts fell within the terms of reference of the Working Group; (d) that square brackets and alternative texts continued to be used in order to indicate areas where it did not prove possible to accommodate views in a single text; and (e) that some members did not consider the matters covered by the texts as necessarily exhaustive.

31. Attention is invited to the introductory note dealing with the unitary approach proposed by the delegation of Malta and to the footnotes in which certain delegations consented to have their views reflected.

C. Item 2 of the Programme of Work

32. 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.

33. 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.

34. 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 delimitation of the area in which the machinery would exercise authority, the powers of the machinery and the resources of the area.

35. 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 above.

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

36. 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.

37. 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, taking into account the particular interests and needs of developing countries whether coastal or land-locked. Other delegations felt that the international machinery should have functions necessary for the regulation of industrial exploration and exploitation of the sea-bed and its subsoil.

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

39. It was a common view that the basic machinery should consist of at least two kinds of organs:

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 was limited to the notion that the composition of the Council should be such as to enable it to be representative and to operate effectively. There were widespread differences, however, in regard to the fundamental aspects of the Council including its size, 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. A view was expressed that decisions should be taken by consensus as far as matters of substance were concerned. It was argued that the composition and procedures must ensure adequate protection for those states whose positions will be most affected. Other views were expressed to the contrary, on the ground that such a composition and procedure were likely to frustrate or impede the working of the Council.

It was also stated by many delegations that it would be necessary to establish an administrative service or secretariat, and that it would be necessary to establish procedures for the settlement of disputes. Some considered that this should be in the nature of a tribunal, which would be established by the treaty along with the machinery. Others foresaw a role for the International Court of Justice; some delegations felt that the Court's rules of procedure should be made more flexible; still others seemed to feel there might be a place both for a special 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. A number of delegations considered that other organs should be created and pre-eminence should be given to the International Sea-bed Enterprise, which would be in their view the organ "par excellence" of the machinery in regard to all the technical, industrial and commercial activities concerning the exploration of the area and the exploitation of its resources.

40. 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 suggestion was also made for the establishment of a distribution agency and a stabilization board to deal with distribution of benefits and stabilization of prices respectively.

41. 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.

42. 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.

43. 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.

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

45. 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.

46. 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.

47. 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.

48. Some other views expressed were that sea-bed operations 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:

49. 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.

50. 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.

51. 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.

52. 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, regulation of 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.

53. 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.

54. 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.

55. 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.

56. In this regard, the Sub-Committee had at its disposal the Secretary-General's study in document A/AC.138/58 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.

57. 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 term encompassed inter alia, access to raw materials and access to scientific information. 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.

58. 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. A view was expressed that benefits deriving under the treaty should be made available only to those States which ratify or accede to the treaty.

59. 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.

60. 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.

61. 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.

62. One delegation was of the view that coastal States should contribute to the international community a proportion to be determined, in due course, of the financial benefits derived from ocean space exploitation within its jurisdiction. Another 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

63. 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 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. Other delegations pointed out that the possibility exists of discouraging sea-bed mining by means of restrictive controls and that this would act to the detriment of the international community as a whole. 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.

64. 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.

65. Other speakers saw a role for existing international organizations, such as UNCTAD, in minimizing any harmful effects of sea-bed production. Some delegations pointed out that it has not yet been proven that ocean minerals can actually compete at present real price levels. 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.

66. Another view was that, with the possible exception 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 the Committee's endeavours.

67. Information was given about work being done by certain companies in the deep-sea area. It was, inter alia, 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 would become exploitable on a large scale between 1975 and 1980. Significant new resources would then gradually become available to meet mankind's growing needs and to produce revenues for the international community. Several speakers felt that these prospects were much too optimistic and they stressed that at the present time there was no precise indication as to the possibility of

economically feasible and commercially profitable exploitation. Notwithstanding the differing views as to the time-scale in which significant sea-bed production would be achieved there was general agreement on the great importance and urgency of establishing a régime to ensure the orderly and rational development of those resources.

68. 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 régime. It was pointed out that some States may not have the appropriate domestic legislation to provide such assurances. 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.

69. The view was expressed that if it proved impossible to get early agreement on the régime 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 régime 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 régime and machinery.

70. 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.138/73, 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 81-92 below). The Sub-Committee recommended to the Main Committee that it should annex to its report the text of the Secretary-General's study referred to above.

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

71. 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.

72. 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.

73. 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.

74. 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 those States to conduct activities of exploration and exploitation of the area - either individually, in partnership with another State, as a member of a group of States, or in co-operation with the sea-bed authority. The view was also expressed that the international machinery should provide land-locked States with opportunities for training in marine technology.

75. 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.

76. 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.

77. 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

78. 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.

79. 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.

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80. At the 55th meeting of the Sub-Committee, the Vice-Chairman summarized the discussion on item 2 of the Work Programme, and his summary by decision of the Sub-Committee, was circulated as document A/AC.138/SC.I/L.17.

D. Mineral production from the deep-sea area

81. 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 63-70 above.

82. 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.

83. During the consideration of this matter at the March session in 1972 (see paragraphs 63-70 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).

84. 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. Many delegations suggested that States should not encourage their nationals in the exploration and exploitation of sea-bed resources beyond the limits of national jurisdiction. 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.

85. 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.

86. 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 the hypothetical production estimates used in 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 not likely to be commercially feasible at less than current price levels for the metals to be derived from manganese nodules, that investment in nodule production was not justifiable at less than the current price level for these metals and that minerals from the sea-bed were likely only to meet a part of the expected increase in world demand. They affirmed that several errors of fact and figures were contained in the report and held that in some cases the authors had used data and drawn on published sources that were of questionable reliability.

87. 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, but that a long period of development free from excessively restrictive regulation may be necessary if revenues are to be generated from sea-bed mineral production for the maximum benefit of mankind.

88. A number of delegations reiterated the view, supported, in their opinion, by the Report and in particular the chapter prepared by UNCTAD on the negative effects which most certainly may derive from the new production to the economies of developing countries, who are the main land producers and the subsequent need for an overall control of the production process in all its stages. It was furthermore emphasized that many developing countries, due to their high degree of dependency on mineral production and export, would be the most affected by a lack of such control. These delegations affirmed the validity of the data provided by the Secretariat.

89. 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.

90. 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.

91. 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.

92. 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.

E. Further consideration of item 2

93. The Sub-Committee agreed at its 61st meeting to a proposal by the Chairman which is summarized below, concerning the course of future work in regard to item 2 of the Programme of Work.

94. The 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 established by decision of the Sub-Committee at its 44th meeting on 27 March 1972 and chaired by Mr. C.W. Pinto, the task of dealing with the matters included in item 2 of the Programme of Work, in accordance with the Group's procedures. The Chairman then read item 2 of the Work Programme (see paragraph 5 above).

95. 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.

96. Several delegations expressed certain understandings, which are contained in the Summary Records of the Sub-Committee, in regard to the Chairman's proposal.