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

GENERAL ASSEMBLY

OFFICIAL RECORDS : TWENTY-FIFTH SESSION

SUPPLEMENT No. 21 (A/8021)

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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INTRODUCTION

1. In resolution 2574 B (XXIV) of 15 December 1969, the General Assembly requested the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction to consider further, with a view to making recommendations, the questions entrusted to it in accordance with its terms of reference as set out in resolution 2467 A (XXIII).

2. The Committee's report is divided into four parts. Part I contains details of the organization of the Committee in 1970. Part II provides an account of the Committee's activities and deliberations in accordance with the relevant portions of resolution 2467 (XXIII) and resolution 2574 (XXIV). Part III contains an account of the Committee's consideration, at its August 1970 session, of the report by the Secretary-General under paragraph 2 of General Assembly resolution 2574 C (XXIV). This account is provided in response to paragraph 3 of the same resolution, under which the Committee was called upon to submit a report on this question to the General Assembly at its twenty-fifth session. Finally, in part IV, the Committee sets out certain considerations which emerge from its work to date.

I. ORGANIZATION OF THE COMMITTEE DURING 1970

3. The membership of the Committee, as established by the General Assembly at its twenty-third session, remained unchanged as follows: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Ceylon, Chile, Czechoslovakia, El Salvador, France, Iceland, India, Italy, Japan, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Malta, Mauritania, Mexico, Nigeria, Norway, Pakistan, Peru, Poland, Romania, Sierra Leone, Sudan, Thailand, Trinidad and Tobago, United Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yugoslavia.

4. A number of Member States requested accredited observer status as provided for in the decision of the First Committee at the twenty-third session of the Assembly.[1/] At the close of the Committee's second session in 1970, the following

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1/ A/7477, para. 19.

Members had observer status: Barbados, Burma, Cuba, Denmark, Ecuador, Finland, Guyana, Indonesia, Iran, Jamaica, Morocco, Netherlands, New Zealand, Nicaragua, Philippines, Portugal, South Africa, Spain, Sweden, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Uruguay, Venezuela.

5. The officers of the Committee during 1970 were as follows:

Main Committee

Chairman:	Mr. Hamilton Shirley Amerasinghe (Ceylon)	
Vice-Chairmen:	Chile	(Mr. José Piñera (first session); Mr. Fernando Zegers (second session)).
	Norway	(Mr. Edvard Hambro (first session); Mr. Jens Evensen (second session)).
	Poland	(Mr. Eugeniusz Kulaga (first session); Mr. Wlodzimierz Natorf (second session)).
	United Republic of Tanzania	(Mr. Salim A. Salim (first session); Mr. E.E. Seaton (second session)).
Rapporteur:	Mr. Charles V. Vella (Malta)	

Legal Sub-Committee

Chairman:	Mr. Galindo Pohl (El Salvador)
Vice-Chairman:	Mr. Alexander Yankov (Bulgaria)
Rapporteur:	Mr. Abdel Halim Badawi (United Arab Republic)

Economic and Technical Sub-Committee

Chairman:	Mr. Roger Denorme (Belgium)
Vice-Chairmen:	Mr. J.S. Teja (India) - first session Mr. C.V. Ranganathan (India) - second session
Rapporteur:	Mr. Anton Prohaska (Austria).

6. During 1970, the Committee held an organizational meeting at United Nations Headquarters in New York on 26 February, and two sessions: a spring session at United Nations Headquarters in New York from 2 to 26 March, and a summer session in Geneva from 3 to 28 August.

7. Meetings of the Committee were attended by representatives of the International Atomic Energy Agency and of the specialized agencies - International Labour Organisation, Food and Agriculture Organization of the United Nations,

United Nations Educational, Scientific and Cultural Organization and its Intergovernmental Oceanographic Commission, Inter-Governmental Maritime Consultative Organization and World Meteorological Organization.

8. At the 39th meeting on 14 August, the Committee heard a statement by the Under-Secretary-General for Political and Security Council Affairs. At its 40th meeting on 26 August, a statement was made by the representative of UNESCO which, by decision of the Committee, was later issued as a document of the Committee (A/AC.138/30).

9. A list of official documents of the Committee is contained in annex VIII.

II. ACTIVITIES OF THE COMMITTEE

A. Legal principles

10. In paragraph 2 (a) of resolution 2467 A (XXIII), the Assembly instructed the Committee to study the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and to ensure the exploitation of their resources for the benefit of mankind.

11. As related in the report of the Legal Sub-Committee,[2/] prolonged attention was given in that Sub-Committee during 1969 to the elaboration of legal principles and norms for a régime for the sea-bed and ocean floor beyond the limits of national jurisdiction. Making use of the method of informal consultations between sessions, the Sub-Committee made progress in more concrete formulations of legal principles and in identifying the differences among various formulations. In its final meetings in 1969, the Sub-Committee reached agreement on a report including a synthesis, on the basis of a text prepared by the Sub-Committee's Rapporteur.[3/]

12. In resolution 2574 B (XXIV), the General Assembly noted with interest the synthesis at the end of the report of the Legal Sub-Committee, which, it stated, reflected the extent of the work done in the formulation of principles designed

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2/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 22 (A/7622), part two.

3/ Ibid., paras. 85-97.

to promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether land-locked or coastal. The Assembly requested the Committee to expedite its work of preparing a comprehensive and balanced statement of these principles and to submit a draft declaration to the General Assembly at its twenty-fifth session.

13. The Legal Sub-Committee continued during 1970 its intensive study of various formulations of different principles to be contained in a declaration of legal principles. An account of this work is contained in the report of the Legal Sub-Committee. This report was approved by the Committee at its 44th meeting on 28 August 1970 and is contained in annex I to the present report.

B. Economic and technical conditions and rules

14. Paragraph 2 (a) of resolution 2467 A (XXIII) instructed the Committee to study the economic and technical requirements which a régime should satisfy in order to meet the interests of humanity as a whole. Paragraph 2 (b) of the same resolution called on the Committee to study the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole.

15. These matters were considered at some length by the Economic and Technical Sub-Committee during 1969, as described in its report.[4/] The suggestions contained in that report were noted by the General Assembly in resolution 2574 B (XXIV), which requested the Committee to formulate recommendations regarding the economic and technical conditions and rules for the exploitation of the resources of this area in the context of the régime to be set up. In accordance with a request contained in the third part of the Committee's report to the twenty-fourth session, the Secretariat submitted a review of governmental measures pertaining to the development of mineral resources on the continental shelf (A/AC.138/21 and Corr.1).

4/ A/7622, part three.

16. At the session in March 1970, lists of topics were suggested by some delegations to be studied in preparing economic and technical rules and conditions for such exploitation. At the request of the Sub-Committee, the Secretariat prepared a preliminary note on the question of 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 (A/AC.138/24). The Committee decided at its August session to annex this document to the present report (annex IV).

17. The Committee at its 40th meeting on 26 August approved without objection the report of the Economic and Technical Sub-Committee and decided to annex it to the present report (annex II). It endorsed the recommendations contained in paragraph 15 of the Sub-Committee's report. With regard to paragraph 16 of the Sub-Committee's report, the view was expressed that such a study, though useful, would be premature in the absence of acceptable parameters relating to the area and its resources.

18. With regard to paragraph 12 of the Sub-Committee's report, the Committee emphasized the importance of the training of nationals of developing countries and the dissemination of information and wished to place on record the view that the dissemination of the results of scientific research and exploration of the sea-bed and ocean floor should not be confined to States but should be given as wide a circulation as possible, to include, for example, scientific bodies and academic institutions. The view was also expressed that, prior to the establishment of the régime for the area beyond the limits of national jurisdiction, UNESCO and its subsidiary body the IOC, FAO and other agencies within the United Nations family might usefully consider intensifying, expanding and expediting their programmes for the training of nationals of developing countries in the various aspects of marine science and technology.

19. The Committee at its 41st meeting held a general discussion on the question of methods and criteria for the sharing of any benefits to be derived from the exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction. The view was generally expressed that more study and knowledge were necessary in view of the lack of information concerning the resources of the area and the complexities of the subject. Many delegations supported the recommendation,

contained in paragraph 16 of the report of the Economic and Technical Sub-Committee, that the Secretariat should be asked to prepare a more comprehensive study than its preliminary note on the subject. The need for such an additional study, it was stated, clearly stemmed from the mandate given to the Committee in resolution 2574 B (XXIV) under which it was to study, inter alia, the economic conditions for the exploitation of the area in the context of the régime to be set up. On the other hand, the view was also expressed that not enough was known of the area at present to merit a further study and that the necessary prior conditions for such a study did not exist.

20. A fundamental objective, it was widely stated, was that the proceeds and other benefits to be derived from the exploitation of the resources of the area should be shared equitably by all States and in particular the less developed among them. It was stated that for this it was necessary that all should be able to participate actively in the administration of the area. It was also stated that only an international régime which established clear legal rights would ensure that benefits derived from mineral exploitation accrued to the international community.

21. References were made to the scheme for the sharing of the benefits to be derived from the exploitation of the resources of the area as set forth in the working paper submitted by the United States (A/AC.138/25). Attention was drawn to the provisions for the sharing of revenues between coastal States and the international community, and for revenues to be divided between economic development and wider community purposes such as the training of nationals of developing countries in sea-bed operations and the encouragement of sea-bed research.

22. At the close of its meeting, the Committee decided to request the Secretary-General to prepare a more comprehensive study on 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.

C. Exploration and research

23. In sub-paragraph 2 (c) of resolution 2467 A (XXIII), the General Assembly also asked the Committee to review the studies carried out in the field of exploration and research in this area and aimed at intensifying international

co-operation and stimulating the exchange and the widest possible dissemination of scientific knowledge on the subject. In a further resolution (2467 D (XXIII)), the General Assembly request UNESCO that its Intergovernmental Oceanographic Commission intensify its activities in the scientific field, in particular with regard to co-ordinating the scientific aspects of a long-term and expanded programme of world-wide exploration of the oceans and their resources. At the August session in 1969, the Economic and Technical Sub-Committee considered the draft comprehensive outline, prepared by the IOC, of the scope of the long-term programme of oceanic exploration.[5/] The records of the Sub-Committee's discussions were transmitted to the IOC for consideration in preparing the final draft outline. The report of the IOC was submitted to the General Assembly at its twenty-fourth session. At the twenty-fourth session, the General Assembly in resolution 2560 (XXIV), noted with appreciation the comprehensive outline of the scope of a long-term and expanded programme of oceanic exploration and research, of which the international decade of ocean exploration would be an important element. It requested UNESCO and its IOC to keep that programme up to date and consider its implementation in appropriate stages, in co-operation with other interested organizations, in particular the United Nations, FAO, WMO and IMCO. The Assembly further commended the close working relations that had developed between the IOC and the United Nations, FAO, WMO and IMCO.

D. Pollution

24. Sub-paragraph (d) of paragraph 2 of resolution 2467 A (XXIII) requested the Committee to examine proposed measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of this area. In a further resolution, 2467 B (XXIII), the Assembly called for a study from the Secretary-General, in co-operation with the appropriate and competent body or bodies presently undertaking co-ordinated work in the field of marine pollution control. A report has accordingly been prepared on the basis of a study by the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP), and is before the General Assembly at its twenty-fifth session.

5/ An account of this discussion was given in part three of the Committee's report to the twenty-fourth session.

25. At its session in August 1970, reports of the dumping of nerve gas by the United States in the Atlantic Ocean were drawn to the Committee's attention. Following a discussion, during which the United States representative gave an account of the safety measures taken by his Government in this case, the Committee, at its 38th meeting on 20 August, without objection adopted the following statement:

> "The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor, meeting in Geneva today, requested its Chairman to convey to the Secretary-General of the United Nations its concern at the practice of using the sea-bed and the ocean floor for the purpose of dumping toxic, radio-active and other noxious materials, which has been brought to public attention by the decision, since implemented, of the United States to dump a certain quantity of nerve gas in the Atlantic Ocean.
>
> "In expressing this concern the Committee had in mind the General Assembly's desire, as stated in resolution 2340 (XXII), to preserve the sea-bed and the ocean floor and the subsoil thereof from actions and uses which might be detrimental to the common interests of mankind.
>
> "The Committee was conscious of its special responsibility under the mandate entrusted to it by the General Assembly of the United Nations in resolution 2467 A (XXIII), paragraph 2 (d), to examine proposed measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of this area.
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> "The Committee also deemed it opportune to address a general appeal to all Governments to refrain from using the sea-bed and the ocean floor as a dumping ground for toxic, radio-active and other noxious materials which might cause serious damage to the marine environment.
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> "The Committee has noted the assurances given by the delegation of the United States that effective precautions had been taken by the Government of the United States to mitigate any harmful consequences arising from this particular action and that such action will not be taken again."

26. The concern of the members of the Committee with the widespread and urgent problems of pollution was also expressed in various statements in the Economic and Technical Sub-Committee as well as in a discussion in the main Committee at the August session, on the basis of the Secretary-General's report (A/7924). The report was generally considered a useful preliminary survey though it was recognized that it could only be of a general and exploratory character in the

absence of practical experience of the effects of exploitation of the resources of the sea-bed beyond the limits of national jurisdiction. Regret was expressed by some delegations that an interpretation had been given to article 24 of the Convention on the High Seas which appeared to conflict with the provisions of General Assembly resolution 2574 D (XXIV). The need for greater scientific knowledge of the ecology of the area and its vulnerability to pollutants was emphasized as well as the need for international co-operation in research and technology and in the dissemination of statistical and technical data to all States, so as to minimize the risk of pollution. Attention was drawn to the emphasis being placed in the International Decade of Ocean Exploration on scientific observations with a view to preserving the ocean environment and preventing depletion of valuable species. It has also been recognized that a number of specialized agencies are working in this field and that closer co-ordination is called for.

27. It was generally realized that, as stated in the Secretary-General's report, it would not be possible to exploit the resources of the deep ocean floor without some degree of interference with the marine environment and it was agreed that a definition of the level of interference that would be permissible was necessary and should be established by international treaty. It was suggested that appropriate rules might be adopted reflecting the best principles applied by the petroleum industry and laying down the exploitation procedure to be followed to avoid pollution. Reference was made to the definition of pollution by the Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP) which reads:

> "Introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) resulting in such deleterious effects as harm to living resources, hazard to human health, hindrance to marine activities including fishing, impairing of quality for use of sea water and reduction of amenities." 6/

It was suggested that this definition might need to be supplemented by research into the threshold level - at which the harm to the environment occurred - and that this might vary for different sources of pollutants.

28. A number of delegations considered that, while the Committee's specific terms of reference were to consider the question of pollution that might arise from

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6/ "Long-term and expanded programme of oceanographic research. Note by the Secretary-General" (A/7750, p. 25).

exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction, the marine environment for the purposes of the prevention and control of pollution had to be treated as an integral whole. It was suggested that attention should be given to the prevention of pollution arising from all actions in the sea-bed area, not merely that resulting from acts of exploration and exploitation.

29. The Committee recognizes that at present little is known of the possible effects of pollution from deep-sea mining, but pollution from the discharge of domestic and industrial waste (mainly from coastal outlets), the escape of dumping of toxic or radio-active materials, oil spills from ships and from exploitation on the continental shelf present vast and urgent problems of international concern. Action on a world-wide scale is required since problems of pollution in different areas are related: ocean currents, for example, can carry the effects of pollution hundreds of miles in a comparatively brief time, while winds can carry pesticides from land.

30. A number of delegations considered that the international régime to be established for the area beyond national jurisdiction should recognize the right of a coastal State in the region of an activity causing or likely to cause damage through pollution of the marine environment to be consulted and to take preventive measures to protect its coastal area from pollution caused by activities in the area beyond its jurisdiction. It was stated, however, that a regional approach should be used in a wider, international context and that international measures should be within the framework of agreed scientific programmes of inquiry.

31. Attention was drawn by many delegations to General Assembly resolution 2566 (XXIV) calling for a comprehensive report in 1971 on pollution of the marine environment, to be prepared by the United Nations and the specialized agencies with special reference to the Conference on the Human Environment in 1972. It was suggested that following this report there might be a special plenipotentiary conference to conclude a treaty or treaties for the prevention of pollution. It was recognized that such a conference, if held, would have to be co-ordinated with the 1972 Conference on the Human Environment and the projected IMCO conference on pollution from ships to be held in 1973. Mention was also made of the conference being organized by the Economic Commission for Europe in 1971 and

the working papers being prepared for it which were to include one on the disposal of waste. Reference was made by various delegations to previous conventions relating to marine pollution[7] and to the work of the specialized agencies, in particular the work of IMCO in connexion with pollution from oil spills from ships, and also to the work of the IOC, FAO and WMO, as well as to that of the IAEA. It was stressed that, while it was important to avoid duplication, it was necessary that there should be a more comprehensive approach, embracing all types of pollution. At present, no effective international safeguards exist to prevent pollution of the oceans, apart from cases of oil spills from ships. There should be co-ordination not only among the programmes of the specialized agencies but also between the international and the various national programmes of control.

32. As far as the specific mandate of the Committee was concerned, it was generally recognized that some statement should be made in the declaration of principles, of the need to prevent and control pollution and that provisions should be made in the international régime for adequate safeguards against pollution. It was widely recognized that the international machinery would assume the responsibilities devolving upon it for the prevention of pollution. In this connexion, references were made to the provisions relating to pollution contained in the United States working paper submitted to the Committee (A/AC.138/25).[8] It was also important, members considered, to arrive at an agreement on liability for damage.

E. Peaceful uses

33. Paragraph 3 of resolution 2467 A (XXIII) called on the Committee to study further within the context of the title of the item and taking into account the

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7/ Reference was made, in particular, to two conventions adopted at Brussels in 1969: La Convention internationale relative au droit d'intervention de l'Etat riverain en cas d'accidents de mer survenant au-delà de ses eaux territoriales et entrainant ou pouvant entrainer une pollution de la mer par les hydrocarbures. La Convention internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures.

8/ Attention was drawn in particular to article 1, para. 1, and articles 9, 10, 11, 12, 19, paras. 2, 23, 27 and 40, sub-paras. (j) and (k) in relation to the prevention and control of pollution.

studies and international negotiations being undertaken in the field of disarmament, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which may be agreed upon in this respect.

34. Accordingly, the Committee at five additional meetings held in November 1969 after the submission of its report to the Assembly at its twenty-fourth session, considered the implications for its work of the report of the Conference of the Committee on Disarmament (A/7741), and in particular the implications of the draft Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, submitted to the Conference of the Committee on Disarmament by its two Co-Chairmen. In an addendum to its report,[9] the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction reported to the Assembly on its discussions.

F. International machinery

35. In resolution 2467 C (XXIII), the General Assembly requested the Secretary-General to undertake a study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of this area, and the use of these resources in the interests of mankind, irrespective of the geographical location of States, and taking into special consideration the interests and needs of the developing countries, and to submit a report thereon to the Committee for consideration during 1969.

36. A report (A/AC.138/12 and Add.1) was accordingly prepared, and was discussed in general terms in the Main Committee in August 1969 and from the point of view of its economic and technical aspects in the Economic and Technical Sub-Committee at that session.[10] The Committee suggested that the Secretary-General be requested to continue in depth the study of the

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9/ A/7622/Add.1.

10/ An account of the Sub-Committee's discussion is contained in part three of the Committee's report to the twenty-fourth session.

establishment in due course of appropriate international machinery, concentrating on the following areas: (a) status of the machinery; (b) structure of the machinery; (c) powers and authority to be given to this machinery; (d) activities and functions of the machinery.

37. The General Assembly, bearing this recommendation in mind, requested the Secretary-General, in resolution 2574 C (XXIV) to prepare a further study on various types of international machinery, particularly a study covering in depth the status, structure, functions and powers of an international machinery, having jurisdiction over the peaceful uses of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, including the power to regulate, co-ordinate, supervise and control all activities relating to the exploration and exploitation of their resources, for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether land-locked or costal.

38. A further report (A/AC.138/23) was accordingly prepared by the Secretary-General, taking into account the views expressed by Members in the General Assembly and at the session of the Committee in March 1970, and was before the Committee at its August session in 1970. An account of the discussions at that session is contained in part III of the present report.

III - CONSIDERATION OF THE REPORT OF THE SECRETARY-GENERAL ON INTERNATIONAL MACHINERY PURSUANT TO GENERAL ASSEMBLY RESCLUTION 2574 C (XXIV)

39. At its second session in 1970, the Committee discussed the report (A/AC.138/23) submitted to it by the Secretary-General in accordance with General Assembly resolution 2574 C (XXIV). Reference was also made to a number of Committee documents during this discussion and, in particular, to working papers introduced by the United States (A/AC.138/25), the United Kingdom (A/AC.138/26) and France (A/AC.138/27) at the beginning of the session.[11/]

40. The report by the Secretary-General (A/AC.138/23) was generally welcomed by members of the Committee, although various speakers considered that the first two types of machinery examined in part II of that report should be ruled out as possibilities. It was suggested that although international machinery for exchange of information and preparation of studies did represent an essential stage of development, such arrangements would not be adequate since they would not provide practical organization or effective administration for the area beyond the limits of national jurisdiction. It was also noted that such functions were either already being performed or would in any event be only one of the functions of international machinery.

41. The second type of machinery described in the Secretary-General's report, machinery with intermediate powers, was also regarded as inadequate by various delegations. The tasks to be performed by such machinery, it was said, could be carried out by existing bodies and an intermediate organization or a mere registration body with limited scope and competence would not only be unacceptable to most States but would not reflect the basic concept that the area and its resources were the common heritage of mankind. It was stated that the objective of the proposed machinery was not merely to avoid friction between individual States engaged in the exploration and exploitation of the sea-bed resources, but to ensure the optimum utilization of those resources for the benefit of mankind as a whole.

11/ The four above-mentioned documents are annexed to the present report (annexes III, V, VI and VII).

42. Some delegations expressed support for the establishment of international machinery competent to issue licences and to collect royalties and fees, and urged that this was the kind of machinery on which the Committee should concentrate. Differing views were expressed in this context. Various delegations stressed that this should be only one of the possible functions of the machinery with comprehensive powers. It was proposed that all exploration and exploitation of mineral deposits in the international sea-bed area, would be licensed. Some delegations suggested that there should be no licensing of scientific research: others were of the opinion that it would be necessary to subject some types of scientific research to the same form of controls against pollution as in the case of exploration and exploitation activities. Some delegations were of the opinion that requirements for licensing of scientific research should not be as extensive as in the case of exploration and exploitation. It was generally agreed that all deep drilling including that carried out for research purposes be licensed in some way but some felt that other forms of scientific research would not need to be licensed. There should be general provisions governing the entities admitted to apply for licences, the conditions under which licences would be used, the size of the areas to which licences might be applied, their duration, the minerals to be covered by the licences and the amounts of fees and payments. Certain delegations pointed out that there should be no licensing in connexion with scientific research on the sea-bed and the ocean floor beyond the limits of national jurisdiction.

43. It was also considered that States must have an essential role within the régime of exploration and exploitation of the sea-bed because they were the only possible link between such a body and the public or private companies undertaking the exploration and exploitation. Various delegations stressed the important role of regional organizations in this regard. It would be easier to deal with a State or with regional or other internationally recognized organizations than with private corporations which lacked a clearly defined status in international law. Furthermore, States would then assume responsibility for all activities carried out under licences; they would not be mere intermediaries but would be free to use both private and public resources as they saw fit. It was also pointed out that unless licences were issued to States, it would be difficult to achieve equitable distribution of the benefits to be derived from exploration of the sea-bed. To issue licences directly to operators would risk putting at a permanent disadvantage

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those States which at present lacked substantial technological capacity. It was also pointed out that a State bears international responsibility for national activity within the limits of the area irrespective of whether this activity is carried out by government bodies or by corporate or physical persons. Such activity would be carried out with the authorization and under the permanent surveillance or observation of the State. Referring to State responsibility, other delegations, however, pointed out that this notion did not necessarily encompass financial responsibility and that the problem of responsibility for damage should accordingly be the subject of detailed study within the framework of the régime to be established.

44. On the other hand, it was noted that difficult questions might arise if an operator had no genuine link with the sponsoring or authorizing State and it was doubtful to what extent a State could be held responsible for the actions of such operators. Those problems might be avoided if the international machinery were empowered to grant licences not only to States, groups of States or international organizations, but also to international business organizations of repute. Another view was that licences might be granted to private enterprises or joint ventures, government enterprises or international consortia, representing private or joint enterprises, and intergovernmental concerns representing various economic systems. It was suggested that international inspection of operations would have to be conducted by the international machinery or under its supervision. The view was also expressed that the machinery should from the outset be endowed with operational powers which it could exercise whenever necessary and feasible.

45. Another point of view advanced was that licensing was only one of many complex questions connected with the international machinery which was still a long way from being solved. It required further careful and detailed study. Licensing on a first come first served basis, licensing by lottery, licensing on the basis of the applicant's qualifications and licensing on the basis of the highest bidder, as also licences granted to private companies, would all, in practice, it was stated, give an advantage to particular groups of countries and monopolies and would serve the narrow interests of individual States and companies rather than those of mankind as a whole. In this connexion, it was suggested that the rules and procedures for the award of licences should not be too rigid and should permit a certain amount of negotiation of terms in order to ensure, inter alia,

that a licence is granted to those who offer the organization under international machinery the most attractive financial return. Some delegations pointed out the imperfection of the licensing system and emphasized that it endangered the interests of many States.

46. Differing views were expressed on the subject of the type of machinery analysed in part III of the report of the Secretary-General, namely international machinery having jurisdiction over the peaceful uses of the area. Many delegations contended that the international machinery should take the form of an autonomous, universal organization possessing full legal personality and having jurisdiction over the sea-bed to ensure the rational exploration, conservation, exploitation and use of its resources, including the co-ordination, regulation, supervision and control of development, pollution prevention, the protection of life, property and mineral resources, settlement of conflicts and the enforcement of regulations and standards in collaboration with other bodies, and that the constituent instruments establishing the international machinery should be so drafted as to enable it to undertake wide functions. Only such machinery, it was held, would correspond to the basic concept that the area and its resources were the common heritage of mankind. The view was also expressed that the future international machinery should not have jurisdiction over the sea-bed beyond the limits of national jurisdiction. It was therefore stressed that the international machinery could be established only on the basis of an international agreement on the régime of a universal character and that its basic function should be to ensure that States parties to this agreement carried out the commitments undertaken by them.

47. Conflicts of a colonial type, it was said, could be avoided only if provision were made for the equitable management, not only of the resources, but of the area itself. In this connexion, it was held preferable to envisage the establishment of an "international sea-bed authority" rather than an "international sea-bed resource authority". It was also noted that the Secretary-General's report did not mention all the potential and probable uses of the area. The international machinery, in another view, should have full legal personality with the right to make contracts, to acquire and dispose of property and to institute legal proceedings. It should also be itself liable to be sued, while enjoying privileges and immunities comparable to those of, for instance, the International Bank for Reconstruction and Development. Its functions, according to some views,

should include licensing, direct exploitation of resources, control of production in order to avoid excessive price fluctuations, collection of fees and royalties, prevention of pollution and implementation of training programmes. A view was expressed that the international machinery should not carry out direct exploration and exploitation of the resources of the sea-bed.

48. If the international machinery was to deal with other peaceful uses of the sea-bed, and not only with the exploration and exploitation of resources, it would have to have an economic, technical and commercial wing to regulate and control the exploration and exploitation of resources, and a general or political wing to deal with co-ordination with other international organizations concerned with specific aspects of the marine environment and questions relating to the exclusive use of the sea-bed for peaceful purposes.

49. On the other hand, it was contended that international machinery with comprehensive powers such as described in the third part of the Secretary-General's report was unnecessary for a number of reasons and would mean setting up a huge apparatus which might easily be paralysed by the very complexity of the legal, economic, technical and scientific functions. Such machinery could probably only be set up if based on a series of multilateral treaties. It would require a full and detailed study of marine resources and their uses and the completion of such a project could conceivably take a long time. Another view was that international machinery should not, at least in the initial stages, have functions and powers other than those governing the exploration and exploitation of mineral resources; all living resources should be excluded and international regulations on fishery resources conservation should be made applicable to sedentary species. Some delegations were of the opinion that the international institution which might be established should have clearly defined powers and functions and should avoid a cumbersome bureaucracy with high administrative costs which would consume a substantial part of the revenues from exploitation of the sea-bed that would otherwise be available for distribution for the benefit of States Parties to the régime.

50. The question of broader powers, it was said, should be approached circumspectly not only because of the complex questions involved but for fear that the proposed machinery would become too cumbersome and expensive. A more practical approach might be to devise a structure providing for all the essential elements at the outset, beginning with a skeleton framework, to be expanded as progress was made.

51. Differing opinions were also expressed on the stage reached in the Committee's work with regard to international machinery. On the one hand, it was held that the two reports by the Secretary-General (A/7622, annex II, and A/AC.138/23) contained sufficient data to enable the desired type of machinery to be selected and that active measures should be taken to initiate the process of establishing the machinery. On the other hand, the conviction was expressed that not enough information was yet available for an immediate attempt to settle the practical and complicated questions whose solution demanded thorough examination. The view was expressed that at present appropriate conditions did not exist for the establishment of international machinery, that essential scientific data was lacking; nor was it clear how profitable the industrial development of the resources of the sea-bed would prove in the near future.

52. Many references were made to the question of the context in which the issue of establishment of international machinery should be viewed. The relationship between machinery and principles and régime was widely emphasized. It was held that there was an essential link between the declaration of principles, the régime, and the machinery. Some delegations felt that it was not possible to choose any specific type of machinery to define its functions and powers, to fix its structure and to define its legal status until agreement had been reached on the wording of the declaration; other delegations stated that further progress on these matters depended on further progress on the nature and scope of the international régime. It was also maintained that specific provisions could only be formulated when agreement had been reached on the most appropriate régime. International machinery, it was said, could not be set up in a vacuum but must have a realistic legal basis. It was further pointed out that the international institution which might be set up should be of an intergovernmental nature, for States should have a predominant role in the régime which would be established.

53. It was held that the main problem was that of deciding on the substance of an international régime, of which the functions of any international machinery would have to be an integral part. It was essential that the régime should be effective in safeguarding the interests of mankind as a whole and ensuring that all States, particularly the developing countries, benefit from the exploitation of the area's riches. The régime should also provide attractive alternatives for States which might otherwise have recourse to other mean to safeguard their own interests in the

area. Failure to deal with such problems could have undesirable consequences. Not only the law of the sea, but the broader question of international relations had to be considered. In another view, peace, rather than development, was held to be the most important consideration; growth, no matter how well planned, could be impaired by the absence of peace. Although important, the exploitation of sea-bed resources and the development of the benefits accruing therefrom for the well-being of mankind were not the only factors to be taken into consideration. The international machinery must ensure that the technology, equipment and human and financial resources now concentrated in the hands of a few States were available to the international community as a whole. If that was recognized, agreement on the status and structure of the machinery should not be difficult. However, it was also pointed out that a great deal of compromise would be necessary and that because of the great complexity of the problems involved, the régime and its supporting machinery were unlikely to be completely satisfactory to any single member of the Committee. It was also pointed out that the international régime and the international machinery should exclude any possibility of activities being carried out in the interest of individual States to the detriment of the interests of other States.

54. The point was made that the protection of living resources should clearly be a major consideration and a balance should be sought between the diferent interests involved in the major uses of the oceans.

55. The heart of the matter, in one view, was to ensure equitable distribution of the benefits of sea-bed exploitation to all States Parties to the international régime. The attempt to meet the interests of mankind as a whole merely by providing for a distribution of a portion of the profits was too restricted an approach. A system of quotas assigned on criteria to be agreed would enable all States also to participate directly in the benefits of exploitation. The international machinery as the licence-issuing authority, according to this view, should be guided primarily by objective criteria which would have to be incorporated as part of the régime, and should not introduce elements of arbitrariness in granting a licence to any particular applicant.

56. It was widely recognised that there was a need to ensure, within the framework of the international régime to be established, the equitable sharing of the proceeds and other benefits to be derived from the exploitation of the resources of the area.

Some delegations pointed out that the question of proceeds and other benefits might be studied in the elaboration of an international régime for the exploitation of the resources of the area.

57. Still another view in this connexion was that the international régime and its machinery should be oriented, at least in its early years, primarily towards encouraging the exploration and exploitation of resources in a difficult environment. The most important factor would be in the need to establish a resource management system designed to encourage and maintain investment on a continuing and orderly basis. A balance must be struck between the need to attract investment capital and the need to ensure that mankind as a whole, particularly the developing countries, benefited from the results of exploitation. In this regard, it was emphasized that appropriate measures should be taken to minimize the fluctuation of the prices of raw materials in the world market which might adversely affect the interests of countries whose economy depends on such raw materials. Others felt, however, that any controls established should be global in nature and not limited to natural resources coming only from one particular area. The view was also expressed that manganese nodules of the sea-bed could be profitably exploited only under internationally controlled conditions of monopoly or oligopoly; it was suggested that if such conditions did not obtain, the effects on international prices of some land-based minerals could be very serious.

58. Various speakers expressed opposition to the creation of either an interim régime or of interim machinery. It was contended, among other things, that any provisional measure might frustrate the efforts to set up permanent machinery. It was, however, suggested by some delegations that a two-phased development of machinery, providing initially for immediate control of exploration and exploitation and gradually developing into a second exploration and development phase, might be considered; that would not be an interim régime but a comprehensive régime with interim machinery.

59. Some delegations expressed the view that machinery should be established by a basic international treaty, which should be as universal as possible, and, it was suggested, ratified by a large number of States. Other delegations expressed the view that machinery could be established on the basis of an international treaty on a régime, of universal character, that is open to participation by all States. Various speakers suggested that more than one treaty might be required, one for the

broad general lines, and the other for details of structure, function and so forth. Several speakers felt that detailed provisions for the machinery should be spelled out in the treaty establishing it. It was also noted that until the machinery gained general confidence, it would need to have detailed provisions, but as it gained in confidence, more leeway could be left to it. Reference was made in this connexion to the importance of provisions for amendment and for periodic review.

60. The manner in which profits and benefits would be distributed was considered to be of vital importance. Such distribution should not be reduced to a form of foreign aid. It was emphasized that benefits must be used to meet the interests and needs of developing countries, bridge existing economic disparities and create conditions in which peace and well-being could be established and maintained.

61. In this connexion, reference was also made to the importance of training programmes for nationals of the developing countries so as to ensure that the latter gained knowledge of the latest scientific and technical methods of exploration and exploitation. It was suggested also that such programmes should not wait for the establishment of the machinery.

62. It was recognised in general that the international machinery would be a new type of international organization and that existing institutions would not provide precise models in view of the unprecedented nature of many of the problems that would be encountered and of the functions that would have to be performed. Various speakers express the view that the international machinery should form part of the United Nations system in a broad sense and it was suggested that in some respects, such as the control of pollution the function of the machinery would be one of co-ordination, with full use being made of the existing institutions in the United Nations system. It was emphasized by other speakers that the international machinery should be open to participation by all States without any discrimination and in accordance with the principle of sovereign equality, irrespective of whether a State is a member of the United Nations or a specialized agency. Another view was that the proliferation of United Nations committees and other organs, and the resulting duplication and overlapping, had already gone far enough and it would be preferable to control activities on the sea-bed, at least initially, through existing machinery such as UNCTAD, rather than by establishing new institutions.

63. With respect to the elaboration of the international régime, including the international machinery, the view was expressed that account should be taken of the wide diversity in geographical and economic circumstances, which is reflected in the regional trends in relation to the law of the sea. It was proposed that the machinery should provide for the participation of regional organizations. Such regional organizations should also be encouraged to set up joint research centres.

64. The question of the limits of the area was also mentioned by various delegations. Certain delegations pointed out that the indeterminate situation in regard to the limits might prove a serious obstacle in the working out of a régime. It was maintained that there was a close connexion between that question and the establishment of a régime and machinery. Some delegations considered that no régime or machinery should be established until this issue was settled. Other delegations considered this matter to fall outside the competence of the Committee; that the régime should have priority, in accordance with their understanding of the mandate of the Committee; and that it was not necessary to have a more precise delimitation of the area in order to establish a régime, as in similar cases such delimitation had not been found necessary.

65. Reference was also made to the need for provisions for consultation of coastal States when their interests were likely to be affected. A number of delegations considered it reasonable, when setting up international machinery, to give coastal States the right to decide whether operations could be conducted in areas of vital importance to their national economies, for example on fishing grounds just beyond the limits of their national jurisdiction.

66. It was observed with regard to the Secretary-General's report on international machinery that little was said about the structure of the international machinery and its financial aspects. It was felt that these two matters should be examined in greater detail. Certain delegations made preliminary proposals regarding a structure for the international machinery which would consist of possibly four main organs, namely a plenary assembly of representatives of each Member State, a smaller executive organ, a secretariat, and an appropriately constituted judicial organ.

IV. CONCLUSION

67. In their study of the problems connected with the sea-bed and ocean floor over the past two years, the members of the Committee have become increasingly aware of the complexity and range of the issues involved. This is partly due to the substantial accumulation of information previously unavailable or at least not brought together in forms promoting common examination of measures necessary in the general interest. With this may be included the rapid pace of technological development, opening up new possibilities for exploitation of the resources of this environment. It is also due to the cumulative effect of the work performed in the General Assembly and in the Committee on the item. Together with the contribution made by other parts of the United Nations system and the increased interest shown in those and related matters outside the organs of the United Nations, this work has brought out a vast and interlocking array of political, security, legal, technical, economic and scientific issues which must be taken into account in the process of fulfilling the mandate entrusted to the Committee.

68. However, the basic consequence has been to articulate the issues in greater detail rather than add to their number. A significant proportion of the preparation work necessary in any serious attempt to produce for this domain viable arrangements acceptable to the international community has in fact already been accomplished. What is of particular importance is that the extent of agreement may be judged to have increased over the past two years and, although progress has been slower than the Committee had hoped, it has been sufficient to maintain confidence in the emergence of the general agreement necessary to elaborate the basis and determine the requirements of the international régime which would take the form of a treaty.

69. The Committee, however, is obliged to add that many differences remain on issues and problems whichare of great importance. Resolution of such differences will inevitably consume more time and effort.

ANNEX I

REPORT OF THE LEGAL SUB-COMMITTEE[1/]

1. The Legal Sub-Committee held a series of formal and informal meetings during its two sessions in 1970. It held six formal meetings and seven informal meetings in New York from 9 to 24 March 1970. It held three formal meetings in Geneva from 25 to 27 August 1970. The Sub-Committee also held informal consultations in New York from 15 to 19 June and in Geneva from 27 to 31 July 1970; with the concurrence of the Committee at the opening of its August session in Geneva, the Legal Sub-Committee continued its informal consultations from 3 to 25 August 1970.

2. The Bureau of the Legal Sub-Committee was composed of the following members:

Chairman: Ambassador Reynaldo Galindo Pohl (El Salvador)

Vice-Chairman: Mr. Alexander Yankov (Bulgaria)

Rapporteur: Mr. Abdel Halim Badawi (United Arab Republic).

3. Under operative paragraph 4 of General Assembly resolution 2574 B (XXIV), the Committee was requested to expedite its work of preparing a comprehensive and balanced statement of principles and to submit a draft declaration to the General Assembly at its twenty-fifth session. Accordingly, there was agreement at the seventeenth meeting of the Committee, held on 26 February 1970, that in accordance with the Committee's programme of work (A/AC.138/8) which allocates the various items and functions between the Committee itself and its two Sub-Committees, the Legal Sub-Committee should consider during its two sessions in 1970 the formulation of principles requested by the General Assembly designed to promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether landlocked or coastal.

1/ Originally issued as document A/AC.138/31.

4. The Sub-Committee based its consideration particularly on the synthesis at the end of its report covering the 1969 period of its work.[2/] The synthesis, as noted by the General Assembly in operative paragraph 3 of resolution 2574 B (XXIV), reflected the extent of the work done in the formulation of principles at its March session. The Sub-Committee considered individually each of the topics dealt with in the synthesis but decided to consider also other matters which were not touched on in the synthesis but which it was believed should be included in the statement of principles. It also took into account other formal and informal proposals submitted for consideration; two draft resolutions submitted to the Sub-Committee during the March session (A/AC.138/SC.1/L.2 and L.4) were taken into account by the Sub-Committee in addition to various informal proposals submitted in the course of informal consultations. A revised version of the draft resolution contained in document A/AC.138/SC.1/L.4 was submitted during the August session (A/AC.138/SC.1/L.4/Rev.1). The texts of the draft resolutions contained in documents A/AC.138/SC.1/L.2 and L.4/Rev.1 are annexed to this report.

5. The Legal Sub-Committee agreed, at its thirtieth meeting held on 10 March 1970, that an informal group should be set up to conduct informal consultations and to review the formulation of principles. The great majority of the members of the Sub-Committee participated in the informal consultations. In view of the fact that several formulations were submitted with regard to each of the elements to be included in the draft declaration of principles, it was felt during the informal consultations that the preparation of a single paper which would attempt to narrow as far as possible the differences between such formulations in the light of the discussions and various views that were expressed during the sessions would be useful. Several delegations, particularly those which had advanced concrete proposals assisted the Rapporteur in carrying out his task. A paper was accordingly prepared by the Rapporteur and circulated among members of the Sub-Committee.

2/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 22 (A/7622), part two, paras. 83-97.

6. The Legal Sub-Committee did not submit a report to the Committee on its work during the March session. Instead, the Chairman of the Sub-Committee, Ambassador Galindo Pohl, sent a letter to the Chairman of the Committee, Ambassador Amerasinghe, informing him of the progress of work (A/AC.138/SC.1/10).

7. At the twenty-seventh meeting of the Committee held on 26 March 1970, there was agreement that the Legal Sub-Committee would hold informal consultations before the August session of the Committee. As a result of contacts undertaken by the Chairman of the Legal Sub-Committee with its members it was agreed that two series of consultations should be held, the first in New York for a week from 15 to 19 June and the second in Geneva for a week prior to the August session of the Committee, from 27 to 31 July. This second series of consultations was carried through beyond the original time allocated to it since it was estimated that their informal character would be conducive to an early agreement on a draft balanced and comprehensive declaration of principles as requested by General Assembly resolution 2574 B (XXIV).

8. The informal discussions had their value, but this was reduced by the fact that the participation was limited, and at times, insufficiently representative. Nevertheless some common grounds were found among the participants to these consultations with respect to some principles and elements for inclusion in the declaration although agreement was not possible on others. These elements, however, had to be considered in the context of the declaration as a whole. In the course of these consultations several delegates attempted to put together a number of formulations which in their views could serve as the basis for the elaboration of a declaration of principles.

9. The Chairman of the Legal Sub-Committee presided over the informal consultations. The Vice-Chairman, Mr. Alexander Yankov, presided over ad hoc drafting groups set up in Geneva in order to consider different formulations on specific principles or elements of principles after examination by the informal consultations. There were no records of the informal consultations.

10. The second session of the Legal Sub-Committee opened in Geneva on 25 August 1970 and heard a report by the Chairman on the results of informal consultations at New York and Geneva.

11. The view was expressed by a number of delegations that the procedure of informal consultations adopted by the Sub-Committee was not conducive to progress since no records were maintained of the views expressed, nor were the various proposals made available to delegations not participating in these informal talks. The emphasis on

informality tended in the view of those delegations to convert the Sub-Committee into a series of consultation groups. Accordingly, the agreement reached in these informal discussions should be restricted to those who participated in them and unless the agreements in question had been considered and adopted by the Sub-Committee, they could not therefore be deemed even as tentative agreements as regards non-participants.

12. On the other hand, the view was expressed by some other delegations that the informal procedure followed by the Sub-Committee had in fact succeeded in enlarging the areas of agreement and, although the formulation of an entire draft Declaration had not been completed by the Sub-Committee at its present session, the extent of agreements achieved on certain texts, however tentative, should be preserved.

13. A proposal was made that informal consultations should be held during the twenty-fifth session of the General Assembly, to be followed by a formal meeting of the Committee to consider and adopt a draft Declaration of Principles, for submission to the General Assembly at its twenty-fifth session. Some delegations considered however that it was premature at this stage to take any position on this proposal. No decision was taken on this proposal.

Appendix I

Brazil, Cameroon, Ceylon, Chile, India, Kenya, Kuwait, Libya, Madagascar, Sierra Leone, Sudan, Tanzania, Thailand, Trinidad and Tobago, and Yugoslavia: draft resolution (A/AC.138/SC.1/L.2)

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968 and 2574 (XXIV) of 15 December 1969 concerning the area to which the title of the items refers.

Reaffirming the objectives set forth in those resolutions,

Reaffirming that there is an area of the sea-bed and the ocean floor, and the subsoil thereof, that lies beyond the limits of national jurisdiction,

Recognizing that it is in the interests of mankind as a whole that the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction be reserved exclusively for peaceful purposes,

Convinced of the need for international co-operation in the exploration, conservation, use and exploitation of that area and its resources for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into special consideration the interests and needs of the developing countries, whether land-locked or coastal,

Believing it essential to that end to establish within the United Nations system, international machinery with jurisdiction over the area and its resources and having responsibility for regulating, co-ordinating, supervising and controlling activities with respect thereto,

Recognizing that it is in the common interest of all nations that the exploration, conservation, use and exploitation of that area and its resources should be conducted in such a manner as to avoid infringement of the other legitimate interests and established rights of nations with respect to the uses of the sea,

Taking into account that the existing legal régime for the high seas is not applicable to the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction,

Mindful of the threat to the marine environment caused by pollution and other hazardous and harmful effects which might result from such activities,

Desiring to promote effective national and international measures for prevention and control of such pollution and to allay the serious damage which might be caused to the marine environment, and, in particular, the living marine resources which constitute one of mankind's most valuable food resources,

Seeking to enrich the knowledge of all mankind by encouraging a free flow and dissemination of information of the oceans to all States,

I

Solemnly declares that the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction including the resources of that area (all hereinafter collectively referred to as the "international zone") are the common /heritage/ /patrimony/ of mankind. Accordingly, the principles hereinafter set forth shall apply with respect to the international zone:

1. The international zone shall not be subject to appropriation by any means by States or by persons, natural or juridical, nor shall any State claim or exercise sovereignty or sovereign rights over any part of it. Except as may be permitted pursuant to the régime to be established for the international zone, no State or person, natural or juridical, may claim or exercise any right with respect to the resources of that zone;

2. The international zone shall be reserved exclusively for peaceful purposes. All military uses of the international zone and all military activities within it shall be prohibited. One or more international agreements shall be concluded as soon as possible in implementation of this principle;

3. Exploration, conservation, use and exploitation of the resources of the international zone shall be carried out in accordance with the provisions of the régime to be established which shall take into account the applicable rules of international law, including the relevant provisions of the Charter of the United Nations;

4. All activities with respect to the international zone, including the exploration, conservation, use and exploitation thereof, shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into special consideration the interests and needs of the developing countries, whether land-locked or coastal;

5. The régime to be established shall provide for the orderly development and rational management of the resources of the international zone and for equitable sharing in the proceeds and other benefits derived herefrom, taking into account the paramount need to accelerate thereby the economic growth of the developing countries;

6. As part of the aforesaid régime, there shall be established, within the United Nations system, international machinery with jurisdiction over the international zone and having responsibility for regulating, co-ordinating, supervising and controlling exploitation, conservation, use and exploitation of that zone;

7. The exploration, conservation, use and exploitation of the resources of the international zone shall be undertaken in such a manner as to foster healthy development of the world economy and balanced growth of international trade. In particular, measures shall be taken to minimize any fluctuation of prices of raw materials that may result from those activities;

8. The international zone shall be open to scientific research exclusively for peaceful purposes by or on behalf of all States undertaking to promote international co-operation in such research

(a) through timely prior publication of research programmes and making available to all, without delay or discrimination, the results thereof; and

(b) by collaboration in measures to strengthen the research capabilities of developing countries, including participation of nationals of other States in such research programmes;

provided, however, that no such activity shall form the basis for any claim with respect to any part of the international zone;

9. Nothing herein shall affect the legal status of the waters superjacent to the international zone as high seas or that of the air space above those waters;

10. In regard to any activity with respect to the international zone, States shall pay due regard to the rights and interests of all other States, in particular those of any coastal State adjacent to the area of that activity. Close and continuing consultations shall be maintained with the coastal State concerned with a view to avoiding any infringement of such rights and interests;

11. States shall also:

(a) Adopt and ensure the application of appropriate measures, including internationally acceptable standards and procedures, for

(i) prevention of pollution of, and other hazards to, the marine environment;

(ii) the safety of life and property;

(iii) application of sound operational practices;

(iv) protection and conservation of the living resources of the seas;

(v) collaboration in case of accident, distress or danger; and

(b) Ensure that the laying or maintenance of submarine cables or pipelines on the sea-bed is not impeded;

12. A State shall bear responsibility for any activity with respect to the sea-bed whether carried on by governmental agencies or non-governmental entities, and for assuring that any such activity is carried on in conformity with the international régime to be established;

II

Requests the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction to make recommendations to the General Assembly at its twenty-sixth session concerning the establishment as early as practicable, by means of an international agreement, of the régime contemplated for the international zone, including the international machinery as specified in paragraph 6 of the foregoing Declaration;

III

Invites the specialized agencies, the International Atomic Energy Agency and other intergovernmental bodies including the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization to co-operate fully with the Committee with a view to ensuring the observance of the principles set forth in the foregoing Declaration.

Appendix II

Norway: draft resolution (A/AC.138/SC.1/L.4/Rev.1)

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968, and 2574 (XXIV) of 15 December 1969 concerning the area to which the title of the items refers,

Reaffirming that there is an area of the sea-bed and the ocean floor and the subsoil thereof that lies beyond the limits of national jurisdication (hereinafter collectively referred to as the area), the precise limits of which are yet to be determined,

Convinced of the need for international co-operation in reserving the area exclusively for peaceful purposes and in reserving the exploration, conservation, use and exploitation of that area and its resources for the benefit of mankind as a whole, irrespective of the geographical location of states, whether land-locked or coastal, taking into particular consideration the interests and needs of the developing countries.

Believing it essential that an international régime including an appropriate international machinery should be established for this area and its resources as soon as possible,

Recognizing that this régime shall not affect the legal status of the superjacent waters of the area and of the airspace above these waters,

Mindful of the threat to the marine environment caused by pollution and other hazardous and harmful effects which might result from such activities and

Desiring to promote effective measures, international and national, for the effective control and prevention of such pollution and to allay and repair the serious damage which might be caused to the marine environment by such pollution,

Seeking to enrich the knowledge of all mankind by encouraging the free flow and dissemination of information on these areas and the ocean as a whole,

Solemnly declares:

1. The area and its resources is the common heritage of all mankind and as such shall enjoy a special status in accordance with the present Declaration and the international régime to be established.

2. The area shall not be subject to appropriation by any means by States or by persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part of it.

No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the régime to be established and the principles of this Declaration.

3. The régime applying to the area and its resources shall be established by a basic international instrument generally agreed upon, inter alia, reflecting applicable principles of international law and the principles of this Declaration.

4. Without prejudice to any wider limits which may be agreed upon or any other measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament, the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction shall be reserved exclusively for peaceful purposes.

International agreement or agreements shall be concluded as soon as possible in order to implement effectively this principle and to prevent an armaments race on the sea-bed, the ocean floor and the subsoil thereof.

5. The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of states, whether coastal or land-locked, taking into particular consideration the needs and interests of the developing countries. Efforts should be made to minimize fluctuations in prices of raw materials that may result from the exploitation of the resources of the area.

6. Nothing herein shall affect the legal status of the waters superjacent to the area as high seas or that of the air space above these waters; in particular there shall be no infringement of the recognized freedoms of the high seas nor shall activities in the area interfere unjustifiably with the exercise of these freedoms.

7. In their activities in the area States shall take appropriate measures and shall co-operate in the adoption and implementation of international rules, standards and procedures for:

(a) Prevention of pollution, contamination and other harmful effects and hazards to the area and the marine environment including the coastlines concerned and of interference with the ecological balance of the marine environment.

(b) Protection and conservation of the resources of the area and prevention of damage to flora and fauna of the marine environment.

8. States shall take appropriate measures to ensure that activities carried out on the sea-bed, the ocean floor and in the subsoil thereof, both within and outside the area shall not infringe upon the rights and legitimate interests of other States, in particular those of coastal states.

Consultations should be held in particular with the coastal states concerned with a view to avoiding infringement of such rights and interests.

9. States shall have the obligation to ensure that activities in the area whether undertaken by governmental agencies or by non-governmental entities or persons under their jurisdiction or acting on their behalf shall be carried out in conformity with the international regime to be established.

The same obligation applies to international organizations and their members of activities undertaken by such organizations or on their behalf.

Damage caused by activities undertaken in the area shall entail liability and the obligation to make effective reparation.

10. The area shall be open to scientific research exclusively for peaceful purposes by or on behalf of all states without discrimination.

States shall promote international co-operation in such research.

(a) By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries,

(b) through effective dissemination of research programmes and the results of such programmes through international channels,

(c) by co-operation in measures to strengthen the research capabilities of developing countries including the participation of their nationals in research programmes.

No such activity shall form the legal basis for any claims in respect to any part of the area and its resources.

11. The regime to be established shall, inter alia, provide for:

(a) the orderly development and the rational management of the area and its resources,

(b) the equitable sharing by the international community in the proceeds and other benefits to be derived from the exploration and exploitation of the resources of the area taking into particular account the interests and needs of the developing countries whether coastal or landlocked,

(c) international arrangements concerning the international machinery endowed with the necessary authority and jurisdiction for regulating, co-ordinating, and supervising activities in the area.

12. The parties to any dispute relating to activities in the area shall resolve such dispute by the means mentioned in article 33 of the United Nations Charter and such procedures for settling disputes as may be agreed upon in the regime to be established.

ANNEX II

REPORT OF THE ECONOMIC AND TECHNICAL SUB-COMMITTEE[1/]

1. The Economic and Technical Sub-Committee held nine meetings in New York from 9 to 23 March 1970 and six meetings in Geneva from 11 to 24 August 1970. The meetings were attended by the representatives of the forty-two member countries of the Committee. Also present were the observers of the following countries: Barbados, Burma, Cuba, Denmark, Ecuador, Finland, Guyana, Indonesia, Iran, Jamaica, Morocco, Netherlands, New Zealand, Nicaragua, Philippines, Portugal, South Africa, Spain, Sweden, Tunisia, Turkey, Ukrainian SSR, Uruguay and Venezuela, and the representatives of the ILO, FAO, UNESCO and its IOC, WMO, IMCO and IAEA.

2. The Bureau of the Economic and Technical Sub-Committee was composed of the following members:

Chairman: Mr. Roger Denorme (Belgium)

Vice-Chairman: Mr. J.S. Teja (India) during the session in New York
Mr. C.V. Ranganathan (India) during the session in Geneva

Rapporteur: Mr. Anton Prohaska (Austria)

3. An interim report (A/AC.138/SC.2/L.6) was adopted at the end of its thirty-fourth meeting, held on 23 March 1970. The Sub-Committee adopted its final report at the end of its 40th meeting (A/AC.138/29).

4. Following proposals made by the Chairman (A/AC.138/SC.2/L.2 and A/AC.138/SC.2/L.8), the Economic and Technical Sub-Committee considered the economic and technical conditions and rules for the exploitation of the resources of the sea-bed and the subsoil thereof beyond the limits of national jurisdiction in the context of the régime to be set up in accordance with the terms of reference as laid down in General Assembly resolution 2467 A (XXIII) and pursuant to the particular mandate contained in General Assembly resolution 2574 B (XXIV) (A/AC.138/SC.2/L.3 and A/AC.138/SC.2/L.7).

1/ Originally issued as document A/AC.138/29.

5. The Sub-Committee had the following documents at its disposal: The review prepared by the Secretariat on government measures pertaining to the development of mineral resources on the continental shelf (A/AC.138/21 and Corr.1): the studies of the Secretary-General on international machinery (A/AC.138/12 and Add.1 and Corr.1 and Add.1/Corr.1, and A/AC.138/23); the report of the Secretary-General on marine pollution and other hazardous and harmful effects which might arise from the exploration and exploitation of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (A/7924); the preliminary note of the Secretariat on the question of possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from the exploitation of the resources of this area which it requested at its March session; and the relevant parts of the report of the Sea-Bed Committee to the General Assembly at its twenty-fourth session (A/7622). It also took into account the comments made during that session on this item (A/C.1/PV.1673-1783 and A/C.1/PV.1708-1710) and the comments during the debates in the main Committee (A/AC.138/SR.17-24 and SR.25-38).

6. On the opening of the August session of the Sub-Committee, at its thirty-fifth meeting, the Under-Secretary-General for Economic and Social Affairs made a statement which, following a decision by the Sub-Committee, was reproduced in document A/AC.138/SC.2/L.9.

7. Under operative paragraph 6 of General Assembly resolution 2574 B (XXIV), the Committee is requested to formulate recommendations regarding the economic and technical conditions and the rules for exploitation of the resources of this area in the context of the régime to be set up. In response to this request, it was suggested that it would be appropriate in a first phase to identify and examine systematically the problems and issues of an economic and technical nature regarding the exploration and exploitation of marine mineral resources beyond the limits of national jurisdiction.

8. While the Sub-Committee recognized that something is to be learned from existing national rules and practices relating to resource exploration and exploitation in all countries, it recognized also that none of these existing systems is directly applicable to resource development in this environment under an appropriate régime internationally agreed upon.

9. The Sub-Committee further recognized that when considering economic and technical conditions and rules for activities of exploration and exploitation of the resources in this area, it would also have to study the alternative questions as to which economic and technical conditions and rules might need to be specified and in what detail in the international agreement establishing the régime, and which of them might require international machinery or might be left for determination by States. In this connexion, it was stressed by some representatives that consideration of such alternatives would not prejudice their future position with regard to international machinery or international institutional arrangements.

10. During the debate, several representatives indicated their views as to the economic and technical rules and conditions of exploitation, the nature and scope of the régime to be established, and the principles to be reflected in this régime, as well as to the international machinery which will be responsible for management of the area and its resources. Several representatives suggested topics with regard to the economic and technical conditions and rules for the exploitation of the resources of this area which might, inter alia, be usefully considered in the context of the international régime to be set up and a number of considerations were expressed on various approaches and possible forms of solution. They are listed in appendix I to this report.

In addition, various proposals emerged which might also be usefully considered during future sessions of the Economic and Technical Sub-Committee in accordance with its terms of reference. Some of them are contained in appendices to this report. However, the Sub-Committee considered that at this stage it was not in a possition to advance concrete proposals about the economic and technical conditions and rules regarding exploitation and exploration of the resources of this area.

11. The points raised during discussions, many of which are referred to in appendices to this report, as to economic and technical conditions and rules for exploitation of the resources of this area in the context of the régime to be set up indicate that the

subject in its totality is complex and that many of its aspects are interrelated. Many representatives felt the need for more time to enable the considerable amount of material now available to the Sub-Committee to be examined by their Governments.

12. The need to provide training in sea-bed operations for nationals in developing countries as well as the important of ensuring the widespread dissemination and availability to all States of the results of scientific research and exploration of the sea-bed and ocean floor of the area was stressed by the Sub-Committee. The need for agreed definitions of the economic and technical terminology used was also stressed. The Sub-Committee was conscious of the priority task of the Geneva session which was the preparation of an agreed declaration of principles and the carrying out of further discussions on the international machinery. It refrained, therefore, from making selective recommendations in terms of the task assigned to it by the Committee under operative paragraph 6 of General Assembly resolution 2574 B (XXIV) until following further progress, it could present its recommendations as a balanced and coherent whole.

13. The Sub-Committee feels, however, that through the documents before it on this session and the wide-ranging discussions held, it was possible to obtain a further clarification of some of the economic and technical conditions and rules for the exploitation of the resources of the sea-bed and subsoil thereof beyond the limits of national jurisdiction in the context of the régime to be set up.

14. The Sub-Committee reports that it has made an encouraging start to its task and that progress made in the exchange of views has confirmed the value and importance of its work.

15. It was the unanimous recommendation of the Sub-Committee that it be instructed at its future sessions to study further and systematically the issues raised in order to identify the most suitable solutions, in accordance with the mandate given to the Committee as set out in General Assembly resolutions 2467 A (XXIII) and 2574 B (XXIV). In doing so it will keep in mind the relevant resolutions of the General Assembly as well as the concurrent studies of the main committee and the Legal Sub-Committee, and take into account the reports of the Secretary-General on international machinery, the preliminary note on 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, as well as comments thereon. It was felt that this study should be made with a view to incorporating the most suitable

alternative solutions in a draft resolution to be recommended by the Committee to the General Assembly. Such a draft resolution might, inter alia, request the Committee to pursue its consideration with a view to formulating acceptable draft provisions for the agreement establishing an international régime in the area.

16. The Sub-Committee agreed that the Committee should request the Secretary-General for a more comprehensive study on 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, which will formulate and develop several possible alternatives. The report should be presented in one of the sessions of 1971. Some delegations expressed doubts on the necessity of this study for the discharge by the Sub-Committee of its mandate.

Appendix I

LIST OF TOPICS SUGGESTED BY SOME MEMBERS TO BE STUDIED IN PREPARING ECONOMIC AND TECHNICAL RULES AND CONDITIONS FOR THE EXPLOITATION OF THE RESOURCES OF THE SEA-BED AND SUBSOIL THEREOF BEYOND THE LIMITS OF NATIONAL JURISDICTION WITHIN THE CONTEXT OF THE REGIME TO BE SET UP

This list, which represents a summary of the issues mentioned during the discussion by a number of members, is intended to identify some of the topics to be considered in the context of any kind of régime, and further to identify but not evaluate the alternative forms rules might take.

This list does not imply that rules would be found necessary on all topics included in it when they come to be considered in the context of a particular régime, nor does it imply that all of the rules that prove necessary will have to be specified in the treaty by which the régime would be established.

I. General framework

1. General definitions

Definitions of the various terms and concepts used in the context of marine mineral development will have to be agreed upon. The definition of working concepts used by the Economic and Technical Working Group of the Ad Hoc Committee constituted the first attempt in this direction (A/7230, annex I, paras. 5 and 12), which was followed up by the Economic and Technical Sub-Committee in 1969 (A/7622, part III, chap. I).

2. Assignment of responsibility for the administration of provisions and rules

The alternatives mentioned referred to the extent to which responsibility for administering provisions and rules is assigned to States as opposed to an international resource management authority. This problem will have to be considered further at the next session in the light of the report which the Secretary-General is to present in accordance with General Assembly resolution 2574 C (XXIV).

3. Definition of entities entitled to participate in sea-bed exploration and exploitation

Operators authorized to participate in sea-bed resources development could include States, State-authorized operators and international organizations.

This issue would also have to be considered further in the light of the report of the Secretary-General following resolution 2574 C (XXIV).

II. Operating rights

4. Activities subject to registration or licensing

Distinction will have to be made between exploration for scientific purposes and exploration for commercial purposes (in French, prospection). Certain kinds of commercial exploratory activities as well as all kinds of exploitation activities might have to be registered or licensed in some manner.

5. Categories of rights to be assigned according to the stage of the development

Three categories of activity may be distinguished:

(a) Broad reconnaissance exploration not involving deep drilling;

(b) Detailed exploration including deep drilling and evaluation;

(c) Exploitation.

A distinction is often made between rights of exploration, evaluation and exploitation. All of these could be grouped together in one category. It might then be left to the State to make the distinction between different types of titles in its relations with individual operators.

6. Rights to be assigned on an exclusive or on a non-exclusive basis

Rights under the headings in paragraph 5 can be assigned on an exclusive or a non-exclusive basis.

Category (a) could be granted on a non-exclusive basis.

Categories (b) and (c) could either be issued seperately or combined in one title covering both phases of activity.

Generally speaking, it was felt that exploitation rights should be exclusive, but there is a question as to whether this is needed if production is from a mobile platform, e.g., dredging.

7. Types of minerals which are to be covered by exploration and exploitation rights

Titles can be granted to cover the development of all or only of specific minerals in the area for which they are granted.

According to the development phase for which the title is issued it was suggested:

(a) That exploration rights might cover:

(i) only particular minerals, or

(ii) all minerals;

(b) That exploitation rights might cover:

(i) all minerals within the same area, or

(ii) be distinguished according to the mode of occurrence between:

(1) nodules;

(2) hydrocarbons;

(3) other marine mineral resources.

8. Ways in which exploration and exploitation rights should be assigned

The following means and methods of assigning rights were listed:

(a) Registration of claims or tracts on a first-come, first-served basis;

(b) Selection among applicants by lottery;

(c) Assignment by the administering authority on the basis of its judgement of the merits of the applicants;

(d) Assignment to the highest bidder in an auction in which the bidding is based on the amount of a cash bonus to be paid for the acquisition of rights, the amount of royalties to be paid on production, the shares to be paid on profits, or the amount of work to be undertaken, or possibly some combination of these elements.

In granting exploitation rights, the extent to which exploration has been undertaken might be taken into account.

Machinery might be provided by which, in the event of there being conflicting claims for the same area, the conflict can be resolved by mutual agreement on the allocation of an adjacent area.

This question will have to be studied further in the light of the Secretary-General's report under resolution 2574 C (XXIV).

9. Means of selecting the areas which will be explored or exploited

(a) The selection of the area to be explored or exploited might be left wholly to the initiative of the operator.

(b) The administering authority could decide what areas or what proportion of the total areas are to be open for exploration and exploitation on the basis of its own cognizance.

(c) The administering authority could decide what areas are to be opened after receiving nominations or applications from operators.

In addition, distinctions can be made depending on whether the rights applying to the area were exclusive or not:

(a) In so far as non-exclusive exploration rights are concerned, the initiative might be left with the operator who might be required to indicate to the administering authority the areas in which he will be working;

(b) As to exclusive titles, the authority might reserve to itself the right to determine over which areas titles will be granted, or again, it might be left to the initiative of the operator.

10. Size of areas to which exploitation and exploration rights will apply

The size of areas can vary according to the type of minerals covered by the titles and on the phase of development for which rights are issued.

For the exploration stage the area should be big enough, from the point of view of the operator, to be economically explored, taking into account distance from shore and depth of water, while, from the point of view of the international community, not so big that it cannot be effectively worked over during a reasonable period of time.

At the production stage the area should be big enough to mount a viable operation for a period long enough to amortize expenditure and make a reasonable profit.

11. Duration of rights

Following the distinction between exclusive and non-exclusive rights, which is based to a large extent on the size of the investment (see also 5 (a)):

(a) Exploration rights on a non-exclusive basis might be granted only for a relatively short duration and be easily renewable;

(b) Exploitation rights on an exclusive basis might be granted in principle for a longer period whereby the continuation of these rights might be made contingent, after a suitable period, on the achievement of production or be subject to a renewal of rights under new terms.

12. Relinquishment of part of the area after a certain lapse of time

A certain proportion of the initial area allotted might be relinquished by the operator according to a predetermined schedule.

13. Transferability

It could be considered whether or not any rights under the régime should be transferable from one licence- or concession-holder to another.

14. Maintenance of exploitation rights subject to work requirement

In order to discourage the freezing of areas, it could be required that the operator spend a minimum amount on exploration each year and deposit that amount in advance with the administering authority.

15. Size of area that may be held by a single operator or State

A formula will have to be designed to prevent the monopolizing of sea-bed resources and to give the people of the world access to them on an equal basis. The total area to be held by operators of a single State could be limited according to a variety of criteria concerning States (size, population etc.).

Alternatively, the areas that could be held by individual States or operators could be limited in a de facto way by a combination of work requirements and rules limiting the period over which rights could be held.

16. Production requirements

The question will have to be considered as to how far continuing production should be made a condition for the retention of rights, how commercial production would be defined, and to what extent it could be delayed or interrupted without loss of exploitation rights. Another question is the extent and manner to which production of sea-bed minerals should be controlled to protect the markets of land producers. It was suggested that this problem could be approached in the context of the world commodity agreements in relation to the particular mineral or minerals concerned.

III. Operating obligations

17. Operational standards

The requirement for agreed operational standards in the performance of work is necessary to ensure and has a bearing on:

(a) The safety of personnel and equipment;

(b) The prevention of unjustifiable interference with other uses of the high seas;

(c) The prevention of waste in mineral exploitation, and

(d) The prevention of pollution and other damage to other resources and the marine environment.

The aims and objectives of operations standards might be embodied in the agreement establishing a régime while the elaboration of the more detailed regulations governing the implementation of those standards could be left to the administering authority.

On the other hand, the inclusion of fairly explicit rules of implementation in the agreement was also envisaged as a possibility.

18. Collection and dissemination of data

The questions raised referred to the advisability, from the standpoint of the resource management system, the operator and the world community, of whether, to what extent and when operators should be required to make available data which they acquire during mineral exploration and exploitation.

19. Liability

Rules will have to be developed to govern liability for damage resulting from sea-bed operations.

Appendix II

PROPOSALS WHICH MAY BE STUDIED IN THE ECONOMIC AND TECHNICAL SUB-COMMITTEE (FROM A STATEMENT MADE ON 13 AUGUST 1970 BY THE USSR REPRESENTATIVE IN THE ECONOMIC AND TECHNICAL SUB-COMMITTEE OF THE UNITED NATIONS COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION)

1. The economic and technical conditions and rules for exploitation of the resources of the sea-bed beyond the limits of national jurisdiction should form part of an international agreement on the regime of exploration and exploitation of the mineral resources of the sea-bed. Those conditions and rules should, in particular, be based on fuller information about the utilization of the sea-bed and the ocean floor and should presuppose the availability of more advanced means of developing mineral resources on the sea-bed.

2. The State shall bear international responsibility for national activity within the limits of the area under consideration, irrespective of whether that activity is carried on by governmental agencies, juridical persons or physical persons; their activity shall be carried on with the authorizat[illegible]nd under the continuous supervision of the State concerned.

3. As hitherto, the main task at this stage is to organize surveys of the sea-bed on the basis of broad international co-operation and co-ordination of the efforts of individual States, since industrial development of the wealth of the sea-bed can in practice be expected to take a long time yet.

4. In determining the nature of operations it is necessary to distinguish between:

(a) Surveys for scientific purposes - any geological and geophysical operations carried out at a particular spot, along a particular route or within a small area, as well as the sampling of bottom and subsoil deposits of a regional character, which are not undertaken for the purpose of locating occurrences of mineral raw materials, making a geological or economic evaluation thereof, or deriving a direct economic advantage from the use of mineral resources;

(b) Surveys (prospecting and exploration) for industrial purposes - any large-scale geological and geophysical exploration and prospecting operations, drilling and sampling of bottom and subsoil deposits undertaken for the purpose of locating and evaluating industrial fields of mineral raw materials with a view to preparing them for exploitation;

(c) Industrial exploitation of deposits of mineral raw materials by any technological means, undertaken for the purpose of deriving a direct economic advantage from their use.

5. In setting standards for the exploitation of mineral resources, the State bearing international responsibility for national activity in the area under consideration:

(1) Should ensure the conservation of the mineral resources in process of exploitation and should not permit any irrational waste of mineral raw materials; to this end it should ensure that geological, geophysical, geological engineering and hydrological operations are carried out on the necessary scale before a deposit is developed;

(2) Should not permit the pollution of or any damage whatsoever to other resources of the sea and the marine environment; to this end it should ensure that all necessary special research on the subject is carried out;

(3) Should not create unjustified obstacles to the use of the high seas or, in particular, to navigation or fishing;

(4) Should ensure the safety of personnel in accordance with the recommendations of the International Labour Organisation and the Inter-Governmental Maritime Consultative Organization, and the preservation of equipment.

6. The technical conditions and standards applied by States to the exploration and exploitation of the resources of the sea-bed should be such that the waters of the world ocean are not poisoned or contaminated; that no damage is done to the fauna and flora of the marine environment or to living resources; that the biological, chemical and physical balances and processes which have come into being naturally are not disturbed; that there is no infringement of the interests of all States in the enjoyment of the free high seas; and that no damage is done in any of these respects to riparian States.

7. Wasteful exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction shall be prohibited; the exploration and exploitation of mineral resources may be carried on only on the basis of rational and scientifically sound principles and rules.

8. Since the exploration and exploitation of sea-bed resources at great depths are radically different from the extraction of minerals on the continental shelf as at present understood, advances made in the exploitation of sea-bed resources on the continental shelf should not be mechanically transferred to areas beyond the limits of national jurisdiction.

9. Continuing intensive scientific research and exploration, which form the basis for a full understanding of the marine environment and the resources of the world ocean floor, should be supplemented by broad dissemination of information on the results of such operations, so as to enable all States to participate in developing the resources of the sea-bed.

Appendix III

WORKING PAPER PRESENTED BY CAMEROON, CEYLON, INDIA, KENYA, KUWAIT, LIBYA, MADAGASCAR, MALAYSIA, PAKISTAN, SIERRA LEONE, SUDAN AND THAILAND ON INTERNATIONAL MACHINERY FOR THE USE, EXPLORATION AND EXPLOITATION OF THE SEA-BED AND OCEAN FLOOR AND THE SUBSOIL THEREOF, UNDERLYING THE HIGH SEAS BEYOND THE LIMITS OF NATIONAL JURISDICTION

The sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction including the resources of that area (hereinafter collectively referred to as the sea-bed) is the common heritage of mankind.

The sea-bed shall be reserved exclusively for peaceful purposes.

All activities with respect to the sea-bed, including the exploration, use and exploitation thereof, shall be carried out in the interests of mankind, irrespective of the geographic location of the States, and taking into account the special interests and needs of the developing countries.

Appropriate measures shall be taken to ensure a free flow of scientific information on the sea-bed to all States.

The sea-bed shall be placed under the jurisdiction of an international machinery. It shall be an autonomous universal organization possessing full international legal personality within the United Nations system. It shall be responsible for ensuring the rational exploration, conservation, exploitation, and development of the resources of the sea-bed. States shall be entitled to participate on an equal footing in the management of the organization.

The organization shall have regulatory and operational functions.

Its regulatory functions shall include organizing, controlling, administering and co-ordinating all activities with respect to the sea-bed. It shall grant licences for lawful activities with respect to the sea-bed in accordance with rules and legal norms to be formulated embodying standards and criteria for the granting and termination of such licences.

It shall take appropriate measures to prevent pollution and other hazards in the marine environment.

It may undertake operations independently. This may be done either through or in association with investors (government or private) possessing the necessary technical skills, equipment and financial resources or by use of its expertise and equipment.

It shall provide for the most appropriate and equitable application of benefits obtained from the exploration, use and exploitation of the sea-bed to mankind as a whole, particular consideration being given to the special interests and needs of developing countries.

It shall regulate production of the sea-bed resources with a view to preventing fluctuation of prices of raw materials in the world market resulting from the exploitation of the resources of the sea-bed.

The organization shall arrange training programmes aimed at enabling the developing countries to increase their expertise in the techniques needed to carry out all operational activities with respect to the sea-bed.

It shall establish its own budget. It shall be financed initially out of members' subscriptions, according to an appropriate scale of assessment to be determined. Other sources of funds may include borrowing, grants, licence fees, and proceeds derived from operational activities. Conditions of exploitation shall be negotiated with the organization prior to the commencement of activities.

Resources obtained from the exploitation of the sea-bed shall be made available to all countries, in accordance with their needs and in relation to their economic and social development.

A certain portion of the organization's net income shall be allocated to the developing countries in accordance with a scheme to be established and to increase the resources of the United Nations and its specialized agencies active in the field of economic development.

The organization shall have all the powers necessary for the performance of its functions.

Appendix IV

WORKING PAPER PRESENTED BY THE UNITED STATES OF AMERICA ON THE OBJECTIVES TO BE SERVED BY THE INTERNATIONAL REGIME GOVERNING THE EXPLORATION AND EXPLOITATION OF SEA-BED RESOURCES BEYOND THE LIMITS OF NATIONAL JURISDICTION

The following objectives to be served by an international régime governing sea-bed resource exploration and exploitation beyond the limits of national jurisdiction were described by the representative of the United States of America, Christopher H. Phillips, in his speech on 6 March 1970 to the Sea-Bed Committee, as objectives that would need to be met by any régime, regardless of its character. They were also referred to by the United States representative, V.E. McKelvey, in his speech on 11 March to the Economic and Technical Sub-Committee as useful in the evaluation of alternative rules and provisions that might be developed to implement the régime, and on 17 March he proposed that they be distributed to the Sub-Committee as a working paper for that purpose. The list of objectives (with Ambassador Phillips' explanatory comments on them) then distributed as a working paper, is as follows:

1. <u>To encourage exploration and exploitation of sea-bed resources</u>

This objective, of course, is basic. All of us are looking to the sea-bed as the source of future benefit to mankind. In its potential mineral wealth, it does indeed promise long-term benefit to mankind as a source of supplemental supplies as well as a source of income derived from their development. But these benefits will stem only from the production and use of these resources; no benefits at all will come either to potential users of these resources or to the international community unless we are successful in encouraging their exploration and exploitation. A sea-bed resource régime not built with this as its primary objective would truly be self-defeating.

2. <u>To assure that all interested States will have access, without discrimination, to the sea-bed for the purpose of exploring and exploiting mineral resources</u>

At the outset, possibly only a few States will be active in the exploitation of sea-bed resources beyond the limits of national jurisdiction. But over the period in which need for them is likely to develop, we hope that all interested nations will have the capability to develop them to supplement their needs for raw materials. It is important, therefore, that equal access be assured for all.

3. To encourage scientific research and the dissemination of scientific and technological information related to sea-bed resources

Continued scientific research and exploration are the keys to full understanding of the ocean environment and its resources, and the dissemination of the results of research is essential to allow all nations to participate in sea-bed development.

4. To encourage the development of services, such as aids to navigation, maps and charts, weather information, and rescue capability

All of these are necessary to support sea-bed operations.

5. To provide procedures for the assignment of rights to minerals or groups of minerals in specific areas under terms that protect the integrity of investments in sea-bed resource development, that encourage economic efficiency in the exploration and exploitation of sea-bed resources, that prevent a race for claims, and that discourage operators from seeking to hold large areas for purely speculative purposes

This objective is related to the first, but it is also of basic importance if we are to achieve an effective international régime, for without assurance of security of tenure of exploitation rights under agreed terms, no one will risk the large investment required to achieve resource development in this area.

Considering the cost barriers that must be surmounted to make sea-bed development economically feasible, it is essential that we develop a régime that makes possible maximum economic efficiency in sea-bed exploration and exploitation. And, of course, it is essential that we prevent sea-bed resources from being tied up by speculators or others who intend to hold them for future gain rather than immediate development.

6. To provide for a reasonable return on risk investment

This objective is also related to the first and is just as basic. It applies, I might point out, equally to risk investment undertaken by an international operating organization and to that undertaken by private or state entrepreneurs. Regardless of who is making the investment in exploration or exploitation, risk of total loss must be compensated by a higher rate of return on successful ventures than is the case for low- or non-risk investment, if the operation is to be economically viable in the over-all.

7. To provide revenue to benefit international community purposes, taking special account of the needs of the developing countries, and to meet the operating expenses of the international body established to administer its provisions

Over the long term, the fullest benefit to mankind will come from the use of sea-bed resources as a supplemental source of raw materials, but in the immediate future the benefit to much of mankind may well come *via* a share in the economic rent that accrues from resource production.

8. To assure that exploration and exploitation of sea-bed mineral resources will be carried out in a manner that will protect human life, prevent conflicts between users of the sea-bed, safeguard other uses of the ocean environment against undue interference, avoid irreparable damage to the environment and its resources, and promote the use of sound observation practices

The basic and most important objective here is to provide effective standards governing sea-bed operations, but backing them up must be procedures and measures to assure compliance.

9. To provide terms and procedures governing liability for damage resulting from exploration and exploitation of sea-bed minerals so that damage will be adequately repaired or compensated

As recent mishaps have shown all too clearly, the chance for accidents of massive proportions in this environment is a very real one. As in all safety precautions, the most effective ones have to do with the development of safe operating procedures. But arrangements for financial responsibility must be provided to pay for the cost of reparations for damage that occurs in spite of all precautionary measures.

10. To provide for the stability of rules, and yet for the flexibility to introduce modifications over time responsive to new knowledge and new developments

Potential operators need the assurance that rules and provisions governing conditions of tenure and the payment of fees will not change during the life of permits and rights that they may acquire, but at the same time provisions must be made to modify operational standards and procedures to take account of new knowledge and new developments.

11. To provide effective procedures for the settlement of disputes

As in pollution control, the most effective means of settling disputes is to prevent them from happening in the first place, but effective procedures for resolving them promptly and fairly are surely a basic objective of any régime.

12. In the over-all, to establish an international régime so plainly viable that States will in fact ratify the treaties establishing it

Unless the régime we establish is acceptable to the vast majority of the nations who would participate in sea-bed resource development, its chance of success is small.

Note

On 3 August, the United States submitted as a working paper a Draft United Nations Convention on the International Sea-bed Area, which shows how these objections would be met under an international régime and machinery and proposes rules governing exploration and exploitation relating to topics listed in appendix I of this report. The 3 August working paper is included as an annex to the report of the plenary Committee. In addition, the United States representative gave a statement to the Economic and Technical Sub-Committee on 13 August describing the rules proposed in the Draft Convention under each of the headings listed in appendix I.

Appendix V

WORKING PAPER SUBMITTED BY EL SALVADOR INCLUDING PROPOSALS ON THE REGIME OF EXPLORATION AND EXPLOITATION OF THE INTERNATIONAL ZONE OF THE SEA-BED

1. The régime of exploration and exploitation shall be part of the general régime of the international zone of the sea-bed, and the general régime shall be agreed upon as a unit by means of a treaty.

2. The aforesaid régime shall apply to the international zone of the sea-bed including the subsoil thereof, and hence to the exploration and exploitation of its natural resources.

3. The régime shall provide, among other procedures, for legitimizing exploration and exploitation, for the issuing of licences exclusively to States, associations of States and international organizations.

4. The régime shall be administered by an international organ.

5. The régime shall provide for the payment of dues, taxes, royalties and shares in the profits for the exploitation of the resources of the international zone of the sea-bed in a reasonable proportion consistent with the nature, volume and international price of the resources exploited, the investment and the risks.

6. The régime of exploration and exploitation and the régimes of the superjacent waters and air space above the international zone shall be harmonized and co-ordinated.

7. The régime shall provide for the measures necessary to ensure that exploration and exploitation activities do not interfere with other marine activities, including those designed to conserve biological resources, oceanographic research and the laying of cables and oil pipe-lines, and vice versa.

8. The régime shall introduce measures to ensure work safety, the coverage of risks and other normal safeguards for the personnel engaged in exploration and exploitation, in accordance with the recommendations of the International Labour Organisation.

9. The régime shall provide that the authority issuing a licence or any other permit to explore or exploit shall assume responsibility for complying with the regulations and for any damage that may be caused, even unwittingly, in carrying out legitimate operations.

10. The régime shall prescribe the grounds for the withdrawal and forfeiture of licences and other permits issued pursuant to the relevant regulations.

Appendix VI

ECONOMIC AND TECHNICAL RULES AND CONDITIONS FOR THE EXPLOITATION OF THE RESOURCES OF THE SEA-BED BEYOND THE LIMITS OF NATIONAL JURISDICTION

Working Paper presented by Australia

The following outline[a/] of possible economic and technical rules and conditions is submitted by Australia as a Working Paper. The outline does not necessarily represent the definitive views of the Australian Government and is put forward to promote the exchange of ideas.

Outline

1. A statement of agreed definitions should be included in the rules.
2. States, or groups of States, should be the basic entity authorized by the international machinery to participate in seabed operations. If a company is to be the operator a State should be interposed between the company and the international machinery.
3. State administrations should be used as much as possible to supervise operations which they sponsor.
4. The international machinery should have full rights of inspection.
5. All commercial operations directed towards exploration and exploitation of seabed resources should be licensed by the international machinery.
6. Deep drilling of the seabed for scientific purposes should only be done under the authority of the international machinery.
7. For commercial operations there should be two types of licence issued by the international machinery:-

   First - a non-exclusive licence -- a "hunting licence" covering broad reconnaissance exploration, but not deep drilling.

   Second - an exclusive licence covering all forms of exploration and also production.
8. Non-exclusive licences should cover all seabed minerals.

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a/ To be read in conjunction with the statement by the Australian representative in the Economic and Technical Sub Committee on 13 August 1970 (A/AC.138/SC.2/SR.36).

9. Exclusive licences should specify one of the following three categories of minerals:

   (a) Hydrocarbons and associated substances recovered through drill holes,

   (b) Manganese nodules and similar substances which occur on the seabed,

   (c) All other minerals.

10. Assignment of licences should be by a combination of methods designed to ensure an equitable distribution among all contracting parties.

11. Initiative in selecting areas which offer the best chance of success should be encouraged.

12. Exclusive licences should be over areas big enough to be economically explored and exploited, but not so big that they cannot be effectively worked over during a reasonable period of time.

13. Non-exclusive licences should be granted for short periods, but easily renewable.

14. Exclusive licences should be for long enough to mount a viable operation, amortize expenditure and make a profit.

15. Relinquishment of part of the area of exclusive licences should be according to a predetermined schedule.

16. Licences should be transferrable provided always that a State remains responsible.

17. Rules and procedures should be such as to ensure, preferably without the imposition of fixed limitations as to total areas held, that no State can monopolize the resources of the international seabed.

18. Retention of an exclusive licence beyond a specified period should be subject to continuing commercial production.

19. Operational standards should be specified covering such subjects as:

    Safety,

    Prevention of interference with other activities,

    Prevention of waste,

    Prevention of pollution.

These operational standards should be kept continuously under review by the international machinery as technology develops.

20. Data acquired in the course of seabed operations should, after a suitable period, be available through the international machinery for public information.

21. States sponsoring activities should be liable for damages caused by such activities. The possibility of providing an effective insurance scheme should be studied.

22. Before finally settling on the level or method of payments, consideration might be given to adopting a scheme of tax on profits, rather than royalties, as the main financial impost.

23. Failure to conform to established operating standards or to meet agreed obligations shall render a licence liable to forfeiture.

24. Rules and conditions should be efficient in their operation and equitable in their treatment of all parties.

ANNEX III

STUDY ON INTERNATIONAL MACHINERY

Report of the Secretary-General[1/]

1/ Originally issued as document A/AC.138/23.

CONTENTS

CONTENTS (continued)

INTRODUCTION

1. The present report is submitted in accordance with General Assembly resolution 2574 C (XXIV) of 15 December 1969. It should be read together with the report[2/] prepared by the Secretary-General pursuant to General Assembly resolution 2467 C (XXIII) of 21 December 1968, which it supplements in various respects. Reference should be made in particular to the preliminary considerations set forth in the introduction to this previous report[3/] which, in general, apply equally to the present study.

2. However, whereas the earlier resolution asked for a study on the establishment of machinery, the request made by the General Assembly in resolution 2574 C (XXIV) calls first for a study on various types of international machinery and secondly for a study covering in depth a specific kind of machinery. Accordingly, after a summary of the history of the resolution and the views expressed by Member States, this study deals in parts II and III with these two elements of resolution 2574 C (XXIV). Another important difference arises from the fact that whereas resolution 2467 C (XXIII) referred to "appropriate international machinery for the promotion of the exploration and exploitation of this area", resolution 2574 C (XXIV) employed the terms "various types of international machinery, particularly... the status, structure, functions and powers of an international machinery having jurisdiction over the peaceful uses of the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction... ". The present study is not limited to exploration and exploitation of resources, but covers, in respect of the types of machinery dealt with in part III, the peaceful uses of the area.

3. It may be pointed out that the present study is in essence limited to describing the general elements of various conceivable kinds of machinery; it does not purport to deal with every combination of possible arrangements since specific provisions for machinery can only be formulated when agreement has been reached on what kind of régime will be most appropriate. Equally the study does not attempt to examine the extent to which various functions are performed by, or come within the technical competence of existing bodies within or outside the United Nations system, although examples of such activities have been mentioned.

2/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 22 (A/7622), annex II.

3/ Ibid., paragraphs 2-6.

PART I

ADOPTION OF RESOLUTION 2574 C (XXIV) AND VIEWS EXPRESSED BY MEMBER STATES

1. ADOPTION OF RESOLUTION 2574 C (XXIV)

4. In resolution 2574 C (XXIV) of 15 December 1969, the General Assembly, after noting the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, and the study on international machinery prepared by the Secretary-General annexed to that report, and referring to the recommendation of that Committee that the Secretary-General should be requested to continue the study in depth, requested:

> "the Secretary-General to prepare a further study on various types of international machinery, particularly a study covering in depth the status, structure, functions and powers of an international machinery, having jurisdiction over the peaceful uses of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, including the power to regulate, co-ordinate, supervise and control all activities relating to the exploration and exploitation of their resources, for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries, whether land-locked or coastal".

5. The Assembly requested the Secretary-General to submit his report to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction for consideration during one of its sessions in 1970. The Committee was requested to submit a report on the question to the General Assembly at its twenty-fifth session.

6. It may be recalled that by resolution 2467 C (XXIII) of 21 December 1968, the General Assembly had requested the Secretary-General to undertake a study on the question of

> "establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of this area, and the use of these resources in the interests of mankind, irrespective of the geographical location of States, and taking into special consideration the interests and needs of the developing countries".

The report prepared in accordance with this resolution was submitted to the Committee prior to its summer session in 1969, and the text was annexed to the

Committee's own report to the General Assembly at its twenty-fourth session. The report of the Committee's Economic and Technical Sub-Committee (A/7622, part three) gave an account of its consideration in August 1969 of the economic and technical aspects of the Secretary-General's report. The Committee itself heard general statements on the report, but informed the Assembly that because of limited time it had been unable to finalize its study in detail of all the various aspects of that report and that it proposed to consider the question further in 1970. The suggestion had been made with approval by the Committee that

> "the Secretary-General be requested to continue in depth the study of the establishment in due course of appropriate international machinery, concentrating on the following areas: (a) status of the machinery; (b) structure of the machinery; (c) powers and authority to be given to this machinery; (d) activities and function of the machinery".

7. At the twenty-fourth session of the General Assembly, the First Committee considered among other proposals a joint draft resolution (A/C.1/L.477) submitted on 6 November, and introduced in the Committee by the representative of Kuwait. On 2 December, the Committee approved this draft, as already revised by the sponsors, by a vote of 99 to 1, with 13 abstentions. (The revision had consisted in adding to the original draft the words "a further study on various types of international machinery particularly ...".) This draft resolution was adopted as resolution 2574 C (XXIV) at the 1833rd plenary meeting on 15 December 1969 by a vote of 100 to none, with 11 abstentions.

2. VIEWS EXPRESSED BY MEMBER STATES

8. This section covers the views expressed by representatives of Member States in the General Assembly and in the Sea-Bed Committee since the submission of the Secretary-General's previous report in 1969. The views have been presented analytically, roughly following the sequence of terms employed in resolution 2574 C (XXIV). No attempt has been made to set forth the position adopted by any particular delegation in its entirety, either on the subject as a whole or on individual aspects of it. The summary of views is of a general character, illustrating the range of considerations advanced, and in no way purports to indicate the degree of support which specific views may command.

9. Certain differences in approach appeared in the General Assembly and the Sea-Bed Committee, in regard to the relationship between machinery and an international régime covering the area. It was for instance observed that machinery was to be part of the régime, that it would apply the provisions of the régime or that it should give effect to the principles and standards of the régime and regulate their practical application. It was thus suggested that the question of international machinery needed to be considered simultaneously with, and in the light of, the legal régime, and that the type of machinery would be closely related to the provisions of the régime agreed upon. However, it was also contended that an international régime would not necessarily imply machinery. It was suggested that the formation of any definitive views on the whole question of institutional machinery should logically await agreement on the general legal framework of which such machinery would be a part and within which it would operate. The present study is, as requested by the Assembly, concerned with machinery, but this account of views on machinery needs to be placed in the context of views expressed on the broader question of the régime. This applies particularly to various sets of criteria which it was proposed the régime should satisfy[4/] as well as to the functions and powers to be allocated to the machinery.

10. As stated above, following consideration of the report of the Secretary-General in the Sea-Bed Committee in August 1969, support was expressed for the continuation of the study. It was also urged, however, that there should be further consideration by Governments of the material already prepared, which had not yet been studied exhaustively in the Committee, and it was proposed that the report of the Secretary-General should be circulated to all States so that after their remarks and observations came in, the question of the international machinery might be studied more in depth and in detail in the Sea-Bed Committee. During the consideration of the draft resolution submitted in the First Committee, various representatives stressed the view that the study should emphasize the particular type of machinery specified in that draft resolution. A further suggestion was that the study should be oriented toward the idea of licensing as that appeared

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4/ See, for example, A/7622, part III, paragraphs 136 to 138.

to be the type of machinery that could command general acceptance. It was also observed, however, that if an additional study was to be prepared by the Secretariat, it must in no way prejudge the views of the Committee or of the General Assembly. The expectation was voiced that the Secretary-General would be guided, in the preparation of the study, in the first instance by the discussion which had taken place in the Sea-Bed Committee and in the General Assembly and would thus clearly cover those forms of international machinery which had received significant support in those discussions.

11. On the subject of the actual establishment of machinery, as distinct from the continuation of the study, a variety of considerations was advanced. As the report of the Economic and Technical Sub-Committee in August 1969 noted, it was widely emphasized that international machinery should be established and that it should be a part of an international régime governing the exploration and exploitation of the resources of the sea-bed beyond the limits of national jurisdiction. The view was expressed that such machinery should act as a trustee for the international community. An international machinery, it was also said, must be set up to manage the heritage of mankind represented by the sea-bed and ocean floor. Reference was made in this connexion to Articles 55 and 56 of the United Nations Charter. Another view was that it would be necessary to establish some form of international machinery with powers to secure that the exploitation of the sea-bed and its subsoil is undertaken in a rational manner serving the interests of all States. Only through an international régime and machinery would it be possible to ensure for States which do not possess the technological and financial capabilites to conduct their own exploration and exploitation in these new environments that their interests are safeguarded on an equal footing with those of technologically and economically more advanced States. In the absence of an international machinery to govern activities on the sea-bed, it was held, the developing countries would be placed in a very disadvantageous position in relation to the developed ones.

12. The setting up of an international machinery, it was urged, should be envisaged at the earliest possible time. The development of international rules and regulations should take place before the inevitable clash between national interests occurred. Delay in that respect could only complicate matters. Some form of international machinery, it was said, would be a practical necessity if conflict was to be avoided and orderly development ensured.

13. In another view, while there was acceptance of the proposition that some kind of international organizational arrangements would have to be made, it was stressed that a number of complex issues still required careful study, in particular the problem of the most appropriate type of arrangements for the orderly development of the exploration and exploitation of the deep ocean floor. It was doubtful, it was said, if all the problems involved were yet sufficiently well known for decisions to be taken on, for example, the nature of the international machinery. It was also urged that deliberations about an eventual international machinery to be set up were premature and speculative in view of the relatively small progress made towards the solution of fundamental questions concerning the legal régime and peaceful uses of the area.

14. Some delegates argued strongly that the establishment of an international régime did not necessarily imply the setting up of international machinery, and that pending further study of all aspects of the problem a decision on the establishment of international machinery was premature. Another consideration raised was the danger for the overwhelming majority of States if international machinery were set up which was, directly or indirectly, under the control of imperialist monopolies.

15. Another form of concern expressed was that such few countries as would have access to the deep sea through their advanced technical capabilities would be able to dominate the issuance of licences by any supranational entity.

16. A variety of views was expressed on the possible types of machinery that could be established. Attention was drawn to the point covered in the previous report of the Secretary-General on machinery to the effect that it was possible to devise a wide range of solutions involving elements and combinations of each of the three models described. This was taken as suggesting the desirability of avoiding fixed or immutable positions and of concentrating on specific elements necessary for acceptable and effective international machinery. Attention was also drawn to the importance of careful study, since it might be difficult to modify the structure and the authority of the machinery once it had been established. The view was expressed that the machinery should be more than a mere registry of claims. It was suggested that neither a well-controlled licensing system nor the exploitation of the resources of the deep sea-bed under the direct control of an international agency should be excluded from examination by the United Nations.

17. As regards the status of the machinery, one point of view was that it should be an autonomous universal organization possessing full international legal personality within the United Nations system. It should be a duly recognized juridical entity so that it might carry out its tasks with the necessary authority. Such a status should be granted to it internationally.

18. As regards structure, according to this point of view, the machinery would consist of a governing council or board, whose members would be elected in such a way as to impart to it a universality of character and equitable geographical distribution, as well as the representation of all political, economic and social systems. Such a board would be responsible for planning, organizing, directing and controlling all the operations having to do with the exploration and exploitation of the resources of the sea-bed and the ocean floor. The board would perform its functions under a mandate issued to it at the proper time by the proper organ which, in the present instance, might be the General Assembly of the United Nations. It would be responsible to the General Assembly or some deliberative or constitutional organ formed for the sea-bed and ocean floor; such a constituent organ would then organize the necessary powers for the purpose of controlling the activities of the machinery itself.

19. Another point of view was that the form and structure of the international body would depend upon the precise nature of the functions it was to discharge. It would presumably form a part of the United Nations family. The agreement establishing the régime would need not only to specify the form of the international body, but also to lay down in particularly clear and precise provisions the rules by which it would operate and the criteria it should follow, in order to reduce to the minimum the scope for disagreement.

20. Other formulations specified an autonomous intergovernmental organization to operate within the framework of the United Nations system; a United Nations agency within the United Nations set up with a governing board that represented maritime States, developing States and land-locked States; an organ of the same type as the specialized agencies, with the proviso that its structure and powers could of course be changed in the future; an organ on the pattern of the UNDP or a specialized agency. Some delegates expressed doubts concerning an elaborate form of machinery. Further comments also stressed the importance of the

participation of all States, in some cases a reference being made to the concept of the common heritage of mankind as requiring this. The need was also stressed for the developing countries to participate to the greatest possible extent.

21. It was suggested that regional mechanisms might be established which would take into account the various geographic and economic characteristics of different areas, or that the international machinery should take due account in its practical work of the different geographic and economic characteristics of each area.

22. As to the functions and powers of the machinery in general, it was emphasized by a number of delegations that it must be efficient, as well as impartial, and that it was important to avoid a cumbersome bureaucracy and too heavy administrative costs. It was also said that the machinery ought to have a reasonably wide authority over the area, which would enable it to allay the fears of the majority of nations about what might suddenly become a source of real danger. When the world had been assured of the basic equity of the proposed régime, its operation could be fashioned in a way that would serve the best interest of the international community. The wider the powers and responsibilities allotted to the machinery, the more crucial it became to ensure, as far as was humanly possible, both efficiency of action and a decision-making process that truly took into account the interests of all. The machinery should be appropriate to the task it was to perform; it should be neither greater nor less than required. The machinery must, above all, it was stated, be equipped to promote exploration and exploitation of the sea-bed's resources. It should be designed so that it took account of such factors as the exploratory techniques necessary to find the various types of deposits, the evaluation procedures required to justify their development and the equipment and methods devised for their extraction. It should be constituted so as to be able to undertake the most diverse tasks, including functions with regard to adoption and implementation of appropriate standards and other regulatory matters. Therefore, the instruments constituting the new international machinery should establish it in such a way as to be legally, organizationally and technically equipped to perform its function as trustee or administrator of the common heritage of mankind.

23. Some delegates expressed support for the concept of international machinery covering all activities on the sea-bed and not just exploration and exploitation.

24. Support was expressed for the type of machinery specified in resolution 2574 C (XXIV) as a subject of the study by the Secretary-General. It was suggested that, pending the outcome of study of machinery for direct exploitation, there should be envisaged machinery which would co-ordinate, supervise or regulate all activities relating to the exploration and exploitation of the sea-bed resources. This view was spelled out in some detail in a working paper submitted by a number of countries in the Economic and Technical Sub-Committee in March 1970. It contained the following description of the functions and powers of international machinery:

> "... It shall be responsible for ensuring the rational exploration, conservation, exploitation, and development of the resources of the sea-bed. States shall be entitled to participate on an equal footing in the management of the organization.
>
> "The organization shall have regulatory and operational functions.
>
> "Its regulatory functions shall include organizing, controlling, administering and co-ordinating all activities with respect to the sea-bed. It shall grant licences for lawful activities with respect to the sea-bed in accordance with rules and legal norms to be formulated embodying standards and criteria for the granting and termination of such licences.
>
> "It shall take appropriate measures to prevent pollution and other hazards in the marine environment.
>
> "It may undertake operations independently. This may be done either through or in association with investors (government or private) possessing the necessary technical skills, equipment and financial resources or by use of its expertise and equipment.
>
> "It shall provide for the most appropriate and equitable application of benefits obtained from the exploration, use and exploitation of the sea-bed to mankind as a whole, particular consideration being given to the special interests and needs of developing countries.
>
> "It shall regulate production of the sea-bed resources with a view to preventing fluctuation of prices of raw materials in the world market resulting from the exploitation of the resources of the sea-bed.
>
> "The organization shall arrange training programmes aimed at enabling the developing countries to increase their expertise in the techniques needed to carry out all operational activities with respect to the sea-bed.

"It shall establish its own budget. It shall be financed initially out of members' subscriptions, according to an appropriate scale of assessment to be determined. Other sources of funds may include borrowing, grants, licence fees, and proceeds derived from operational activities. Conditions of exploration shall be negotiated with the organization prior to the commencement of activities.

"Resources obtained from the exploitation of the sea-bed shall be made available to all countries, in accordance with their needs and in relation to their economic and social development.

"A certain portion of the organization's net income shall be allocated to the developing countries in accordance with a scheme to be established and to increase the resources of the United Nations and its specialized agencies active in the field of economic development.

"The organization shall have all the powers necessary for the performance of its functions."

25. It was urged that the machinery should not be precluded from direct exploitation activities. In one view, it would obviously be unable to undertake operational functions at least in the initial stages but should be so structured that it would be capable of undertaking such activities.

26. A variety of doubts was expressed about the possibility of the machinery itself carrying out exploration and exploitation. One view was that it would be preferable, for the purpose of promoting efficient development of the area for the benefit of mankind, to have a State or a private enterprise undertake such activities. A system of direct international exploitation, it was contended, would be an adventure that might turn out to be disastrous for precisely those who hoped to derive the greatest profit from it. Machinery for direct exploitation, it was also said, would have enormous ramifications and would represent something far larger than could at present be contemplated. It could prove so expensive as to drain away much of the benefit to be derived from the internationalized area. Others accepted the theoretical possibility but held that practical considerations called for conducting such tasks through States or public or private institutions.

27. An international agency empowered to explore, exploit, refine and market sea-bed resources itself or through sub-contractors would, it was stated, be harmful to the interests of developed and developing countries alike, because it would, among other things: (a) require a large initial capitalization; (b) meet, and even generate, conflicts in the marketing of its mineral products, since it

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

28. As regards machinery which would have as its primary function the registration of claims, it was recognized that it would require provisions concerning the size and number of areas which could be registered by one nation or its nationals. Another view was that an international régime should include an international registry of claims governed by appropriate procedures. The registry should be neither complicated nor costly so that maximum proceeds would be available to the international community. It was also maintained that a registry system should be supplemented with criteria. In general, those endorsing a registration system envisaged a registry of requests or claims by States sponsoring the activities. Governments would be responsible for adherence by their nationals to internationally agreed criteria, and both adequate verification techniques and dispute settlement procedures would be established.

29. It was also considered that States or States grouped in ad hoc or regional organizations could submit applications on behalf of natural or juridical persons. The possibility of registration of claims by intergovernmental agencies referred to in the Secretary-General's report was felt especially important for developing countries, which could through such a procedure pool their resources in regional ventures.

30. Others advocated a licensing system. A simple registration system, it was said, would not protect the international community against an exploitation race or an occupation race, nor would it promote or guarantee world peace or the

exploitation of the area for the benefit of mankind. In view of the complexity of the problems involved, when exploration and exploitation activities had increased sufficiently, a licensing system with rather elaborate elements of authority and control would be called for. The machinery envisaged would be able to promulgate rules and regulations in order to co ordinate, supervise and control activities on the sea-bed and ocean floor.

31. It was also suggested that licences should be issued not to individuals but to Member States who would then themselves be responsible for issuing licences to operators under their own legislation and seeing that agreed standards and safeguards were observed. In this connexion, a view was expressed that licences should not only be granted to States, but also to groups of States and to international organizations.

32. It was also considered that sea-bed resources could be divided into two categories: subsoil deposits and surficial deposits. There would, therefore, be two types of licensing which might also fall into three different stages: exploration, evaluation and exploitation. With regard to exploration, in this view, there were only two possible alternatives - either registration or licensing, or complete freedom of exploration. With regard to evaluation, mineral dredging activity would call for registration only, but in the case of drilling, licences should be issued to States by international authority. All exploitation would have to be licensed.

33. Some delegates took the view that there could be a close resemblance between a registry system with additional functions and a licensing authority, whereas others maintained that there was an essential difference.

34. It was also suggested that the system of registry be dissociated from the system of licensing so as to use the first for the exploration stage while the second would apply to the exploitation of mineral resources.

35. On the other hand, it was observed that the system of concessions practised by nationals of developed countries had so far not contributed to the development and prosperity of the countries on whose territory the concessions had been granted; on the high seas there would be even less of an opportunity to bring foreign companies to abide more closely by international standards and laws.

36. It was also suggested that the international machinery should have the right to grant or refuse a licence depending on the extent to which the application conformed to the criteria laid down.

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

38. A broad range of methods of channelling benefits in the interest of the international community should be considered, e.g., this task could be entrusted either to the future international machinery itself, to some United Nations organ, or carried out through a method of direct channelling of benefits to States.

39. Another view was that the administrative machinery, with administrative and legal functions, should not be the same agency as the one operating the fund, with its economic and technical functions and specialized advisers.

40. It was also stressed that the international machinery should ensure that production of sea-bed minerals should not unduly affect the price level of minerals obtained on dry land.

41. Another opinion held that the effects of machinery which would introduce creeping international controls would run counter to the interests of both the developing and developed countries. Instead of controlling production so as to protect the markets of land producers, ways should be sought to solve the problems of fluctuating prices and demands regardless of where the minerals originate, i.e., in the context of world mineral production and trade - instead of discouraging sea-bed exploitation through additional strictures.

PART II

VARIOUS TYPES OF INTERNATIONAL MACHINERY

42. As explained in the Introduction, part II deals with the various types of international machinery which may be established, and part III with that form of international machinery which would have jurisdiction over the peaceful uses of the sea-bed. Although further distinctions and refinements, as well as combinations, could be made as regards the various types of international machinery which might be established, part II covers in summary form the following types, representing the main forms which such machinery might take:

(1) International machinery for exchange of information and preparation of studies;

(2) International machinery with intermediate powers;

(3) International machinery for registration and licensing;

(4) International machinery having comprehensive powers.

43. The last-mentioned type of machinery is merely noted in part II, in order to show the full range of possible types of international machinery, part III being devoted to an examination of this form of machinery.

1. INTERNATIONAL MACHINERY FOR EXCHANGE OF INFORMATION AND PREPARATION OF STUDIES

44. The simplest and most limited type of machinery would presumably be the kind designed merely to record and circulate to States information received from them in accordance with a General Assembly resolution or other form of decision. Since this is a common variety of Secretariat function, it would seem appropriate to consider it in conjunction with the possible preparation of relevant studies. Present arrangements for collection and dissemination of information were described in the previous report by the Secretary-General.5/ As was noted therein, exchange of oceanographic and other information relevant to the development of sea bed resources is at present being carried out by a number of organizations within and

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5/ A/7622, annex II, paras. 33-39.

outside the United Nations system. As regards specialized bodies within the United Nations system, particular reference may be made to the Intergovernmental Oceanographic Commission and the Inter-Governmental Maritime Consultative Organization, which have greatly assisted in the promotion of the exchange of oceanographic and technical information within their respective areas of special competence and interest. The United Nations itself has also given its assistance in this regard, and has prepared a series of publications and other documents based, in a number of instances, on information supplied by Member States.

45. Having regard to the growing amount of information related to sea-bed activities, and the expectation that that amount will increase rapidly as those activities are pursued, Member States may wish to consider whether, as one form of international machinery which might be established, arrangements should be made to have the Secretariat act as a focal point for the assembly and dissemination of this information and, also, to prepare studies on a more permanent and regular basis than hitherto. States might provide information (in so far as the source of information would be States, as distinct, for example, from other sources of information, such as general or technical publications, or the results of research carried out by international bodies) either on a voluntary basis, pursuant to a General Assembly resolution, or they might assume an obligation to do so under a treaty, if one were to be concluded for the purpose.

46. Under such arrangements, the Secretariat, besides collecting and disseminating information, might itself prepare, on a regular basis and in addition to what is now being done, reports, reviews, summaries and other working papers on national and international activities relating to the sea-bed, as well as on the relevant activities of the United Nations, the specialized agencies and other international bodies.

2. INTERNATIONAL MACHINERY WITH INTERMEDIATE POWERS

47. Proceeding from the premise that the tasks of the international machinery might be greater than those described in section 1 above, but less than those of registration, licensing or of the exercise of wider powers described below, it is possible to envisage a form of machinery which might perform certain intermediate tasks with respect to the promotion of international co-operation. The context in

which these tasks would be performed would be one in which States would, in principle, be at liberty to explore and exploit resources, subject only to any particular obligations assumed and to the general obligation of seeking to find ways of co-operating in the development of the resources in question and of avoiding such friction as might otherwise arise between individual States or operators. The machinery would accordingly be designed to promote international co-operation in this sphere by providing, in essence, a common meeting ground at which problems could be discussed and resolutions adopted, on a consensual basis. The tasks or functions which might be performed may be provisionally divided as follows: the preparation of resolutions of a general character (for example, as regards the principles to be observed with respect to the exploration and exploitation of the natural resources of the sea-bed; the encouragement and endorsement of scientific research; and measures to ensure respect for other users of the marine environment); the preparation of specific conventions and recommendations; the formulation of a code of international regulations, standards and recommended practices; the establishment of a complaints procedure; and, possibly, the negotiation and adoption of arrangements with respect to quotas and allocations of sea-bed resources. The machinery would not, in principle, itself have direct powers, but would provide a means whereby States could discuss the issues and adopt certain common solutions, as well as receiving assistance on some of the technical questions involved.

48. The form of machinery which would appear most suitable to perform functions of this character would be that of a United Nations subsidiary organ, on a scale similar to the United Nations Industrial Development Organization or the United Nations Conference on Trade and Development, or, possibly, that of a United Nations specialized agency. It would be for the General Assembly to decide which, in the light of the tasks performed, would be the more preferable form. As regards the method of establishment of such bodies, this matter was discussed in the Secretary-General's previous study so that detailed comment on that aspect is not necessary.[6/] The basic distinction is that whereas subsidiary

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6/ A/7622, annex II, paras. 90, 95-103. This report also gives information on the following aspects, which are not therefore dealt with here: membership, voting arrangements, financial arrangements and secretariat.

organs are established, pursuant to the Charter, by resolution of the principal organ in question,[7] the specialized agencies were set up by international treaties concluded at plenipotentiary conferences. As was previously pointed out, however, a further combination of possibilities also exists in that arrangements could be made whereby an international treaty, elaborated and adopted at a conference of States, would provide for the imposition of duties, and the granting of rights, to a subsidiary organ of the United Nations established pursuant to a resolution of the General Assembly.[8]

49. Institutional structure. The precise institutional structure of the machinery would necessarily have to be related to the actual functions agreed upon. It may, however, be of interest to note the cases of existing United Nations subsidiary organs of a major character. The principal organ of UNIDO is the Industrial Development Board, composed of forty-five members, which holds regular annual sessions and reports each year to the General Assembly through the Economic and Social Council.[9] The Board may establish such subsidiary organs as it may find necessary. UNIDO has its own secretariat, headed by an Executive Director who has over-all responsibility for administrative research and operational activities. UNCTAD has a more elaborate organization, consisting of a Conference, which meets every three years and the members of which are States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency, and the Trade and Development Board of fifty-five members, elected by the Conference.[10] The Board carries out the functions of the Conference when the latter is not in session, and reports to the Conference and, annually, to the General Assembly through the Economic and Social Council. The Board may establish subsidiary organs, and has set up committees on various major topics of concern to UNCTAD. The secretariat of UNCTAD is headed by the Secretary-General of the Conference,

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7/ Article 7, para. 2, of the Charter provides the general authority. Articles 22 and 68 of the Charter deal with the authority of the General Assembly and of the Economic and Social Council to establish subsidiary organs.

8/ A/7622, annex II, paras. 87, 98-101.

9/ General Assembly resolution 2152 (XXI) of 17 November 1966.

10/ General Assembly resolution 1995 (XIX) of 30 December 1964.

who, as in the case of the Executive Director of UNIDO, is appointed by the Secretary-General of the United Nations and confirmed by the General Assembly.

50. As regards United Nations specialized agencies, these consist, broadly speaking, of a deliberative organ composed of all members, which meets at regular intervals (commonly annually or bi-annually), of an executive body which meets more frequently[11] and of a secretariat. The specialized agencies report to the Economic and Social Council. The International Atomic Energy Agency, however, reports directly to the General Assembly.

51. Functions. The functions which might be performed by international machinery designed to promote international co-operation with respect to sea-bed activities are briefly reviewed below, with cross-reference where appropriate to the performance of similar tasks within their particular fields of competence by existing organizations.

(a) Resolutions and recommendations of a general character. It seems unnecessary to comment at length on this most typical activity of international organs. The authority of United Nations subsidiary organs to adopt resolutions derives from that of the parent organ, and express provision for this is normally made in the establishing resolution.[12]

(b) Conventions and recommendations giving rise to specific obligations. The preparation within an organization of conventions or recommendations, which are then submitted to States members for acceptance, is an established and now familiar practice. The International Labour Organisation, in particular, has developed an extensive practice in this regard, based on article 19 of its Constitution, and similar procedures have been provided in the case of most of the other specialized agencies. While United Nations subsidiary organs have not usually been so equipped, UNCTAD has been concerned with the negotiation of a number of agreements falling within its competence, in particular the conclusion of commodity agreements.

11/ As regards the membership of such executive bodies, see A/7622, annex II, paras. 116-125.

12/ As regards voting arrangements in United Nations subsidiary organs and specialized agencies, see A/7622, annex II, paras. 126-140.

(c) Adoption of international regulations, standards and recommended practices. Here also, an extensive practice has been built up by a number of specialized and other agencies, including IAEA, the International Civil Aviation Organization and the World Health Organization, with respect to matters within their competence.[13] The need for the adoption of such regulations, standards and practices with regard to sea-bed exploration and exploitation has been widely stressed by speakers in the Sea-Bed Committee.

52. Complaints procedures. The procedure within the organization for the handling of complaints, if one were to be established, would need to be carefully considered and adjusted to various situations. At least three different contexts for possible complaints may be distinguished: complaints of non-observance of resolutions adopted by the organization; complaints of non-observance of specific treaty obligations assumed by individual States; and complaints as between States engaged in different and possibly conflicting uses of the sea-bed and water column. In so far as actual or future treaty provisions are concerned, the matter might already receive a degree of regulation under the treaty in question. In the other two instances, arrangements might be made within the organization for the receipt of complaints and for the application of various techniques for their regulation. Such means might be formalized[14] or stress laid on flexibility and measures to achieve conciliation between the parties.[15]

13/ See article III, paras. 5 and 6, and article XII, IAEA Statute; articles 37 and 54, Convention on International Civil Aviation, United Nations Treaty Series, vol. 15, p. 296; and articles 21 and 22, WHO Constitution.

14/ Article 26, paras. 1-4 of the ILO Constitution, for example, provides that complaints by a State member that another has not observed an ILO Convention to which both are parties, may be referred by the Governing Body to a commission of inquiry, which is required to make a report, including its recommendations, regarding the steps to be taken. The Governments concerned are then required to state whether they accept the recommendations and, if not, whether they wish the matter to be referred to the International Court of Justice.

15/ Thus, in the case of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly on 21 December 1965, (resolution 2106 A (XX)), complaints of non-observance may be brought to the attention of the Committee on the Elimination of Racial Discrimination; if the matter is not settled following statements by the parties, it may be referred to an ad hoc conciliation commission.

53. Arrangements with respect to quotas and allocations. It would be a matter for consideration whether the international machinery might perform functions with respect to the establishment of quotas or of allocations of specific areas or quantities of given sea-bed resources. Such functions might consist of the provision of facilities for the negotiation as between individual States of such quotas or allocations, or possibly of the adoption of regulations which would establish quotas for the exploitation of particular sea-bed resources. Such a system would be designed to prevent disputes from arising with respect to exploitation of specific areas to ensure conservation and/or to preclude depletion of resources, and to prevent undue fluctuations in world prices of the resource in question.16/

54. While no existing arrangements relate to a situation identical with that envisaged, reference may be made to the work of the International Telecommunication Union Plenipotentiary and Administrative Conferences and of the ITU International Frequency Registration Board, with respect to the division of radio frequencies between States, and also to various fishing, seal and whaling conventions which provide for the division of the permissible catch amongst participating nations.17/

3. INTERNATIONAL MACHINERY FOR REGISTRATION AND LICENSING18/

55. The present section deals with the use of international machinery to perform registration or licensing functions with respect to the exploration and

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16/ On the latter aspect, see also below, part III, 4 A (3).

17/ See e.g., International Convention for the High Seas Fisheries of the North Pacific Ocean, United Nations Treaty Series, vol. 205, p.65; Interim Convention on Conservation of North Pacific Fur Seals, ibid., vol. 314, p. 105; International Convention for the Regulation of Whaling, ibid., vol. 161, p. 72; Arrangements for the Regulation of Antartic Pelagic Whaling, ibid., vol. 486, p. 263 and Supplementary Arrangements, ibid., vol. 486, p. 271.

18/ International machinery of this character was also dealt with in the previous study, see A/7622, annex II, paras. 41-69. See also part III, 4 A (1) of the present study, which examines in more detail some of the questions raised with respect to the operation of a licensing system.

exploitation of sea-bed resources.[19] The international machinery concerned might have functions additional to those of registration or licensing - for example, some of those referred to above with regard to the preparation of studies and the promotion of international co-operation, or the encouragement of scientific research or functions with respect to the reservation of the international area exclusively for peaceful purposes. For purposes of exposition, however, only those functions relating to registration and licensing are dealt with here.

56. Distinction between registration and licensing. The precise scope of the machinery and of the legal effects of registration and licensing would have to be determined in the course of reaching agreement on the establishment of the machinery. In principle, however, a qualitative distinction can be drawn between registration and licensing: whereas in the case of registration the authority or machinery would be passive in that it would merely note the activities undertaken by States (which, subject to such obligations as they might assume, would be at liberty to engage in the exploration and exploitation of sea-bed resources), in the case of licensing the power to authorize such activities would presumably rest with the international authority, which would (or might, according to the terms of the constituent instrument) be entitled to establish the conditions under which specific activities might be conducted. None of the speakers who have advocated a registration system appear to have endorsed, however, the adoption of a minimal registration system whereby the international machinery merely recorded and circulated to States the information it received. If registration machinery of that character is set aside, the range of possible forms of machinery extends, in a continuous spectrum, from a registration system of a "stronger" type to a "weak" or "medium" licensing system, and beyond that to a "strong" licensing system having comprehensive powers.[20] A "strong" registration system might come close in practice to a "weak" or "medium"

19/ It is possible that activities other than those related to the exploration and exploitation of mineral resources (for example, the laying of submarine cables, or the conduct of oceanographic research) might be registered or licensed. The present section, however, concentrates on the principal case involved, namely, the possible registration or licensing of activities related to mineral resources.

20/ With regard to licensing arrangements in conjunction with machinery having more comprehensive powers, see part III, 4.

licensing system; the matter to be determined would be the extent of powers to be granted in each case, within the conceptual framework indicated whereby registration machinery would tend in principle to be weaker than machinery entrusted with licensing functions.

57. In essence, international registration would provide evidence of non-sovereign title with respect to the exploration or exploitation of the resources of particular areas of the sea-bed and its subsoil. The registration act by itself would not presuppose a determination of rights to conduct activities in such areas. In the case of licensing, the international machinery would be the source of the rights concerning the activities to be conducted. Put in negative terms, without such grant of rights by the licensing authority, the activities could not be conducted; correspondingly, once granted, under an effective licensing system the rights granted could not be infringed by other States.

58. It is also possible that a single form of machinery might be established to perform both registration and licensing functions - for example, the registration of exploration activities and the licensing of actual exploitation. Conceivably also, there might be a recording or granting of certain intermediate rights if actual investment was made (e.g., to carry out core drilling) between the conduct of registered exploration and the undertaking of licensed exploitation, with a difference in the costs payable to the international machinery in each case (thus, registration costs might be no more than the administrative expenses involved, whilst licensing fees might be dependent on the scale of production).

59. Having regard to the area of possible convergence, the present section therefore deals with machinery to perform both registration and/or licensing functions.

60. Mandatory or non-mandatory arrangements. Acts of registration might or might not be made mandatory or, in other words, might or might not be recognized as the sole means to provide evidence of rights to sea-bed resources. Licensing arrangements, on the other hand, would be mandatory in the sense that there would be no other way to obtain rights over such resources. While the operation of a licensing system might be seriously impeded if a considerable

number of States felt themselves free to disregard it, it is at least conceivable that an optional registration system could be maintained even though not all States were observing it.

61. If it were desired to make international registration an express legal obligation or to establish licensing arrangements, it would probably be necessary to do so by treaty based on the principle of universality. It has indeed been stressed by many speakers that, as a practical matter, any system or régime with respect to future arrangements for the sea-bed could operate only on a basis of general participation.

62. If, however, registration were not to be made mandatory then recourse could be had, for example, to the adoption of a resolution by the General Assembly in facultative terms, establishing international registration and "urging" and "requesting" States to comply with the procedures thereby established. States would then be at liberty, within the bounds of the Charter, to determine whether or not to act in accordance with such arrangements and to gain the benefits, vis-à-vis others, of being able to point to international registration, as public evidence of their prior claim to the resources of a given area.

63. Forms of international machinery to perform registration or licensing functions. International machinery of a mandatory character would have a legal status laid down in the treaty, separate from that of other existing bodies or institutions, such as the United Nations. The new institution could, however, be brought into relationship with the United Nations by various supplementary acts, and attention may be called here to the existence of several organs within the United Nations system which perform functions laid down in separate treaties.[21/]

64. In the case of a registration body of a non-mandatory character, it would be possible to proceed to its establishment by means of a General Assembly resolution, in so far as its functions and powers could be performed by a

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21/ The main examples being the Office of the United Nations High Commissioner for Refugees, which performs functions under the Convention Relating to the Status of Refugees, and the narcotic drugs bodies. Details are given in the previous study, A/7622, annex II, paras. 98-101.

United Nations subsidiary organ.[22] More extensive functions and powers for such registration body would require correspondingly larger machinery, and possibly necessitate the conclusion of a special treaty. If provision was to be made, for example, for the development of international standards and regulations relating to mineral exploitation, or to procedures for the receipt and review of complaints by other States, or if conditions were to be imposed accompanying registration (for example, as regards observance of specified operational procedures, or proof of financial security against possible infliction of harm to other users of the marine environment), then consideration would have to be given to the setting up of fairly complex machinery. The details of that machinery would necessarily depend on the scope of work entrusted to it, and no categorical estimate can be given at this juncture as to the most suitable size and form of the directing and plenary bodies (presumably composed of State representatives), or of the scale of the secretariat which might be required or of the requisite disciplines (oceanographers, marine biologists, persons with experience of the various aspects of mineral exploration and exploitation, economists, and so forth) which would need to be represented. However, within the necessarily wide parameters, it would appear that a "strong" registration body, for example, could operate within the framework of a United Nations subsidiary organ, or of a separate bureau (without necessarily connoting the grant of separate legal personality) established by treaty. Such a body (which would require special arrangements with respect to its financing in either case) might accordingly consist of a plenary body (and/or a system of reporting to an existing United Nations organ, such as the General Assembly). a smaller executive body ("the Registration Board" or "the Licensing Board", as the case might be) also composed of State representatives, which would presumably meet more frequently, and a permanent secretariat of its own, which might or might not form part of an existing secretariat.

65. Further issues. No account has so far been given of the technical conditions, in the widest sense, under which a registration or licensing system might operate. Questions relating to the determination of the entities which would be entitled to register activities or to receive licences, the resources or activities to be registered or licensed, the size and duration of claims

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22/ The previous study gives examples of United Nations subsidiary organs (such as UNCTAD, UNICEF and UNRWA) established by General Assembly resolution, see A/7622, annex II, paras. 95-97.

or licences, the possible termination or cancellation of registration or of licences, and the observance and adoption of safety standards and procedures, the scale of fees or other assessments to be paid, would all have to be decided, together (if it were so agreed) with a procedure for the settlement of any disputes as might arise.[23/]

4. INTERNATIONAL MACHINERY HAVING COMPREHENSIVE POWERS

66. The functions previously distinguished have been limited or specific in character. They have involved machinery for the exchange of information and the preparation of studies; machinery with intermediate power for the promotion of international co-operation; or international machinery for registration and licensing of sea-bed activities. They differ therefore from the type of machinery referred to in the present heading, which would perform a much wider range of functions and have much greater powers, including regulatory powers, with respect to all peaceful uses. This particular type is merely noted here, in order to complete the range of possible types of machinery which might be established, and is described in part III below, which is devoted solely to this particular type of international machinery, to which special attention is called in resolution 2574 C (XXIV).

23/ These issues were dealt with to some extent in the previous study, A/7622, annex II, paras. 42-57 and 61-69.

PART III

INTERNATIONAL MACHINERY HAVING JURISDICTION OVER THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR, AND THE SUBSOIL THEREOF, BEYOND THE LIMITS OF NATIONAL JURISDICTION, INCLUDING THE POWER TO REGULATE, CO-ORDINATE SUPERVISE AND CONTROL ALL ACTIVITIES RELATING TO THE EXPLORATION AND EXPLOITATION OF THEIR RESOURCES

1. GENERAL CONSIDERATIONS

67. In calling for the preparation of a further study on various types of international machinery, resolution 2574 C (XXIV) mentions in particular international machinery having jurisdiction over the peaceful uses of the sea-bed. Machinery of this character differs from those examined under part II in that it would be endowed with "jurisdiction" over all peaceful uses of the sea-bed. No attempt will be made here to define the concept of "jurisdiction", but the scope of the powers of such machinery in respect of exploration and exploitation is illustrated in the resolution itself, which states that they include "the power to regulate, co-ordinate, supervise and control all activities relating thereto".

68. It has been said that the proposed "common heritage of mankind" is a concept which provides central direction and purpose to machin ·v of this type. The principles and purposes which have been mentioned by delegations as inherent in this concept also imply certain functions and powers. The most important of these functions are those relating to licensing, designed to cover a range of activities with respect to the sea-bed and would of necessity require broad regulatory powers.

69. Machinery of this nature could only be established by a treaty which, possibly with additional treaties, would establish the legal régime the machinery is designed to regulate. Regulations issued by the organization and implementing legislation which parties to the treaty or treaties may enact, would also form part of the régime. It is assumed that, in accordance with General Assembly resolution 2574 (XXIV), a comprehensive and balanced statement of principles will first be adopted as a declaration by the General Assembly. All or most of the principles in the declaration, with possible additional principles, would be incorporated in a treaty under an appropriate heading

designed to reflect the fact that they would constitute the guiding principles for the operation of the régime. These principles might follow a preamble and precede a chapter on the purposes or objectives of the régime, some of which have been discussed in the Sea-Bed Committee for inclusion in the declaration. Depending upon the degree of detail in which the functions of individual organs are provided for, this might be followed by a chapter setting out the general functions of the machinery. Subsequent chapters or articles might deal with membership; legal status; composition, functions and forms of each of the organs; rules or principles concerning particular uses of the sea-bed; measures for implementation or enforcement of regional arrangements; and settlement of disputes. Provisions setting out the stages by which the organization might gradually assume wider functions might be given consideration. The view has been expressed in this regard that the machinery might take a limited form at first and be expanded and strengthened as need and requirements dictate. Any such arrangement, if it were to be agreed upon, might entail establishing a transitional régime with clearly determined stages in which additional principles and functions might apply.

70. In accordance with the terms of resolution 2574 C (XXIV), the present part of the study will examine successively the status, structure and functions and powers of such machinery. Functions and powers relating to the exploration and exploitation of resources are dealt with separately from functions and powers concerning other peaceful uses. Finally, in view of the fact that certain standards would apply to functions and powers of both these categories, there is a section dealing with functions and powers concerning standards which would apply to all peaceful uses.

2. STATUS

71. It has been envisaged that machinery of this type should be endowed with full legal personality. In view of the extensive powers which the machinery would have, and the consequential obligations which it may have to assume, it seems that no other legal status would be possible. The relevant provision in the treaty establishing the machinery and the régime for the sea-bed could most appropriately be along the lines of the provisions in Article 104 of the

United Nations Charter and article 1 of the Convention on the Privileges and Immunities of the United Nations. Article 104 of the United Nations Charter provides that "the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes". Article 1, section 1, of the Convention provides that "the United Nations shall possess juridical personality. It shall have the capacity:

"(a) To contract,

"(b) To acquire and dispose of immovable and movable property,

"(c) To institute legal proceedings."

Most of the organizations within the United Nations family have in their constituent instruments provisions in this regard similar, if not identical, to those quoted above. Having regard to the range and scope of its powers, the question would need to be considered whether more detailed formulation of the machinery's legal capacity would be required.

72. It has also been suggested that the sea-bed organization be established within the United Nations system, although not necessarily on the pattern of existing specialized agencies. If it were so established, its precise relationship with the United Nations and the other organizations in the United Nations family would have to be stipulated in appropriate agreements.

73. Closely connected with the legal status of the organization is the question of what privileges and immunities it would have. Here again, provisions similar to those in the Convention on the Privileges and Immunities of the United Nations would, in all probability, provide for most of what is needed in this regard. However, were the sea-bed organization to have the power to engage directly in operational activities, it might have to have special provisions along the lines of those of financial organizations within the United Nations family (such as the International Bank for Reconstruction and Development and the International Monetary Fund) which make an important exception to the general immunity from legal process enjoyed by these organizations. Generally speaking, the purpose of such an exception is to make the organization amenable to suit as regards obligations contracted with third parties in the exercise of its powers to raise capital.

Thus, in the case of the IBRD, the Bank is subject to actions brought against it in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purposes of accepting service of notice of process, or has issued or guaranteed securities. Other similar lending agencies, such as the African Development Bank, have established as an exception "cases arising out of the exercise of its borrowing powers". Most of the lending agencies provide in their respective instruments that the full protection of immunity from a legal process applies to actions brought by members or persons acting for or deriving claims from members. This means that controversies between the organization and its members of whatever character cannot be brought before a court, but are to be settled according to a procedure for the settlement of disputes which is provided for in such cases.

3. STRUCTURE

74. The structure of the organization would largely depend upon the precise functions and powers accorded to it and the particular purposes which the organization is to fulfil. It could be said in general that the organization would have an organ in which all the members would be represented, whose purpose would be to establish policy and give direction to the organization; an organ of more restricted membership to examine, recommend or decide on questions of granting of licences and other questions requiring urgent decisions; possibly one or more technical or scientific organs of an advisory nature; and a secretariat. An organ designed to have some functions in respect of settlement of disputes might or might not be an organ of the organization or at least might be established only when called upon to perform functions. The actual allocation of benefits might or might not be dealt with by an organ of the organization, although it might be important for the organization to integrate this function with others linked with it.[24/]

24/ Certain of the problems connected with the structure of this type of machinery, in particular membership, voting arrangements, financial arrangements and secretariat, have been considered in the previous study of the Secretary-General (A/7622), annex II, paras. 81 et seq.

75. Various private associations have made proposals[25/] regarding the structure of machinery for the sea-bed. Some of the machinery contemplated in these proposals would be concerned not only with the sea-bed but with the marine environment as a whole.

4. FUNCTIONS AND POWERS

A. Functions and powers relating to the exploration and exploitation of resources

76. Among functions and powers relating to the exploration and exploitation of resources, the following will be examined:

(1) Licensing;
(2) Direct exploitation;
(3) Role with respect to fluctuations of price;
(4) Collection of fees and royalties;
(5) Training programmes.

(1) Licensing

77. One of the most important functions of machinery of this type would be to license activities for the development of resources in accordance with certain standards to ensure their equitable and rational management. These standards would be of varying importance and character and would, in effect, implement the general principles governing the régime.

78. In the case of this particular type of machinery, the distinction between licensing and registration would be considerably more pronounced (see above, paras. 56-59). Registration machinery, even if endowed with far-reaching regulatory powers, would, in principle, accept or reject applications within certain narrowly defined limits, while machinery of the type dealt with here

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25/ The Ocean Regime, Elisabeth Mann Borgese, published by the Centre for the Study of Democratic Institutions; Draft Statute for a United Nations Sea-Bed Authority. Twenty-first Report of the Commission to Study the Organization of Peace; February 1970 "An Ombudsman for the Oceans", Frank M. Potter, Jr. PIM Preparatory Conference in Kingston, Rhode Island, 30 January-1 February 1970 (unpublished).

would have greater powers in accepting or rejecting applications. Thus, an application for the exploitation of natural resources might be denied, deferred or subject to negotiation because, for instance, of the need to prevent severe fluctuation of prices of raw materials in world markets or to protect submarine pipelines or cables lying close to sea-bed resources for which application has been made, or to permit completion of scientific research carried out in the area. In view of the fact that the powers would apply not only to different resources but also to any of the other peaceful uses of the sea-bed, it would be necessary to allow for some latitude in their exercise, (see section C (4), "Conflicting uses of the sea-bed"). A further relevant factor is the interrelationship of the sea-bed with other parts of the sea, such as the water column over which the machinery would have no jurisdiction. For instance, an application for sea-bed resources lying near important fishing resources might give rise to difficulties if licensing powers were to be exercised without regard to all interests involved and without appropriate procedures for consultations and negotiations with interested parties.

79. A number of issues are likely to arise in connexion with the licensing power of the machinery. Some of these issues concern general principles or definitions to be contained in the constituent treaty, while others concern standards or operating procedures which might possibly be adopted by the machinery itself once established. The list of topics in annex I to the interim report of the Economic and Technical Sub-Committee (A/AC.138/SC.2/L.6) was intended to identify some of the topics to be considered in the context of any kind of régime and it is accordingly illustrative of the issues which the licensing powers of the machinery would raise. Therefore, in the treatment of subjects in this section, this list of topics has been taken into account.[26/]

(a) Definition of resources

80. Some fundamental terms and concepts would have to be defined concerning the powers of the machinery as regards natural resources. As regards the

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26/ See also Mineral Resources Development with Particular Reference to the Developing Countries - United Nations publication E.70.II.B.3.

definition of "resources" of the sea-bed, it is assumed that all mineral resources, whether metalliferous or not, will be included.

81. Mineral resources. It has been suggested that the mineral resources of the area that are likely to be exploited could be divided into two different categories: (a) deep deposits, i.e., oil, gas, sulphur, saline minerals and steam, which could be extracted through drill holes in the sub-bottom, and (b) surficial deposits, i.e., manganese nodules, phosphorites, etc., which could be collected by dredging or other methods.

82. Another division has also been suggested: (a) mineral deposits within bedrock; (b) surficial deposits lying upon or under the ocean floor, and (c) "deposits" in the form of minerals contained in solution in sea waters.[27] It will be noted that the machinery would have no jurisdiction over minerals in solution in sea water. However, this would not apply to special cases of concentration of minerals such as hot brines.

83. Living resources. The question arises, if the living resources of the sea-bed are included among those falling under the powers of the international machinery, how such resources are to be defined. Consideration in this regard may be had to the provision in article II, paragraph 4, of the Continental Shelf Convention.[28]

84. In the consideration of this question, scientific data would have to be taken into account regarding the possibility that, within the area to which the régime would apply, there could be organisms of sedentary species of economic or other value. A similar question might arise with respect to fisheries conducted by means of equipment embedded in the sea-bed. It will be recalled that

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27/ See "Mineral resources of the sea" (ST/ECA/125).

28/ This provision reads as follows:

> "The natural resources referred to in these articles consist of the minerals and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say organisms which, at the harvestable stage, either are immobile, on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil."

such fisheries are dealt with under article 13 of the Convention on Fishing and Conservation of the Living Resources of the High Seas.[29]

85. Other resources. A further question may arise whether sunken ships, archeological relics or lost objects lying on the sea-bed might be considered as part of its resources where no clear claim of ownership by any particular person or entity exists. Perhaps these are not "resources" or at least not "natural resources". Nevertheless, they may fall under the jurisdiction of the machinery, if the recovery of such objects is regarded as another use of the sea-bed.

(b) States of activities

86. In the development of marine mineral resources, various stages of activities are usually distinguished: exploration, evaluation and exploitation. The system of licensing would have to take such stages into account. With regard to exploration, a distinction might be made between scientific investigation and economic exploration.

(c) Entities entitled to participate in the development of sea-bed resources

87. As pointed out in the previous study of the Secretary-General on machinery, licences might be granted to States; to States engaged in a joint enterprise; to international, State, or private bodies; and to individuals. While it might be possible to have a system whereby licences could be granted by the international machinery to all these operators, it has been argued that licences should be

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29/ This provision reads as follows:

"1. The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the general status of the areas as high seas.

"2. In this article, the expression 'fisheries conducted by means of equipment embedded in the floor of the sea' means those fisheries using gear with supporting members embedded in the sea floor constructed on a site and left there to operate permanently or, if removed, restored each season on the same site."

granted exclusively to States, associations of States and international organizations.

88. The list of topics annexed to the interim report of the Economic and Technical Sub-Committee (A/AC.138/SC.2/L.6, annex I) mentions as possible operators authorized to participate in sea-bed resource development three elements or entities - States, State-authorized operators and international organizations. On the first of these, there appears to be no problem. With regard to State-authorized operators, the question of the role of the authorizing State has to be considered, particularly whether the authorizing States should bear responsibility for supervising actions of their licencees. A related question is whether a State could sub-license operators which are neither its nationals nor companies incorporated in its territory. Apart from the difficulty which the State might encounter in supervising such operators, it is conceivable that it would not be prepared to undertake liability for their actions. In general, this might be a matter for decision by each State concerned, provided that a solution is found for the problem of jurisdiction over vessels and installations operated under a flag different from that of the authorizing States[30] and that arrangements to meet liability are satisfactory. Regarding the third possibility, whether international organizations could also be eligible, account should be taken of the problems that might arise with regard to the guarantees, financial or otherwise, which are necessary for the exploration and exploitation of the sea-bed. The possibility of joint ventures should also be taken into account.

(d) Assignment of responsibility for the administration of provisions and rules

89. This topic appears in paragraph 2 of the list of topics and was dealt with in the previous study on machinery by the Secretary-General.[31] It was suggested that a double concession system might be established, so that the international authority would grant licences to a State which would act as a sort

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30/ See previous study of the Secretary-General, A/7622, annex II, para. 173.

31/ A/7622, annex II, paras. 58 and 61.

of "administering authority" in respect of the sublicences they might in turn grant to enterprises. This double system would raise the question of the extent to which responsibility for administering provisions and rules would be assigned to States as opposed to the international machinery. It is assumed in this hypothesis that sublicences granted by the State would be granted under its laws and supervision. In this case, the conditions which such national laws shou meet might be stipulated in the constitutent treaty. Regulations implementing the principles of the régime might also be issued by the machinery, regulations which the administering State would be bound to incorporate in its laws. Suitable procedures for international inspection of operations might likewise have to be developed.

(e) Types of operating rights

90. Various types of rights may be granted in relation to different stages of mineral development. As pointed out in the review prepared by the Secretariat on "Government measures pertaining to the development of mineral resources on the continental shelf" (A/AC.138/21), four types of rights are representative of various practices prevailing in the development of mineral resources on the continental shelf:

(1) A non-exclusive exploration right which may be followed by an exclusive right for evaluation;

(2) A non-exclusive right for exploration which may be followed by an exclusive right in which evaluation and exploitation are combined;

(3) An exclusive combined exploration and evaluation right with preferential option for exclusive exploitation;

(4) An exclusive right in which exploration, evaluation and exploitation are combined.

An extrapolation of such rights may be envisaged as part of the basis on which instruments for use by the international machinery could be devised.

(f) Procedure for granting licences

91. While various procedures for granting licences can be envisaged, such as a first-come-first-served basis, the drawing of lots, grant on the basis of the

merits of the applicants, and competitive bidding, consideration would have to be given to the needs of developing nations, bearing in mind the exploitation of sea-bed resources for the benefit of mankind as a whole. An equitable distribution of licences might be achieved by a combination of ways rather than by adoption of a single procedure. The main issue, however, might be the extent to which the machinery would have to follow guidelines and procedures established in the constituent treaty or alternatively be empowered to exercise wide discretionary authority in allocating licences.

(g) Conditions and obligations arising from the granting of licences

92. Among these elements the question of the selection of the area and its size will have to be determined. It has been suggested that the authority of the international machinery should decide which areas are to be open to operators. In national practice, areas allocated for exploration are generally larger than those allocated for evaluation and exploitation. It has also been said that the authority might have discretionary power to prevent disproportionately large areas from being placed under the control of a single operator. The duration of rights for which a licence remains valid should be fixed, taking into account, inter alia, the nature of the resources, the distance from shore and the size of the area. Licences may be cancelled, and might or might not be transferable from one licence holder to another under provisions to be determined.

93. The granting and retention of licences could be made conditional upon various requirements (work requirements or production requirements) and could entail various obligations for the operator. In particular, these obligations could deal with the problem of safety of personnel, prevention of pollution, the protection of living resources, and liability arising from operations (see below).

(h) Financial aspects

94. It has been suggested that fees to be paid by the operators for exploration licences should be very light and designed to cover administration costs. It has also been suggested that the proceeds of production royalties should be distributed for the benefit of the international community, particularly of the developing

countries. In accordance with a request by the Economic and Technical Sub-Committee, the Secretary-General has prepared a paper on the question of 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 sea-bed (A/AC.138/24).

(2) Direct exploitation

95. Reference has been made earlier in this study to suggestions that the powers of international machinery should include the possibility of direct conduct of operations, or at least, that the machinery should not be precluded from conducting such activities. This issue was dealt with in the previous report on machinery by the Secretary-General, which indicated the main functions which might be performed by an international machinery and the principal issues arising in connexion with those functions. As was noted, many issues would need to be considered in relation to legal matters, financial arrangements and functions as well as operating functions.[32/]

96. An extensive range of powers would be necessary to enable the machinery itself to engage in prospecting and exploitation activities with its own staff and facilities. A lesser range of powers would be required for the machinery to arrange for others to perform these operations on its behalf by a system of service contracts; or to undertake joint ventures with other bodies.

97. Under service contracts, the contractor would not be in the position of licensee operating under licensing regulations. He would be an agent performing specified services for a fee, although it would also be possible to have other arrangements, such as, for example, some share in the production or in the value thereof. He would not in principle acquire any rights of ownership over mineral production, which would remain with the machinery. The use of such contractual arrangements could apply to all phases of mineral development. For example, it could be extended to the marketing, etc., of mineral production.

98. In the undertaking of joint ventures, the machinery would enter into an agreement with an operator whereby, in return for a share of the production or other consideration, the operator would participate with the machinery in the

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32/ See A/7622, annex II, paras. 70-74.

development of mineral resources. Joint participation of this nature could assume a variety of forms, whether in respect of organization, financing, operations, or marketing. It may be presumed, however, that such arrangements would not normally involve any relinquishing of the machinery's rights of supervision and control.

(3) Role with respect to fluctuation of prices

99. An effective role for the international machinery in respect of price fluctuation could be envisaged only when the production of minerals from the sea-bed and the subsoil thereof beyond the limits of national jurisdiction would reach such magnitude as to have a marked impact on world markets and, in particular, on the exports of developing countries. A note by the Secretariat presented to the Ad Hoc Committee in 1968 attempted to throw some light on this question.[33/] The scale of possible exploitation of the sea-bed will have to be considered in relation to the growing world-wide demand for various raw materials as well as in the light of the evolution of costs and prices.

100. Assuming that, some time in the future, production of certain minerals from the area beyond national jurisdiction may become economically competitive and may affect the mineral exports of developing countries,[34/] various means of dealing with the problems that might arise may be examined. For example, international commodity agreements for specific products could be envisaged. The international machinery could be empowered to become a party to such an agreement and, under its terms, to enforce a ceiling for production of that given mineral from the area when deemed necessary. It might also be enabled to enter into some form of compensatory arrangement with those developing countries which might feel the brunt of this new competition, particularly in the case of a country whose economy, being heavily dependent on production of a given mineral, could therefore suffer severe consequences.

33/ "Economic implications of the exploitation of mineral resources on and underlying the sea-bed and ocean floor and its subsoil with particular reference to world trade and prices" (A/AC.135/14).

34/ A table, showing the leading world producers and exporters of manganese ore and phosphate rock is contained in ibid., annex I and annex III.

101. Within the United Nations system, the United Nations Conference on Trade and Development is the organ entrusted with problems of commodity price fluctuations, and commodity agreements fall within its field of competence. Therefore, if and when the need arises for a commodity agreement in respect of mineral exploitation from the sea-bed and the subsoil thereof beyond the limits of national jurisdiction, it would be reasonable to expect that UNCTAD would take note of it and deal with this matter in co-operation with the proposed international machinery.

102. At present, the International Tin Council is the only established international body dealing with a specific type of mineral production and setting agreed production ceilings.[35] Some looser informal arrangements have been in existence for lead and zinc as well as copper. Of a different character is the Organization of Petroleum Exporting Countries which protects the interests of a number of major petroleum exporters. At this juncture, it is difficult to be more explicit as to what kind of agreements or arrangements may prove to be relevant for the hypothetical production from the international zone. It seems evident, however, that this aspect of the matter will require study as exploitation becomes a reality.

(4) Collection of fees and royalties[36]

103. The international machinery could organize and administer the collection of fees, royalties and other levies to be paid by authorized operators under the international régime to be established. This might be done through Member States which would then be responsible to the international organization for the collection of sums due from operators under their flag, or it could be direct from the operators. The method of collection, as well as the method of assessment, might be laid down in the instrument establishing the machinery. It has been suggested that a distinction should be drawn between registration fees,

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35/ In addition to tin, international agreements are in operation or under negotiation for the following commodities: cocoa, coffee, olive oil, sugar and wheat. See Commodity Survey, 1968, United Nations, E.69.II.D.5.

36/ For questions regarding the allocation of funds see "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" (A/AC.138/24).

fees to be paid for the right to exploit the resources, and royalties on the resources recovered. It might be that different methods of collection would be appropriate to the different types of dues. Provision would also have to be made for penalties for non-payment of dues or royalties and for arrangements for handling disputes in connexion with such penalties (for example, concerning the amount and/or quality of the material taken from the ocean floor). Some method of inspection might be envisaged.

104. While it has been emphasized that the terms of the arrangements with States and/or other operators should be precise in specifying a definite area, duration and type of product to be covered by a licence, it has also been recognized that terms would have to be such as to encourage exploitation, and the machinery might wish to take this into account in establishing financial terms for permits to exploit. Consideration might also be given to possible arrangements in connexion with unsuccessful operations.

(5) Training programmes

105. The Secretary-General, in his report "Marine science and technology: survey and proposals",[37] drew attention to the fact that "the scarcity of competent personnel... remained a limiting factor to the development of national efforts and of international co-operation as regards the study of the ocean and the full and rational use of its resources". In this report the Secretary-General gave an account of various training activities carried out by organizations in the United Nations system concerned with aspects of marine science. Ocean-based industries will require a variety of specialists in a wide range of basic scientific disciplines as well as in many engineering skills. There seems to be world-wide weakness in most of these fields, particularly in developing countries. The need for a sustained training effort becomes evident if these countries are to be associated with exploration and exploitation activities in the area beyond national jurisdiction, in the spirit of the General Assembly resolutions and of the discussions that have taken place in the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction. The international machinery to be established under the international régime could perform important tasks in this respect, such as:

37/ E/4487, para. 283. For information on existing programmes, and proposals for their expansion, see part II, C, "Education and training in marine science", and part III, E, "An expanded programme of co-operation in the fields of education and training in marine science", of this report.

(a) Organizing and implementing training programmes. These could be organized in various ways as, for example, in co-operation with Governments concerned, with regional organizations or groups, with authorized operators, as well as with those bodies within the United Nations system implementing projects in this field;

(b) Ensuring that operators authorized under the international régime fulfil their obligations with respect to the training of personnel;

(c) Allocating part of any funds which may become available to the international machinery from the proceeds of economic sea-bed activities to finance such training programmes when deemed feasible;

(d) Ensuring proper placement of fellows under bilateral or multilateral fellowship programmes;

(e) Organizing the widest possible dissemination of relevant information on marine science and technology.

B. Functions and powers concerning peaceful uses of the sea-bed, other than exploration and exploitation of resources

(1) Laying of submarine cables and pipelines

106. International machinery of the type envisaged in resolution 2574 C (XXIV), having jurisdiction over the peaceful uses of the sea-bed, might include amongst its activities responsibility in relation to the laying, maintenance and protection of submarine cables and pipelines. The issues which would be posed may be divided under two headings, the first concerning the existing arrangements with respect to submarine cables and the second the need to regulate possible conflicting uses of the sea-bed, such as its use for the development of mineral resources and, also, for the laying of submarine cables.

107. As regards the first aspect, the freedom of States to lay submarine cables and pipelines is amongst those expressly referred to in article 2 of the 1958 Convention of the High Seas. Special provisions on this subject are contained also in articles 26-29 of the Convention on the High Seas, in article 4 of the Convention on the Continental Shelf, and in the Convention for the Protection

of Submarine Cables of 1884.[38] It should also be noted that the International Telecommunication Union is presently charged with responsibility for the promotion of international co-operation with respect to telecommunications, including the use of submarine cables for telecommunication purposes.[39] Various other bodies are also engaged in work (for example, the activities of IMCO with respect to safety of navigation) which may have a bearing on the subject. In the event that future international machinery were endowed with power to regulate, supervise or control the laying, maintenance and use of submarine cables and pipelines, consideration would accordingly have to be given to the question of the extent to which existing legal provisions would need to be amended and, also, to the question of the co-ordination of the activities of the new machinery with those of existing bodies, such as ITU and IMCO.

108. Turning to the second aspect, the substantive functions to be performed with respect to submarine cables and pipelines, it is suggested that these might largely concern the possibility of conflicting uses of the same or closely adjacent areas of the sea-bed. Thus, if the same or adjacent area were to be used for mineral exploitation and for submarine cables, means would have to be found to ensure that the one activity did not unduly interfere with, or impede, the other, and a balancing of interests achieved. Since it may be assumed that the possibility of conflicts of this nature cannot, in any case, be entirely

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38/ A survey of the relevant provisions is contained in the Secretariat study, "Legal aspects of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interest of mankind" (A/AC.135/19/Add.1), paras. 34-41.

39/ Article 4, International Telecommunication Convention of 1 January 1961. Reference to activities of ITU related to submarine cables may be found in "Report to the Economic and Social Council on the activities of the International Telecommunication Union in 1968" (E/4691), chapter 6, para. 4.

ruled out if the development of sea-bed mineral production is to proceed,[40] the fact that both activities would be regulated within the framework of a single organization should in principle make it easier to find an acceptable solution.

109. The international machinery might also need to exercise powers to make recommendations or regulations for such purposes as, for instance, the lights or signals to be shown by ships engaged in work on submarine cables and pipelines; the marking of the location of cables and pipelines and the recording of the relevant information on charts; the avoidance of marine pollution in connexion with the laying of cables and pipelines; and the reporting of any damage caused to cables and pipelines by other installations erected on the sea-bed, or any damage which the operation and maintenance of cables or pipelines might cause to others. Certain of these matters are already subject to a measure of regulation by existing bodies or agreements.

(2) Reservation exclusively for peaceful uses

110. Throughout the discussions in the United Nations on the question of future arrangements with respect to the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction, emphasis has been placed on the necessity of preserving the area exclusively for peaceful uses. For many delegations, the military use of the area is incompatible with the principle, which they accept,

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40/ It is of interest that, as regards the continental shelf, article 4 of the Convention on the Continental Shelf provides:

> "Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf."

In its commentary on the pertinent draft article, the International Law Commission declared:

> "The coastal State is required to permit the laying of submarine cables on the sea-bed of its continental shelf, but in order to avoid unjustified interference with the exploitation of the natural resources of the sea-bed and subsoil, it may impose conditions concerning the route to be followed." Yearbook of the International Law Commission, 1956, vol. II, p. 299.

Thus, in the only area presently exploited and subject to multiple use of the kind under discussion, a degree of regulation has already been found necessary and introduced.

that the area should be used ... the common interests of mankind. One of the main reasons adduced for drawing up an international régime, furthermore, has been that it is urgent to avoid an arms race on the ocean floor, which would present an obstacle to the use of the sea-bed for peaceful purposes.41/

111. Certain differences of view have been expressed as to how the general desire to ensure that the area is preserved for peaceful uses may best be implemented. Proposals and suggestions on the prohibition of military activities on the sea-bed and the ocean floor and the subsoil thereof have been made and are still under consideration by the Conference of the Committee on Disarmament at Geneva. Any arrangements adopted for the sea-bed would have to take into consideration whatever agreements may be reached in these negotiations and accepted by Member States, in so far as the latter relate, either directly or indirectly, to arms control measures in the area beyond national jurisdiction.

112. The functions to be performed by possible international machinery might thus depend on the terms of any treaty adopted in relation to arms control measures in the area, resulting from the work of the CCD, as well as on the arrangements concluded as a result of the work of the Sea-Bed Committee. It is difficult to anticipate at this juncture whether the final outcome would be an international machinery whose functions and powers related both to the development of natural resources and to the reservation of the area for peaceful uses. It is possible, however, that tasks relating to observation of an arms control treaty for the area (such as procedures for registration of activities, receipt of complaints, verification and inspection) could be entrusted to, and performed by, an agreed form of international machinery.

(3) Scientific research

113. Functions relating to scientific research concerning the sea-bed might be amongst those entrusted to international machinery having jurisdiction over all peaceful uses of the international area. The existing framework within which marine scientific research is now conducted - either under national auspices or within the context of programmes of international co-operation - needs to be

41/ For further information on the possible military uses of the sea-bed and ocean floor, see the Secretariat study "The military uses of the sea-bed and the ocean floor beyond the limits of present national jurisdiction" (A/AC.135/28).

briefly indicated, as well as some of the scientific issues involved, before some of the functions which future international machinery might perform are described. The freedom to conduct scientific research is amongst the freedoms of the high seas enjoyed by all States.[42] In so far as the grant to international machinery of exclusive powers of jurisdiction over the sea-bed might be held to entail the curtailment of States' existing powers with respect to scientific research, the conclusion of a treaty would be required. The exercise by States of scientific research might be made dependent on observance of various conditions set by the international machinery (for example, prior communication of programmes and the making available of results), or might involve the international machinery in the general co-ordination of national activities relating to the scientific research of the sea-bed.[43]

42/ See, generally, the Secretariat study "Legal aspects of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of national jurisdiction, and the use of their resources in the interests of mankind" (A/AC.135/19/Add.1), paras. 19-21, 28-33.

43/ A basic approach along these lines would be in conformity with the views expressed by the Legal Sub-Committee of the Sea-Bed Committee which, in paragraphs 94 and 95 of its synthesis, summarized its conclusions with respect to the principle of freedom of scientific research in the following terms:

> "94. This principle was acceptable in general, as well as the notion of the promotion of international co-operation in the conduct of scientific research. The idea that freedom of scientific research in this area shall be assured to all without discrimination and that States shall promote international co-operation in the conduct of scientific research and that there shall be no interference with fundamental scientific research carried out with the intention of open publication appeared able to command agreement, on the understanding that it would be necessary to be able to distinguish clearly scientific research from commercial exploration. One element in this distinction was agreed to be the subsequent making available or communication of results.
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> "95. Differences still remain as to the relation between freedom of scientific research and the possible obligations regarding prior communication of programmes and subsequent communication of results, as well as differences as to whether the notions of accessibility or availability on the one hand or dissemination on the other should be employed. There is still no agreement on the inclusion of the idea that such research should not be the basis for claims for rights to exploitation. The suggestion regarding strengthening the research capabilities of the developing countries is still to be further considered" (underlining in original). See A/7622, part II.

114. Various international bodies (such as the United Nations itself, UNESCO and its IOC, IMCO, the Food and Agriculture Organization of the United Nations and the World Meteorological Organization) are now engaged, in differing degrees, in the encouragement of activities relating to scientific research of the marine environment. IOC in particular has an interest and competence in this field, and its "Comprehensive outline of the scope of the long term and expanded programme of oceanic exploration and research", prepared in response to General Assembly resolutions 2414 (XXIII) of 17 December 1968 and 2467 D (XXIII) of 21 December 1968, includes a special section entitled "Geology, geophysics and mineral resources beneath the sea",[44/] dealing with the problems of scientific research on the sea bed. In the event, therefore, that new machinery were to be established, States would have to consider the extent to which, on the one hand, the new machinery would impinge upon or supersede the activities of existing bodies and, on the other, whether scientific inquiries relating exclusively to the international area of the sea bed could in fact be kept separate from those relating to other parts of the marine environment. Assuming that no single agency were to be established, having over-all responsibility with respect to all forms of marine science, the problem of co-ordination between different bodies would need to be borne in mind.

115. A certain range of functions might be performed by the international machinery in respect of scientific research. It might, for example, seek to promote programmes of scientific research on a co-operative basis, devoted to particular aspects or to particular regions of the sea-bed. The scientific investigation of the international area of the sea-bed would appear to be a clear instance in which it will be very difficult, if not impossible, for a single country to conduct comprehensive and exhaustive inquiries on its own and where all will stand to benefit from internationally co-ordinated activities. More specifically, besides encouraging and sponsoring international investigations, the international machinery might be empowered to license or register national research activities. In the case of registration, States might be required to give notice of the site of

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44/ A/7750, part I, section 4.

installations and devices to be used, as well as to register the actual research to be conducted. The question of the publication of the results achieved would also have to be considered; States conducting research might be required to inform the machinery, within a specified period, of the results, which the machinery would then disseminate. The international machinery might also be called upon to rule, if any difficulty arose, whether particular inquiries or activities constituted scientific research or commercial exploration, as well as to define what exploration programmes fell under the concept of scientific research. The question of conflicting uses of areas of the sea-bed, or of the water column, involving scientific research activities, might also need to be considered and powers given to the international machinery in order to help resolve any difficulties which might arise in this connexion.[45/]

116. Arrangements might also be made through the international machinery for the participation of nationals of different States in common research programmes and for strengthening the research capabilities of the developing countries.[46/] The drawing up, within the framework of the organization, of comprehensive research programmes relating to the sea-bed, might assist in securing this objective.

(4) Other uses

117. Besides the functions and powers referred to above, consideration may also need to be given to functions and powers relating to other uses of the sea-bed. While it is difficult to foresee all the other possible uses of the sea-bed which technological progress might bring about, reference may be made to the use of the sea-bed for the following purposes, each of which might be accompanied by the performance of related functions and powers by international machinery:

Harvesting of sedentary species and fishing conducted by means of equipment embedded in the floor of the sea, beyond the limits of national jurisdiction;[47/]

45/ On the question of possible conflicting uses, see also below, part III, 4, C(4), paras. 133-136.

46/ On the question of educational and training programmes, see also above, part III, 4, A(5), para. 105.

47/ See article 13, Convention on Fishing and Conservation of the Living Resources of the High Seas.

Ocean Data Acquisition Systems embedded in the sea floor;[48]

Placing of storage tanks for oil, gas, radio-active wastes, chemcials, and other substances, on the sea floor; and

Exploration and recovery of sunken ships and lost objects (both from the point of view of archaeology - with regard to which UNESCO performs a variety of functions - and as regards salvage operations).

C. Functions and powers concerning standards which would apply to all peaceful uses

(1) Prevention of pollution

118. It would follow from the concept of international machinery of the type dealt with in the present portion of the study that such machinery would include amongst its concerns measures to prevent pollution, and possibly other hazards as well. (Various organizations in the United Nations system, including the United Nations itself, UNESCO and its IOC, IMCO, IAEA, FAO and WHO among others, are presently conducting activities in connexion with the prevention of marine pollution.) The steps which might be taken to prevent pollution, which present certain special features, are considered below: other hazards may more conveniently be considered under headings (4) and (5) below, relating to conflicting uses of the sea-bed and of the sea-bed and superjacent waters, and liability; heading (3) safety of life and property, may also be relevant in this regard.

119. The existing provisions of international law relating to marine pollution were briefly referred to in the Secretary-General's previous study.[49] The only major item of note which has occurred subsequently has been the conclusion (but not yet the entry into force) of two conventions under the auspices of IMCO, in November 1969, and also the adoption by the IMCO Assembly of certain amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, designed to stiffen its provisions.[50] The two conventions adopted in November 1969, the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties and the International Convention on Civil Liability for Oil Pollution Damage, regulate respectively the conditions under which a coastal

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48/ See Draft Convention on the Legal Status of ODAS, prepared by the IOC Group of Experts, document SC/IOC.EG-1/7, annex IV.

49/ A/7622, annex II; see also "Study on marine pollution which might arise from the exploration and exploitation of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction" (A/7924).

50/ IMCO Assembly resolution A 175 (VI) of 21 October 1969, and annex.

State may intervene to prevent the actual or threatened pollution of its shores following an accident involving the loss of oil from a tanker, and the system of financial liability to apply in respect of major oil spillages of this nature.

120. Although the existence of various legal instruments would, of course, have to be taken into consideration in determining what specific measures should be taken, it has been assumed that the present section is to be based on the supposition that international machinery of the type under discussion would, in principle, have responsibility for prevention of marine pollution arising out of activities conducted on the sea-bed. Looking at the matter from this over-all standpoint, a series of issues would need to be considered.

121. First, a definition, or a means of arriving at a definition, of pollution would have to be agreed upon. The prohibition of pollution, if defined in absolute terms as meaning the prohibition of any change whatsoever in the marine environment, would mean that the exploration and exploitation of resources (certainly of mineral resources) could not be conducted. What has to be determined therefore, is the threshold or the "base line" up to which pollution (or change) could be inflicted without damage, and beyond which pollution would need to be prohibited. Determination of this question is, scientifically speaking, a difficult matter and might well require, to be complete, an ocean monitoring or ocean surveillance system, comprising all seas (both national areas and beyond) and all forms of pollution (i.e., pollution caused by environmental conditions, such as the action of wind and rain carrying pollutants from the land, and pollution caused by immediate human intervention for example, that which might be caused by ocean mining). An ocean surveillance system of such a scale would be a considerable undertaking and, if established, would constitute a large portion of the machinery's work. It may be noted here that IOC has proposed that a system which might perform such functions be established,[51] and that the ODAS proposals which IOC has also sponsored might also contribute to a world-wide scientific system, on a co-operative basis, of this nature.

51/ "Long-term and expanded programme of oceanographic research" (A/7750), annex, part I, 3.

122. Over and above such a system, the machinery might also wish to concern itself with specific regulations relating to pollution dangers arising out of the exploration and exploitation of sea-bed resources. Before the possible contents of such regulations are considered, however, it should be pointed out that the role of the scientific surveillance system just mentioned would not be purely secondary. As has frequently been remarked, a great deal remains to be known about the sea, its operations and the effects of human intervention (as in the case particularly of the exploitation of mineral resources). Aside from the possibility of an accident on a major scale, comparable to the blow-out which occurred in the Santa Barbara channel in January 1969, and which, it may be presumed, would be evident more or less immediately, the danger which also exists is of a gradual deterioration in the marine environment, caused by a multiplicity of acts over a period of time. Situations of that kind are much harder to arrest or to regulate and it is more difficult to make suitable arrangements as regards compensation to other users of the seas whose interests may be affected.

123. The substantive regulations to be adopted with respect to prevention of pollution would need to be based, at least initially, on national precedents; the actual operational procedures with respect to the extraction of minerals (the main resource whose capture entails a risk of pollution) would not themselves differ, according to where the operation was proceeding, and international regulations would need to reflect the best standards of oil industry practice.[52/] What this would mean in specific terms would have to be determined by experts competent in the field; the national legislation in this field, frequently supplemented by detailed regulations, is complex and subject to regular review.

124. This fact of itself would give reason to consider whether, in practice, the international machinery, even of the type envisaged, would wish to undertake the production of a comparable body of law, or whether it would eventually be decided that, within guidelines laid down internationally, the actual regulations to be applied would be those promulgated nationally; or, to posit a slight variation, whether the international machinery would concern itself with the adoption of

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52/ Note should be taken here of the study "Government measures pertaining to the development of the mineral resources of the continental shelf" (A/AC.138/21), para. 57.

international standards, which individual States would then incorporate into national law and enforce. This issue is a particular application of that dealt with in section 5 below, "Enforcement of international regulations or decisions of the organization", and is not further considered here.

125. A major question, not so far examined, except by reference to the best standards of oil industry practice, is that of the stringency of the regulations to be adopted (irrespective of their final formal source). This question adjoins that of liability, which is referred to below, and, more fundamentally, the possibility of conflict of interests between different users of the sea. States with a strong and immediate economic interest in fishing in nearby areas might wish to be granted special rights with respect to those areas (for example, a right to allow or disallow mining activities there) and, in general, might wish to draft regulations designed to protect fisheries (including maintenance of the marine conditions whereby particular fish are nourished) as far as possible. As against this, other States might argue that imposition of regulations which were too stringent would discourage operators, in a context in which, as some have suggested, the problem will be to encourage operators to undertake ventures in the first place. This possible conflict of interest is noted here because of its direct importance to the subject under discussion; its resolution would be a matter of detailed negotiation at a suitable stage, in which appropriate regard to the interests of fishing States within the over-all regulatory process might provide an alternative to recourse by such States to unilateral action. The exact and final solution which may be adopted cannot, however, be forecast at this stage.

126. In summary therefore, the problem of the prevention of pollution, with respect to international machinery of the type envisaged, would involve consideration of the following issues: (1) accurate determination of the effects of the particular human activities involved on the marine environment, which would require, to be complete, the operation of a scientific surveillance system, covering all forms of pollution and all areas of the seas; (2) the adoption of suitable regulations, stating what operational procedures were to be followed to prevent pollution; (3) consideration, in the preparation of such regulations, of the interests of States (such as fishing or coastal States) which may be adversely affected by the activities concerned, and/or a right of unilateral determination, by fishing or coastal States, to decide whether such activities may be carried out, at least in

areas over which they have a special interest; (4) adoption of provisions to cover the possibility of immediate accidents, as opposed to a gradual deterioration of marine conditions over a period of time.

(2) Protection of living resources

127. There are various provisions of the Geneva conventions relating to the protection and conservation of living marine resources,[53] supplemented by a number of agreements dealing with the capture of particular species. The functions envisaged here for the prospective international machinery would not be to supersede these provisions and agreements, but to complement and support them by ensuring that activities conducted on the sea-bed did not result in undue damage to living organisms. Although such functions would coincide in large part with those relating to pollution, considered above, (paras. 118-126) and the regulation of conflicting uses of the seas, dealt with below (paras. 133-136), the topics dealt with under those headings do not exactly coincide with that under discussion. This fact, and the importance of the subject,[54] require that protection of living resources be made a major consideration in regulating the conditions under which sea bed activities are to be conducted.

128. The exact determination of those conditions would be a matter requiring technical and scientific study and an appropriate balancing of interests. The marine food chain is complex and the extent to which the exploration and exploitation of mineral sea-bed resources might affect the productivity of marine organisms living in the water column,[55] is unknown, and indeed will necessarily remain unknown until such exploration and exploitation has been expanded and its effects noted. It would, however, be feasible for the machinery to seek to learn

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53/ Articles 2, 24 and 25 of the Convention on the High Seas; articles 1-8 of the Convention on Fishing and Conservation of the Living Resources of the High Seas; and articles 3 and 5, paragraphs 1 and 7, of the Convention on the Continental Shelf.

54/ The growth in fishing in recent years may be emphasized, the fishing industry of developing countries showing a particularly large increase. The total world fishing catch was 33 million metric tons in 1958 and 64 million metric tons in 1968. 1968 Yearbook of Fishery Statistics (Commodities), FAO, 1970.

55/ This would appear to be the main issue. Special arrangements might be made by the machinery as regards the protection of living resources which adhere to the sea floor itself.

what effect mineral exploitation in areas under national jurisdiction has had on fish stocks in the superjacent waters, in order to try to forecast what the effects of mineral exploitation in the international area are likely to be, and, generally, to supervise the over-all problem in conjunction with other organizations (such as the Food and Agriculture Organization of the United Nations and regional fishery bodies) concerned with the actual harvesting of living resources.

(3) Safety of life and property

129. The functions which international machinery might perform in this connexion would need to be devised with a view to ensuring the protection both of those engaged in sea-bed activities and of those concerned with other maritime occupations, such as fishing and navigation, and of the property used.

130. As regards the safety of persons, the principle traditionally observed at sea of giving priority to distress signals would presumably be applied following an accident involving persons working on the sea-bed so that ships in the area would assist in search and rescue operations if called upon to do so. Safety would chiefly be secured, however, by various technical means concerning the specifications for the construction of installations, inspection of equipment, the provision of life-saving and fire-fighting appliances, the adequate training of personnel and the observance of proper working practices. The extent to which the international machinery would be able to determine the standards to be observed in these spheres would be dependent on the power granted to it, but there would appear to be considerable scope for the performance of a variety of functions by the machinery in this connexion.

131. It may be noted that several organizations have already concerned themselves with some of the problems concerned. The ILO Petroleum Committee has examined the safety and health of personnel working on off-shore drilling and production platforms.[56/] In addition, the IMCO Maritime Safety Committee, acting in response to observations of the Economic and Technical Sub-Committee of the Sea-Bed

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56/ See General Report: Recent Events and Developments in the Petroleum Industry, reports I and II, Petroleum Committee (International Labour Organisation), seventh session, 1966.

Committee,[57] has listed certain measures for improving the safety of personnel working on off-shore installations;[58] these proposals formed the basis for two resolutions[59] adopted by the IMCO Assembly in 1969 relating to the dissemination of information concerning the location and manning of drilling rigs and production platforms, and the adoption of safety radio-communication requirements. There is, thus, already a considerable body of material which would need to be examined by the prospective machinery before appropriate recommendations and regulations were adopted, designed to ensure the safety of persons engaged in sea-bed operations.

132. As regards the safety of installations and equipment used for sea-bed activities (whether for purposes of mineral extraction, scientific inquiries or for telecommunications), as well as the safety of other users of the marine environment, the principal need in the present connexion would be to ensure that appropriate notice was given to the international machinery of the location of sea-bed installations or equipment, so that other users of the marine environment might receive due warning.[60] The different applications of such a notice system (relaying of information to vessels at sea; incorporation of information in charts; establishment of signals on installations; possible devising of sea lanes through congested areas) would require to be worked out in detail in collaboration with existing organizations (such as IMCO) and others, including national authorities, also concerned with such matters.

(4) Conflicting uses of the sea-bed and of the sea-bed and superjacent waters

133. The fact that the sea and sea-bed may be used increasingly for a variety of purposes increases the possibility that conflicts may arise between different uses. The question thus arises of the functions which international machinery having jurisdiction over peaceful uses in the international zone might perform.

57/ A/7622, part Three, para. 97.

58/ "Note by the Inter-Governmental Maritime Consultative Organization" (A/AC.138/15).

59/ Resolutions A.180 (VI) and A.182 (VI).

60/ For the obligations in this respect of the coastal State in regard to its continental shelf, see article 5 of the Convention on the Continental Shelf.

134. Should a single institution be given jurisdiction over the sea-bed, that would itself constitute a means of preventing conflicts from arising, for example, between operators competing for the same mineral-rich area. However, the issue under discussion does not concern conflicts between those engaged in the same activity but between those engaged in different activities. From the point of view of international machinery of the kind envisaged, a distinction may be drawn between conflicts between different sea-bed activities over which the machinery would have direct powers and jurisdiction, and conflicts between sea-bed activities and water column activities.

135. The different sea-bed activities previously distinguished in this paper are: mineral exploration and exploitation; operation of submarine cables and pipelines; reservation of the area for peaceful purposes; scientific research; and certain other uses (such as the harvesting of sedentary species or use of the sea-bed as a storage area for wastes). The extent to which conflicts would necessarily occur between these uses is extremely hard to determine. The existence of the machinery and the requirment for its prior consent (or at least notification) before these operations could be conducted, would enable the machinery to help reduce the possibility of conflicts from arising. As regards mineral exploitation, the operation of submarine cables and pipelines, and the conduct of scientific research, the three main categories concerned, the machinery would need to devise means so that mutual interference was kept to a minimum. If the issue involved had not reached the stage of an actual dispute between States (for which special ad hoc machinery might be created), the machinery would endeavour, when the proposals were still at a planning stage, to ensure, for example, that a mineral operator did not disturb submarine cables, or that scientific research could be conducted despite the existence of mineral exploration activities in the same neighbourhood. The "planning" function of the machinery, combined with its regulatory powers, would thus be exercised so as to prevent conflicts from arising between different users.

136. This accommodation of different uses, on a basis of discussion and reasonable regard for the interests of others, might also form the main approach with respect to potential conflicts involving sea-bed activities and those conducted in the water column or on the surface (most notably, navigation and fishing), with the

exception that the international machinery would not have jurisdiction over the latter. Apart from the question of pollution, which has been previously considered, it would be necessary that, in framing regulations and in exercising powers in relation to sea-bed activities, the machinery should take due account of activities taking place in superjacent waters and make provision accordingly. States which considered themselves especially affected might seek to make special arrangements or application for a modification of sea-bed proposals which might interfere with their fishing or navigation interests.[61] More generally, the problem would be to ensure that, in the formulation of the authorizations given and the regulations adopted, the interests of different users of the marine environment were adequately reflected, a task which would be made easier by the fact that most States members of the machinery would have interests both as users of the water column and water surface, and as potential sea-bed operators.

(5) Liability

137. In the event that international machinery were to be established having jurisdiction over sea-bed activities, it might be deemed, in accordance with the basic conception of such machinery, to be entitled to exercise functions and authority in order to regulate questions of liability. Such questions might relate, on the one hand, to liability for damage as between different sea-bed operators and, on the other, to liability for damage as between sea-bed and non-sea-bed operators, with the machinery playing a somewhat different role in each case. The novelty and difficulty of the situation makes it impossible to give an exhaustive answer to all the issues which might be raised, or their eventual outcome. The present section therefore attempts no more than to indicate in general terms some of the main topics or questions which may need to be considered and their possible solutions so far as international machinery is concerned.

138. As regards sea-bed operators - essentially for present purposes those engaged in mineral exploitation or in the operation of submarine cables and pipelines - the machinery might be empowered to determine what compensation should

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61/ On this issue see also above, section (1) "Prevention of pollution", paras. 118-126.

be paid or what other measures taken in the event that one operator caused or received damage as a result of the activities of another. The particular means which the machinery could use for this purpose might vary considerably, from provision of disputes settlement procedures as between individual operators, to direct adjudication and the imposition of penalties by the machinery itself. Several speakers in the Sea-Bed Committee have suggested that, having regard to the possibility of extensive damage being caused by mineral exploitation activities, provision might be made for a system of financial guarantees whereby mineral operators were required to show proof, before beginning their activities, that they had the means to meet claims which might be made against them. The establishment of a guarantee system on these lines has usually been coupled with the application of the principle of strict liability (as opposed to proof of negligence by the complainant) and the establishment of a ceiling figure with respect to the maximum amount payable for any one accident. It is not possible at the present juncture to say in any precise terms how a parallel system might operate with respect to sea-bed operations (for example, as regards the maximum figure of liability), although undoubtedly it would be feasible to develop such an arrangement.

139. If brought into operation, a system along these lines (basically of financial guarantees and agreed principles of liability) would also assist in regulation of possible disputes concerning damage which mineral operators might inflict on non-sea-bed users (such as fishing and navigation interests). Here again it is difficult, if not impossible, to spell out the precise mechanism which might be used, but, as indicated in the section above dealing with pollution, (see paras. 118-126), individual States who considered that their interests with respect to uses of the water column had been affected by sea-bed activities (such as States whose fishing interests were adversely affected by pollution caused by mineral exploitation) might seek to curtail the offending activity or possibly to submit a claim to the international machinery for compensation. There are, however, many aspects of the problem. First, States with fishing and other water-column interests might have an opportunity, along with other States, to make their views known before the mineral activity was undertaken. Secondly, it would in any case be an obligation of the machinery, as part of its

functions with respect to the regulation of conflicting uses of the sea, to ensure that, so far as possible, different activities could be conducted without serious interference with one another, and to formulate regulations with this end in view. Thirdly, the individual State whose fishing interests were affected might have considerable difficulty in determining which activities - for example, mineral exploitation (in areas which might be under either national or international jurisdiction) or the disposal of wastes from a variety of sources - had contributed, and in what degree, to a decline in fish productivity; the knowledge necessary for such a determination might rest with the machinery and with various other international bodies, such as those engaged in monitoring the condition of the oceans.

140. Separate from the above, which would concern essentially questions of liability as between individual operators and their respective States, would be the possibility of gradual deterioration of the marine environment as a whole - a matter referred to in the section dealing with pollution above (paragraph 121) and of the incurring of liability by the international machinery itself. Damage to the marine environment as a whole, possibly as the result of a series of different activities spread over the years, could only be guarded against by a system of regular scientific observations whereby warning was given of impending changes and appropriate action taken; the matters involved would transcend the activities of a machinery dealing solely with sea-bed activities in the international zone, although such machinery could no doubt contribute to regulation of the problems posed. As regards the question of the incurring by the international machinery of responsibility for damages, this would arise most obviously if the international machinery were itself to conduct operations; in such circumstances, arrangements would have to be made whereby the machinery could be held liable for the consequences of its actions. The responsibility of the organization might, however, be invoked in other ways also (see above, paragraph 93). Disputes might arise concerning, for example, the application of regulations set by the machinery in the course of which it might be said that the regulations were inadequate, or allegations made that the exercise of the organization's executive power had been improper. Disputes of this nature, however, would appear to concern the powers of the organization itself and their exercise, rather than liability as this has mostly been envisaged in the course of discussions, namely responsibility for the direct infliction of economic harm.

5. ENFORCEMENT OF INTERNATIONAL REGULATIONS OR DECISIONS OF THE INTERNATIONAL MACHINERY

141. If international machinery were to be established with full powers to regulate, supervise, co-ordinate and control the exploration and exploitation of the natural resources or other peaceful uses of the sea-bed, two different situations may be envisaged as regards the enforcement of regulations and decisions adopted by the machinery:

(1) Enforcement with respect to States not parties to the treaty establishing the machinery; and

(2) Enforcement as regards States parties to the treaty.

142. As is clear from the Secretary-General's previous report,[62] it would hardly be possible from a legal standpoint to enforce decisions of the international machinery vis-à-vis third States. Even if the concept of the establishment of an "objective régime" were generally accepted, there would be practical difficulties as regards those States which did not agree to the applicability of the concept. The possibility of the use of force with respect to such States should be excluded, unless the particular violation of the machinery's decision might be deemed a threat to the peace, breach of the peace or act of aggression, when the relevant provisions of the Charter would apply. In order, therefore, to ensure fully effective functioning of international machinery of the type in question, it would be highly important to ensure universal participation in the régime to be established.

143. As regards enforcement vis-à-vis States parties to the régime, more particular issues would be raised. Before considering these, reference may be made to the prior question, mentioned briefly in part III 4 C (1) above in connexion with the prevention of pollution, of the extent to which the regulations adopted would be exclusively international and to what extent they would be national. As various speakers have pointed out in the course of dicusssions in the Sea-Bed Committee, it is possible to envisage a range of alternatives combining elements of both sources: a treaty might lay down general objectives, specified in more detail in regulations issued by the agency, but even in this instance it is unlikely that the agency would wish to exercise jurisdiction over every activity - for example, with

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62/ A/7622, annex II, paras. 181-194.

respect to criminal acts; alternatively under a "double concession" type system, each State might be responsible for the adoption of suitable regulations and their enforcement, within conditions laid down by the authority. Under such a system, conflicts might well arise between adjoining States, and the possiblity of international supervision of national enforcement might be contemplated.

144. The range of variants is so great that it is scarcely possible to give an exhaustive account of the methods of enforcement which may be finally adopted. On the assumption, however, that the international authority is a main, if not in every respect the sole, source of regulations and decisions affecting the international area, there would be a number of means of enforcement which it could use. Besides a system of international inspection of activities, States or operators found acting in disregard of regulations might have any licence given suspended or revoked, or might possibly be fined, as determined by the organization. States committing whatever were regarded as serious violations might lose their voting rights within the organization. In the event that the organization had major functions with respect to non-armament measures, the consequences of refusal to accept regulations or decisions laid down by the international agency might have even more grave consequences and involve questions relating to the application of provisions of the United Nations Charter.

145. As a corollary of the grant of extensive regulatory and decision-making power to the organization, provision would have to be made for the settlement of disputes relating to any regulations or decisions adopted, or their application. Such disputes might take broadly two forms, either a dispute as to whether a regulation or decision was correctly taken by the organization, as being within its competence, or a dispute in which one State complained to the organization that another was not acting in compliance with a particular regulation or decision. Arrangements would have to be made in either case for a suitable system of review and examination of such disputes.[63/]

63/ Reference may also be made in this connexion to the Secretary-General's previous study, see A/7622, paras. 79-80.

ANNEX IV

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 NATIONAL JURISDICTION

Preliminary note by the Secretariat[1/]

1. The present note has been prepared in accordance with a decision taken by the Economic and Technical Sub-Committee of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, contained in paragraph 10 of its interim report (A/AC.138/SC.2/L.6), which reads: "The Sub-Committee has requested the Secretary-General to prepare for the August session a paper on the question of possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from the exploitation of the resources of this area, though some representatives expressed the most serious doubts about the timeliness and appropriateness of such a paper for the implementation by the Sub-Committee of its mandate."[2/]

2. During the discussion of this request some comments were made about the difficulty of preparing such a paper, particularly when most of the relevant assumptions on which such a paper should be based had not yet been agreed upon, and because the extent of exploitation activities which might take place in the area beyond the limits of national jurisdiction would be difficult to predict. Even more difficult to calculate would be the size of the proceeds to be derived from them.

1/ Originally issued as document A/AC.138/24.

2/ At its 26th meeting, held on 24 March 1970, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor took note of the interim report of its Economic and Technical Sub-Committee.

3. It was believed, however, that such a paper might be useful in providing a basis for further discussion even with these unavoidable limitations.

4. General Assembly resolutions 2340 (XXII), 2467 (XXIII) and 2584 (XXIV) clearly stated that the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction should be exploited for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries.

5. The benefits to be derived from sea-bed resources are contingent, of course, on progress in mineral exploitation, and at this stage its rate of advance is difficult to predict. Nevertheless, several kinds of benefits could be anticipated from the exploitation of sea-bed resources, ranging from the expansion of the world's mineral resource base and the benefits that accompany the production and use of minerals to the development of a source of income for the international community.

6. Over the long term, the most important of these benefits is likely to be the expansion of the world resource base of several minerals, some of which may otherwise be in short supply in a few decades. Minerals, including mineral fuels, are the physical basis of the machines, chemicals, fertilizers, and structural materials that enable man to raise his living standards in both developed and developing countries. Land sources may not be able to meet world demands for some minerals in a few decades, but if the advance of science and technology enables sea-bed resources to be exploited economically, the availability of several key minerals would be assured far into the distant future. It should be noted that, while developed countries are by far the most important consumers of minerals at present, the developing countries are already increasing their consumption of minerals and fuels. By the time sea-bed production could become technically and economically feasible on a wide scale, all of mankind should be able to share significantly in the benefits that come from the use of sea-bed minerals.

7. Exploitation of the mineral resources of the sea-bed may also have a favourable effect on the stability of raw material markets by diversifying the sources of supply and, in some instances, easing the excessive reliance of consumers on a limited number of producers. At the same time, if exploitation takes place at a rate exceeding that at which sea-bed minerals can be absorbed into the world market, internationally agreed measures may be necessary to safeguard the interests of those developing countries which depend heavily on mineral production in case this new source of supply jeopardizes their markets or the price level for their exports.3/

8. Also among the important benefits to be derived from sea-bed resources exploitation could be the multiplier effects surrounding the land-based supply, processing and refining industries that might develop as a consequence of sea-bed activities. In addition to these economic effects, some benefits from technological spillover may be expected as tools and methods developed for sea-bed mineral exploration and exploitation find application in other fields. There are also, of course, important benefits that come from the spread of new skills and knowledge.

9. These benefits could come not only to those countries that undertake sea-bed exploration and exploitation but also to those that utilize the minerals produced, those that provide equipment and supplies for marine mining and those that provide the sites for related land-based industries. To widen the direct participation of developing countries, provision will need to be made for training nationals from all interested countries in the different phases of marine mineral resources development. Such training and involvement will need to encompass all activities from pure scientific research to the exploration, evaluation, exploitation and marketing of minerals obtained from the sea-bed and ocean floor.4/ Other forms of technical co-operation may also be needed to enable developing countries to acquire the capability to participate in sea-bed exploration and exploitation.

3/ "Economic implications of the exploitation of mineral resources on and underlying the sea-bed and ocean floor and its subsoil with particular reference to world trade and prices" (A/AC.135/14).

4/ See "Economic considerations conducive to promoting the development of the resources of the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction in the interests of mankind" (A/AC.138/6).

10. The sharing of whatever financial proceeds are derived from the exploitation of mineral resources of the sea-bed could take many forms according to the nature of the international régime to be established and the role of an international machinery. At this stage, without prejudging any decision which may be taken on the question of régime or machinery, it is only possible to put forward some very general ideas.

11. For the sake of argument, assuming that under any type of international régime and machinery to be established for this purpose, fees would have to be paid for exploration rights, and authorized operators would have to pay royalties or taxes or other levies on the production obtained from areas beyond national jurisdiction, it would appear reasonable to suppose that such moneys would be collected by an international body. Among the numerous problems regarding the collection of taxes, fees and other levies, the question of currencies will have to be considered so as to ensure that the funds collected can be used as widely as possible without excluding countries or operators which may not possess convertible currencies in sufficient quantities from participation in deep sea exploitation.

12. From the funds thus accumulated one may consider an allocation to cover the expenses of the international machinery and perhaps some additional amounts to cover damages to the environment or to other legitimate interests caused by economic activities on the sea-bed - this of course to the extent that such liabilities are not fully or sufficiently met by the operator. The allocation of funds for other purposes could be envisaged in many different ways.

13. It is worth noting first, however, that the volume of these funds will, for practical reasons, exert an important influence on the manner in which they might be administered, allocated and utilized. Therefore, unless the volume of sea-bed mineral production reaches proportions considerably higher than now anticipated, it would hardly appear practical to attempt to distribute the residual proceeds accruing to the international community directly to the countries of the world, or even to the developing countries alone, according to population size, per capita income, or similar criteria of need.

14. Other methods of administering and allocating surplus financial proceeds from sea-bed explorations could also be considered:

(a) They could be paid into the general budget of the United Nations Organization or its specialized agencies for purposes agreed upon by the Member States;

(b) They could be used to strengthen the United Nations Development Programme and either utilized for the achievement of its general purposes or allocated for certain specific aims, such as global or regional projects or for the promotion of ocean-connected activities of developing countries. In this connexion, considering the speed in which reliable information can be collected on economically attractive mineral deposits in the ocean, it may be worth while to mention that operators will find it very difficult to undertake the first stages of exploration in deep sea until detailed mapping and mineral exploration has indicated the existence of mineral deposits. It may therefore be necessary to consider whether the United Nations as such may have to play a role at least at the outset in outlining mineral deposits;

(c) A special international fund could be created, either as part of the international machinery or independently from it, to finance such activities as:

(i) Large-scale exploration of natural resources in developing countries;

(ii) Maintaining price stability on mineral resources produced from the sea-bed if their production proves to have a negative effect on the exports of certain developing countries;

(iii) Transferring ocean technology to developing countries and financing extensive training of personnel of these countries;

(iv) Supporting various international activities which contribute to the development of scientific knowledge of the oceans and their resources and to the prevention of pollution and other damage to the ocean environment and its resources;

(v) Supporting activities essentially unrelated to the development of ocean resources, such as world-wide campaigns for specific goals in education, food, population control, preservation and improvement of the environment.

15. Any methods and criteria to be adopted for the use of sea-bed revenues should be devised on the basis of the amounts expected and should allow some flexibility in their use over time to meet changing needs and new developments. Definite arrangements for the sharing of proceeds may have to wait until the various factors determining the extent of economic development of mineral resources of the sea-bed and ocean floor (the amount of resources, their location, the limits of national jurisdiction, the technological factors, their economic potential, the rentability of their exploitation) can be appraised with more precision.

ANNEX V

DRAFT UNITED NATIONS CONVENTION ON THE INTERNATIONAL SEA-BED AREA

Working paper submitted by the United States of America[1/]

The attached draft of a United Nations Convention on the International Sea-bed Area is submitted by the United States Government as a working paper for discussion purposes.

The draft Convention and its appendices raise a number of questions with respect to which further detailed study is clearly necessary and do not necessarily represent the definitive views of the United States Government. The appendices in particular are included solely by way of example.

1/ Originally issued as document A/AC.138/25.

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UNITED NATIONS CONVENTION ON THE
INTERNATIONAL SEABED AREA

CHAPTER I

BASIC PRINCIPLES

ARTICLE 1

1. The International Seabed Area shall be the common heritage of all mankind.

2. The International Seabed Area shall comprise all areas of the seabed and subsoil of the high seas* seaward of the 200 meter isobath adjacent to the coast of continents and islands.

3. Each Contracting Party shall permanently delineate the precise boundary of the International Seabed Area off its coast by straight lines not exceeding 60 nautical miles in length, following the general direction of the limit specified in paragraph 2. Such lines shall connect fixed points at the limit specified in paragraph 2, defined permanently by co-ordinates of latitude and longitude. Areas between or landward of such points may be deeper than 200 meters. Where a trench or trough deeper than 200 meters transects an area less than 200 meters in depth, a straight boundary line more than 60 nautical miles in length, but not exceeding the lesser of one fourth of the length of that part of trench or trough transecting the area 200 meters in depth or 120 nautical miles, may be drawn across the trench or trough.

4. Each Contracting Party shall submit the description of the boundary to the International Seabed Boundary Review Commission within five years of the entry into force of this Convention for such Contracting Party. Boundaries not accepted by the Commission and not resolved by negotiation between the Commission and the Contracting Party within one year shall be submitted by the Commission to the Tribunal in accordance with Section E of Chapter IV.

5. Nothing in this Article shall affect any agreement or prejudice the position of any Contracting Party with respect to the delimitation of boundaries between opposite or adjacent States in seabed areas landward of the International Seabed Area, or with respect to any delimitation pursuant to Article 30.

ARTICLE 2

1. No State may claim or exercise sovereignty or sovereign rights over any part of the International Seabed Area or its resources. Each Contracting Party agrees not to recognize any such claim or exercise of sovereignty or sovereign rights.

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*NOTE: The United States has simultaneously proposed an international Convention which would, inter alia, fix the boundary between the territorial sea and the high seas at a maximum distance of 12 nautical miles from the coast.

2. No State has, nor may it acquire, any right, title, or interest in the International Seabed Area or its resources except as provided in this Convention.

(NOTE: The preceding Article is not intended to imply that States do not currently have rights under, or consistent with, the 1958 Geneva Convention on the Continental Shelf.)

ARTICLE 3

The International Seabed Area shall be open to use by all States, without discrimination, except as otherwise provided in this Convention.

ARTICLE 4

The International Seabed Area shall be reserved exclusively for peaceful purposes.

ARTICLE 5

1. The International Seabed Resource Authority shall use revenues it derives from the exploration and exploitation of the mineral resources of the International Seabed Area for the benefit of all mankind, particularly to promote the economic advancement of developing States Parties to this Convention, irrespective of their geographic location. Payments to the Authority shall be established at levels designed to ensure that they make a continuing and substantial contribution to such economic advancement, bearing in mind the need to encourage investment in exploration and exploitation and to foster efficient development of mineral resources.

2. A portion of these revenues shall be used, through or in co-operation with other international or regional organizations, to promote efficient, safe and economic exploitation of mineral resources of the seabed; to promote research on means to protect the marine environment; to advance other international efforts designed to promote safe and efficient use of the marine ennvironment; to promote development of knowledge of the International Seabed Area; and to provide technical assistance to Contracting Parties or their nationals for these purposes, without discrimination.

ARTICLE 6

Neither this Convention nor any rights granted or exercized pursuant thereto shall affect the legal status of the superjacent waters as high seas, or that of the air space above those waters.

ARTICLE 7

All activities in the marine environment shall be conducted with reasonable regard for exploration and exploitation of the natural resources of the International Seabed Area.

ARTICLE 8

Exploration and exploitation of the natural resources of the International Seabed Area must not result in any unjustifiable interference with other activities in the marine environment.

ARTICLE 9

All activities in the International Seabed Area shall be conducted with strict and adequate safeguards for the protection of human life and safety and of the marine environment.

ARTICLE 10

All exploration and exploitation activities in the International Seabed Area shall be conducted by a Contracting Party or group of Contracting Parties or natural or juridical persons under its or their authority or sponsorship.

ARTICLE 11

1. Each Contracting Party shall take appropriate measures to ensure that those conducting activities under its authority or sponsorship comply with this Convention.

2. Each Contracting Party shall make it an offence for those conducting activities under its authority or sponsorship in the International Seabed Area to violate the provisions of this Convention. Such offences shall be punishable in accordance with administrative or judicial procedures established by the Authorizing or Sponsoring Party.

3. Each Contracting Party shall be responsible for maintaining public order on manned installations and equipment operated by those authorized or sponsored by it.

4. Each Contracting Party shall be responsible for damages caused by activities which it authorizes or sponsors to any other Contracting Party or its nationals.

5. A group of States acting together, pursuant to agreement among them or through an international organization, shall be jointly and severally responsible under this Convention.

ARTICLE 12

All disputes arising out of the interpretation or application of this Convention shall be settled in accordance with provisions of Section E of Chapter IV.

CHAPTER II

GENERAL RULES

A. Mineral Resources

ARTICLE 13

1. All exploration and exploitation of the mineral deposits of the International Seabed Area shall be licensed by the International Seabed Resource Authority or the appropriate Trustee Party. All licenses shall be subject to the provisions of this Convention.

2. Detailed rules to implement this Chapter are contained in Appendices A, B and C.

ARTICLE 14

1. There shall be fees for licenses for mineral exploration and exploitation.

2. The fees referred to in paragraph 1 shall be reasonable and be designed to defray the administrative expenses of the International Seabed Resource Authority and of the Contracting Parties in discharging their responsibilities in the International Seabed Area.

ARTICLE 15

1. An exploitation license shall specify the minerals or categories of minerals and the precise area to which it applies. The categories established shall be those which will best promote simultaneous and efficient exploitation of different minerals.

2. Two or more licensees to whom licenses have been issued for different materials in the same or overlapping areas shall not unjustifiably interfere with each other's activities.

ARTICLE 16

The size of the area to which an exploitation license shall apply and the duration of the license shall not exceed the limits provided for in this Convention.

ARTICLE 17

Licensees must meet work requirements specified in this Convention as a condition of retaining an exploitation license prior to and after commercial production is achieved.

ARTICLE 18

Licensees shall submit work plans and production plans, as well as reports and technical data acquired under an exploitation license, to the Trustee Party or the Sponsoring Party, as appropriate, and, to the extent specified by this Convention, to the International Seabed Resource Authority.

ARTICLE 19

1. Each Contracting Party shall be responsible for inspecting, at regular intervals, the activities of licensees authorized or sponsored by it. Inspection reports shall be submitted to the International Seabed Resource Authority.

2. The International Seabed Resource Authority, on its own initiative or at the request of any interested Contracting Party, may inspect any licensed activity in co-operation with the Trustee Party or Sponsoring Party, as appropriate, in order to ascertain that the licensed operation is being conducted in accordance with this Convention. In the event the International Seabed Resource Authority believes that a violation of this Convention has occurred, it shall inform the Trustee Party or Sponsoring Party, as appropriate, and request that suitable action be taken. If, after a reasonable period of time, the alleged violation continues, the International Seabed Resource Authority may bring the matter before the Tribunal in accordance with Section E of Chapter IV.

ARTICLE 20

1. Licenses issued pursuant to this Convention may be revoked only for cause in accordance with the provisions of this Convention.

2. Expropriation of investments made, or unjustifiable interference with operations conducted, pursuant to a license is prohibited.

ARTICLE 21

1. Due notice must be given, by Notices to Mariners or other recognized means of notification, of the construction or deployment of any installations or devices for the exploration or exploitation of mineral deposits, and permanent means for giving warning of their presence must be maintained. Any installations or devices extending into the superjacent waters which are abandoned or disused must be entirely removed.

2. Such installations and devices shall not possess the status of islands and shall have no territorial sea of their own.

3. Installations or devices may not be established where interference with the use of recognized sea lanes or airways is likely to occur.

B. Living Resources of the Seabed

ARTICLE 22

Subject to the provisions of Chapter III, each Contracting Party may explore and exploit the seabed living resources of the International Seabed Area in accordance with such conservation measures as are necessary to protect the living resources of the International Seabed Area and to maximize their growth and utilization.

C. Protection of the Marine Environment, Life and Property

ARTICLE 23

1. In the International Seabed Area, the International Seabed Resource Authority shall prescribe Rules and Recommended Practices, in accordance with Chapter V of this Convention, to ensure:

a. The protection of the marine environment against pollution arising from exploration and exploitation activities such as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations and pipelines and other devices;

b. The prevention of injury to persons, property and marine resources arising from the aforementioned activities;

c. The prevention of any unjustifiable interference with other activities in the marine environment arising from the aforementioned activities.

2. Deep drilling in the International Seabed Area shall be undertaken only in accordance with the provisions of this Convention.

D. Scientific Research

ARTICLE 24

1. Each Contracting Party agrees to encourage, and to obviate interference with, scientific research.

2. The Contracting Parties shall promote international co-operation in scientific research concerning the International Seabed Area:

a. By participating in international programmes and by encouraging co-operation in scientific research by personnel of different countries;

b. Through effective publication of research programmes and the results of research through international channels;

c. By co-operation in measures to strengthen the research capabilities of developing countries, including the participation of their nationals in research programme:

E. International Marine Parks and Preserves

ARTICLE 25

In consultation with the appropriate international organizations or agencies, the International Seabed Resource Authority may designate as international marine parks and preserves specific portions of the International Seabed Area that have unusual educational, scientific or recreational value. The establishment of such a park or preserve in the International Trusteeship Area shall require the approval of the appropriate Trustee Party.

CHAPTER III

THE INTERNATIONAL TRUSTEESHIP

ARTICLE 26

1. The International Trusteeship Area is that part of the International Seabed Area comprising the continental or island margin between the boundary described in Article 1 and a line, beyond the base of the continental slope, or beyond the base of the slope of an island situated beyond the continental slope, where the downward inclination of the surface of the seabed declines to a gradient of 1:_____.*

2. Each Trustee Party shall permanently delineate the precise seaward boundary of the International Trusteeship Area off its coast by straight lines not exceeding 60 nautical miles in length, following the general direction of the limits specified in paragraph 1. Such lines shall connect fixed points at the limit specified in paragraph 1, defined permanently by coordinates of latitude and longitude. Areas between or landward of such points may have a surface gradient of less than 1:____.* Where an elongate basin or plain having a surface gradient of less than 1:____*transects an area having a gradient of more than 1:____*, a straight boundary line more than 60 nautical miles in length, but not exceeding the lesser of one-fourth of the length of that part of the basin transecting the area having a gradient of more than 1:____* or 120 nautical miles, may be drawn across the basin or plain.

3. Each Trustee Party shall submit the description of its boundary to the International Seabed Boundary Review Commission within five years of the entry into force of this Convention for that Party. Boundaries not accepted by that Commission and not resolved by negotiation between the Commission and the Trustee Party within one year shall be submitted by the Commission to the Tribunal for adjudication in accordance with Section E of Chapter IV.

(NOTE: Additional consideration will be given to problems raised by enclosed and semi-enclosed seas)

ARTICLE 27

1. Except as specifically provided for in this Chapter, the coastal State shall have no greater rights in the International Trusteeship Area off its coast than any other Contracting Party.

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* The precise gradient should be determined by technical experts, taking into account, among other factors, ease of determination, the need to avoid dual administration of single mineral deposits, and the avoidance of including excessively large areas in the International Trusteeship Area.

2. With respect to exploration and exploitation of the natural resources of that part of the International Trusteeship Area in which it acts as trustee for the international community, each coastal State, subject to the provisions of this Convention, shall be responsible for:

a. Issuing, suspending and revoking mineral exploration and exploitation licenses;

b. Establishing work requirements, provided that such requirements shall not be less than those specified in Appendix A;

c. Ensuring that its licensees comply with this Convention, and, if it deems it necessary, applying standards to its licensees higher than or in addition to those required under this Convention, provided such standards are promptly communicated to the International Seabed Resource Authority;

d. Supervising its licensees and their activities;

e. Exercise civil and criminal jurisdiction over its licensees, and persons acting on their behalf, while engaged in exploration or exploitation;

f. Filing reports with the International Seabed Resource Authority;

g. Collecting and transferring to the International Seabed Resource Authority all payments required by this Convention;

h. Determining the allowable catch of the living resources of the seabed and prescribing other conservation measures regarding them;

i. Enacting such laws and regulations as are necessary to perform the above functions.

3. Detailed rules to implement this Chapter are contained in Appendix C.

ARTICLE 28

In performing the functions referred to in Article 27, the Trustee Party may, in its discretion:

a. Establish the procedures for issuing licenses;

b. Decide whether a license shall be issued;

c. Decide to whom a license shall be issued, without regard to the provisions of Article 3;

d. Retain (a figure between 33-1/3% and 50% will be inserted here) of all fees and payments required by this Convention;

(e) Collect and retain additional license and rental fees to defray its administrative expenses, and collect, and retain (a figure between 33-1/3% and 50% will be inserted here) of, other additional fees and payments related to the issuance or retention of a license, with annual notification to the International Seabed Resource Authority of the total amount collected;

(f) Decide whether and by whom the living resources of the seabed shall be exploited, without regard to the provisions of Article 3.

ARTICLE 29

The Trustee Party may enter into an agreement with the International Seabed Resource Authority under which the International Seabed Resource Authority will perform some or all of the trusteeship supervisory and administrative functions provided for in this Chapter in return for an appropriate part of the Trustee Party's share of international fees and royalties.

ARTICLE 30

Where a part of the International Trusteeship Area is off the coast of two or more Contracting Parties, such Parties shall, by agreement, precisely delimit the boundary separating the areas in which they shall respectively perform their trusteeship functions and inform the International Seabed Boundary Review Commission of such delimitation. If agreement is not reached within three years after negotiations have commenced, the the International Seabed Boundary Review Commission shall be requested to make recommendations to the Contracting Parties concerned regarding such delimitation. If agreement is not reached within one year after such recommendations are made, the delimitation recommended by the Commission shall take effect unless either Party, within 90 days thereafter, brings the matter before the Tribunal in accordance with Section E of Chapter IV.

CHAPTER IV

THE INTERNATIONAL SEABED RESOURCE AUTHORITY

A. General

ARTICLE 31

1. The International Seabed Resource Authority is hereby established.

2. The principal organs of the Authority shall be the Assembly, the Council, and the Tribunal.

ARTICLE 32

The permanent seat of the Authority shall be at _____.

ARTICLE 33

Each Contracting Party shall recognize the juridical personality of the Authority. The legal capacity, privileges and immunities of the Authority shall be the same as those defined in the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations.

B. The Assembly

ARTICLE 34

1. The Assembly shall be composed of all Contracting Parties.

2. The first session of the Assembly shall be convened _____. The Assembly shall thereafter be convened by the Council at least once every three years at a suitable time and place. Extraordinary sessions of the Assembly shall be convened at any time on the call of the Council, or the Secretary-General of the Authority at the request of one-fifth of the Contracting Parties.

3. At meetings of the Assembly a majority of the Contracting Parties is required to constitute a quorum.

4. In the Assembly each Contracting Party shall exercise one vote.

5. Decisions of the Assembly shall be taken by a majority of the members present and voting, except as otherwise provided in this Convention.

ARTICLE 35

The powers and duties of the Assembly shall be to:

a. Elect its President and other officers;

b. Elect the members of the Council in accordance with Article 36;

c. Determine its rules of procedure and constitute such subsidiary organs as it considers necessary or desirable;

d. Require the submission of reports from the Council;

e. Take action on any matter referred to it by the Council;

f. Approve proposed budgets for the Authority, or return them to the Council for reconsideration and resubmission;

g. Approve proposals by the Council for changes in the allocation of the net income of the Authority within the limits prescribed in Appendix D, or return them to the Council for reconsideration and resubmission;

h. Consider any matter within the scope of this Convention and make recommendations to the Council or Contracting Parties as appropriate;

i. Delegate such of its powers as it deems necessary or desirable to the Council and revoke or modify such delegation at any time;

j. Consider proposals for amendments of this Convention in accordance with Article 76.

C. The Council

ARTICLE 36

1. The Council shall be composed of twenty-four Contracting Parties and shall meet as often as necessary.

2. Members of the Council shall be designated or elected in the following categories:

a. The six most industrially advanced Contracting Parties shall be designated in accordance with Appendix E;

b. Eighteen additional Contracting Parties, of which at least twelve shall be developing countries, shall be elected by the Assembly, taking into account the need for equitable geographical distribution.

3. At least two of the twenty-four members of the Council shall be landlocked or shelf-locked countries.

4. Elected members of the Council shall hold office for three years following the last day of the Assembly at which they are elected and thereafter until their successors are designated or elected. Designated members of the Council shall hold office until replaced in accordance with Appendix E.

5. Representatives on the Council shall not be employees of the Authority.

ARTICLE 37

1. The Council shall elect its President for a term of three years.

2. The President of the Council may be a national of any Contracting Party, but may not serve during his term of office as its representative in the Assembly or on the Council.

3. The President shall have no vote.

4. The President shall:

a. Convene and conduct meetings of the Council.

b. Carry out the functions assigned to him by the Council.

ARTICLE 38

Decisions by the Council shall require approval by a majority of all its members, including a majority of members in each of the two categories referred to in paragraph 2 of Article 36.

ARTICLE 39

Any Contracting Party not represented on the Council may participate, without a vote, in the consideration by the Council or any of the subsidiary organs, of any question which is of particular interest to it.

ARTICLE 40

The powers and duties of the Council shall be to:

a. Submit annual reports to the Contracting Parties;

b. Carry out the duties specified in this Convention and any duties delegated to it by the Assembly;

c. Determine its rules of procedure;

d. Appoint and supervise the Commissions provided for in this Chapter, establish procedures for the co-ordination of their activities, and determine the terms of office of their members;

e. Establish other subsidiary organs, as may be necessary or desirable, and define their duties;

f. Appoint the Secretary-General of the Authority and establish general guidelines for the appointment of such other personnel as may be necessary;

g. Submit proposed budgets to the Assembly for its approval, and supervise their execution;

h. Submit proposals to the Assembly for changes in the allocation of the net income of the Authority within the limits prescribed in Appendix D;

i. Adopt and amend Rules and Recommended Practices in accordance with Chapter V, upon the recommendation of the Rules and Recommended Practices Commission;

j. Issue emergency orders, at the request of any Contracting Party, to prevent serious harm to the marine environment arising out of any exploration or exploitation activity and communicate them immediately to licensees, and authorizing or sponsoring Parties, as appropriate;

k. Establish a fund to provide emergency relief and assistance in the event of a disaster to the marine environment resulting from exploration or exploitation activities;

l. Establish procedures for co-ordination between the International Seabed Resource Authority, and the United Nations, its specialized agencies and other international or regional organizations concerned with the marine environment;

m. Establish or support such international or regional centres, through or in co-operation with other international and regional organizations, as may be appropriate to promote study and research of the natural resources of the seabed and to train nationals of any Contracting Party in related science and the technology of the exploration and exploitation, taking into account the special needs of developing States Parties to this Convention;

n. Authorize and approve agreements with a Trustee Party, pursuant to Article 29, under which the International Seabed Resource Authority will perform some or all of the Trustee Party's functions.

ARTICLE 41

In furtherance of Article 5, paragraph 2, of this Convention, the Council may, at the request of any Contracting Party and taking into account the special needs of developing States Parties to this Convention:

a. Provide technical assistance to any Contracting Party to further the objectives of this Convention;

b. Provide technical assistance to any Contracting Party to help it to meet its responsibilities and obligations under this Convention;

c. Assist any Contracting Party to augment its capability to derive maximum benefit from the efficient administration of the International Trusteeship Area.

D. The Commissions

ARTICLE 42

1. There shall be a Rules and Recommended Practices Commission, an Operations Commission, and an International Seabed Boundary Review Commission.

2. Each Commission shall be composed of five to nine members appointed by the Council from among persons nominated by Contracting Parties. The Council shall invite all Contracting Parties to submit nominations.

3. No two members of a Commission may be nationals of the same State.

4. A member of each Commission shall be elected its President by a majority of the members of the Commission.

5. Each Commission shall perform the functions specified in this Convention and such other functions as the Council may specify from time to time.

ARTICLE 43

1. Members of the Rules and Recommended Practices Commission shall have suitable qualifications and experience in seabed resources management, ocean sciences, maritime safety, ocean and marine engineering, and mining and mineral technology and practices. They shall not be full-time employees of the Authority.

2. The Rules and Recommended Practices Commission shall:

a. Consider, and recommend to the Council for adoption, Annexes to this Convention in accordance with Chapter V;

b. Collect from and communicate to Contracting Parties information which the Commission considers necessary and useful in carrying out its functions.

ARTICLE 44

1. Members of the Operations Commission shall have suitable qualifications and experience in the management of seabed resources, and operation of marine installations, equipment and devices.

2. The Operations Commission shall:

a. Issue licences for seabed mineral exploration and exploitation, except in the International Trusteeship Area;

b. Supervise the operations of licensees in co-operation with the Trustee or Sponsoring Party, as appropriate, but shall not itself engage in exploration or exploitation;

c. Perform such functions with respect to disputes between Contracting Parties as are specified in Section E of this Chapter;

d. Initiate proceedings pursuant to Section E of this Chapter for alleged violations of this Convention, including but not limited to proceedings for revocation or suspension of licences;

e. Arrange for and review the collection of international fees and other forms of payment;

f. Arrange for the collection and dissemination of information relating to licensed operations;

g. Supervise the performance of the functions of the Authority pursuant to any agreement between a Trustee Party and the Authority under Article 29;

h. Issue deep drilling permits.

ARTICLE 45

1. Members of the International Seabed Boundary Review Commission shall have suitable qualifications and experience in marine hydrography, bathymetry, geodesy and geology. They shall not be full-time employees of the Authority.

2. The International Seabed Boundary Review Commission shall:

a. Review the delineation of boundaries submitted by Contracting Parties in accordance with Articles 1 and 26 to see that they conform to the provisions of this Convention, negotiate any differences with Contracting Parties, and if these differences are not resolved initiate proceedings before the Tribunal in accordance with Section E of this Chapter;

b. Make recommendations to the Contracting Parties in accordance with Article 30;

c. At the request of any Contracting Party, render advice on any boundary question arising under this Convention.

E. The Tribunal

ARTICLE 46

1. The Tribunal shall decide all disputes and advise on all questions relating to the interpretation and application of this Convention which have been submitted to it in accordance with the provisions of this Convention. In its decisions and advisory opinions the Tribunal shall also apply relevant principles of international law.

2. Subject to an authorization under Article 96 of the Charter of the United Nations, the Tribunal may request the International Court of Justice to give an advisory opinion on any question of international law.

ARTICLE 47

1. The Tribunal shall be composed of five, seven, or nine independent judges, who shall possess the qualifications required in their respective countries for appointment to the highest judicial offices, or shall be lawyers especially competent in matters within the scope of this Convention. In the Tribunal as a whole the representation of the principal legal systems of the world shall be assured.

2. No two of the members of the Tribunal may be nationals of the same State.

ARTICLE 48

1. Each Contracting Party shall be entitled to nominate candidates for membership on the Tribunal. The Council shall elect the Tribunal from a list of these nominations.

2. The members of the Tribunal shall be elected for nine years and may be re-elected, provided however, that the Council may establish procedures for staggered terms. Should such procedures be established, the judges whose terms are to expire in less than nine years shall be chosen by lots drawn by the Secretary-General.

3. The members of the Tribunal shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. A member of the Tribunal unable to perform his duties may be dismissed by the Council on the unanimous recommendation of the other members of the Tribunal.

5. In case of a vacancy, the Council shall elect a successor who shall hold office for the remainder of his predecessor's term.

ARTICLE 49

The Tribunal shall establish its rules of procedure; elect its President; appoint its Registrar and determine his duties and terms of service; and adopt regulations for the appointment of the remainder of its staff.

ARTICLE 50

1. Any Contracting Party which considers that another Contracting Party has failed to fulfil any of its obligations under this Convention may bring its complaint before the Tribunal.

2. Before a Contracting Party institutes such proceedings before the Tribunal it shall bring the matter before the Operations Commission.

3. The Operations Commission shall deliver a reasoned opinion in writing after the Contracting Parties concerned have been given the opportunity both to submit their own cases and to reply to each other's case.

4. If the Contracting Party accused of a violation does not comply with the terms of such opinion within the period laid down by the Commission, the other Party concerned may bring the matter before the Tribunal.

5. If the Commission has not given an opinion within a period of three months from the date when the matter was brought before it, either Party concerned may bring the matter before the Tribunal without waiting further for the opinion of the Commission.

ARTICLE 51

1. Whenever the Operations Commission, acting on its own initiative or at the request of any licensee, considers that a Contracting Party or a licensee has failed to fulfil any of its obligations under this Convention, it shall issue a reasoned opinion in writing on the matter after giving such party the opportunity to submit its comments.

2. If the party concerned does not comply with the terms of such opinion within the period laid down by the Commission, the latter may bring a complaint before the Tribunal.

ARTICLE 52

1. If the Tribunal finds that a Contracting Party or a licensee has failed to fulfil any of its obligations under this Convention, such party shall take the measures required for the implementation of the judgment of the Tribunal.

2. When appropriate, the Tribunal may decide that the Contracting Party or the licensee who has failed to fulfil its obligations under this Convention shall pay to the Authority a fine of not more than $1,000 for each day of the offence, or shall pay damages to the other party concerned, or both.

3. In the event the Tribunal determines that a licensee has committed a gross and persistent violation of the provisions of this Convention and has not within a reasonable time brought his operations into compliance, the Council may, as appropriate, either revoke his licence or request that the Trustee Party revoke it. The licensee shall not, however, be deprived of his licence if his actions were directed by a Trustee or Sponsoring Party.

ARTICLE 53

If disputes under Articles 1, 26 and 30 have not been resolved by the time and methods specified in those Articles, the International Seabed Boundary Review Commission shall bring the matter before the Tribunal.

ARTICLE 54

1. Any Contracting Party which questions the legality of measures taken by the Council, the Rules and Practice Commission, the Operations Commission, or the Seabed Boundary Review Commission on the grounds of a violation of this Convention, lack of jurisdiction, infringement of important procedural rules, unreasonableness, or misuse of powers, may bring the matter before the Tribunal.

2. Any person may, subject to the same conditions, bring a complaint to the Tribunal with regard to a decision directed to that person, or a decision which, although in the form of a rule or a decision directed to another person, is of direct concern to the complainant.

3. The proceedings provided for in this Article shall be instituted within a period of two months, dating, as the case may be, either from the publication of the measure concerned or from its notification to the complainant, or, in default thereof, from the day on which the latter learned of it.

4. If the Tribunal considers the appeal well-founded, it should declare the measure concerned to be null and void, and shall decide to what extent the annulment shall have retroactive application.

ARTICLE 55

1. The organ responsible for a measure declared null and void by the Tribunal shall be required to take the necessary steps to comply with the Tribunal's judgment.

2. When appropriate, the Tribunal may require that the Authority repair or pay for any damage caused by its organs or by its officials in the performance of their duties.

ARTICLE 56

When a case pending before a court or tribunal of one of the Contracting Parties raises a question of the interpretation of this Convention or of the validity or interpretation of measures taken by an organ of the Authority, the court or tribunal concerned may request the Tribunal to give its advice thereon.

ARTICLE 57

The Tribunal shall also be competent to decide any dispute connected with the subject matter of this Convention submitted to it pursuant to an agreement, licence, or contract.

ARTICLE 58

If a Contracting Party fails to perform the obligations incumbent upon it under a judgment rendered by the Tribunal, the other Party to the case may have recourse to the Council, which shall decide upon measures to be taken to give effect to the judgment. When appropriate, the Council may decide to suspend temporarily, in whole or in part, the rights under this Convention of the Party failing to perform its obligations, without impairing the rights of licensees who have not contributed to the failure to perform such obligations. The extent of such a suspension should be related to the extent and seriousness of the violation.

ARTICLE 59

In any case in which the Council issues an order in emergency circumstances to prevent serious harm to the marine environment, any directly affected Contracting Party may request immediate review by the Tribunal, which shall promptly either confirm or suspend the application of the emergency order pending the decision of the case.

ARTICLE 60

Any organ of the International Seabed Resource Authority may request the Tribunal to give an advisory opinion on any legal question connected with the subject matter of this Convention.

F. The Secretariat

ARTICLE 61

The Secretariat shall comprise a Secretary-General and such staff as the International Seabed Resource Authority may require. The Secretary-General shall be appointed by the Council from among persons nominated by Contracting Parties. He shall serve for a term of six years, and may be reappointed.

ARTICLE 62

The Secretary-General shall:

a. Be the chief administrative officer of the International Seabed Resource Authority, and act in that capacity in all meetings of the Assembly and the Council;

b. Report to the Assembly and the Council on the work of the International Seabed Resource Authority;

c. Collect, publish and disseminate information which will contribute to mankind's knowledge of the seabed and its resources;

d. Perform such other functions as are entrusted to him by the Assembly or the Council.

ARTICLE 63

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other external authority. They shall refrain from any action which might reflect on their position as international officials responsible only to the International Seabed Resource Authority.

2. Each Contracting Party shall respect the exclusively international character of the responsibilities of the Secretary-General and the staff and shall not seek to influence them in the discharge of their responsibilities.

ARTICLE 64

1. The staff of the International Seabed Resource Authority shall be appointed by the Secretary-General under the general guidelines established by the Council.

2. Appropriate staffs shall be assigned to the various organs of the Authority as required.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

G. Conflicts of Interest

ARTICLE 65

No representative to the Assembly or the Council nor any member of the Tribunal, Commissions, subsidiary organs (other than advisory bodies or consultants), or the Secretariat, shall, while serving as such a representative or member, be actively associated with or financially interested in any of the operations of any enterprise concerned with exploration or exploitation of the natural resources of the International Seabed Area.

CHAPTER V

RULES AND RECOMMENDED PRACTICES

ARTICLE 66

1. Rules and Recommended Practices are contained in Annexes to this Convention.

2. Annexes shall be consistent with this Convention, its Appendices, and any amendments thereto. Any Contracting Party may challenge an Annex, an amendment to an Annex, or any of their provisions, on the grounds that it is unnecessary, unreasonable or constitutes a misuse of powers, by bringing the matter before the Tribunal in accordance with Article 54.

3. Annexes shall be adopted and amended in accordance with Article 67. Those Annexes adopted along with this Convention, if any, may be amended in accordance with Article 67.

ARTICLE 67

1. The Annexes to this Convention and amendments to such Annexes shall be adopted in accordance with the following procedure:

a. They shall be prepared by the Rules and Recommended Practices Commission and submitted to the Contracting Parties for comments;

b. After receiving the comments, the Commission shall prepare a revised text of the Annex or amendments thereto;

c. The text shall then be submitted to the Council which shall adopt it or return it to the Commission for further study;

d. If the Council adopts the text, it shall submit it to the Contracting Parties;

e. The Annex or an amendment thereto shall become effective within three months after its submission to the Contracting Parties, or at the end of such longer period of time as the Council may prescribe, unless in the meantime more than one-third of the Contracting Parties register their disapproval with the Authority;

f. The Secretary-General shall immediately notify all Contracting States of the coming into force of any Annex or amendment thereto.

ARTICLE 68

1. Annexes shall be limited to the Rules and Recommended Practices necessary to:

a. Fix the level, basis, and accounting procedures for determining international fees and other forms of payment, within the ranges specified in Appendix A;

b. Establish work requirements within the ranges specified in Appendixes A and B;

c. Establish criteria for defining technical and financial competence of applicants for licenses;

d. Assure that all exploration and exploitation activities, and all deep drilling, are conducted with strict and adequate safeguards for the protection of human life and safety and of the marine environment;

e. Protect living marine organisms from damage arising from exploration and exploitation activities;

f. Prevent or reduce to acceptable limits interference arising from exploration and exploitation activities with other uses and users of the marine environment;

g. Assure safe design and construction of fixed exploration and exploitation installations and equipment;

h. Facilitate search and rescue services, including assistance to aquanauts, and the reporting of accidents;

i. Prevent unnecessary waste in the extraction of minerals from the seabed;

j. Standardize the measurement of water depth and the definition of other natural features pertinent to the determination of the precise location of International Seabed Area boundaries;

k. Prescribe the form in which Contracting Parties shall describe their boundaries and the kinds of information to be submitted in support of them;

l. Encourage uniformity in seabed mapping and charting;

m. Facilitate the management of a part of the international trusteeship area pursuant to any agreement between a Trustee Party and the Authority under Article 29;

n. Establish and prescribe conditions for the use of international marine parks and preserves;

2. Application of any Rule or Recommended Practice may be limited as to duration or geographic area, but without discrimination against any Contracting Party or licensee.

ARTICLE 69

The Contracting Parties agree to collaborate with each other and the appropriate Commission in securing the highest practicable degree of uniformity in regulations, standards, procedures and organizations in relation to the matters covered by Article 68 in order to facilitate and improve seabed resources exploration and exploitation.

ARTICLE 70

Annexes and amendments thereto shall take into account existing internatic. agreements and, where appropriate, shall be prepared in collaboration with other competent international organizations. In particular, existing international agreements and regulations relating to safety of life at sea shall be respected.

ARTICLE 71

1. Except as otherwise provided in this Convention, the Annexes and amendments thereto adopted by the Council shall be binding on all Contracting Parties.

2. Recommended Practices shall have no binding effect.

ARTICLE 72

Any Contracting Party believing that a provision of an Annex or an amendment thereto cannot be reasonably applied because of special circumstances may seek a waiver from the Operations Commission and if such waiver is not granted within three months, it may appeal to the Tribunal within an additional period of two months.

CHAPTER VI

TRANSITION

ARTICLE 73

1. There shall be due protection for the integrity of investments made in the International Seabed Area prior to the coming into force of this Convention.

2. All authorizations by a Contracting Party to exploit the mineral resources of the International Seabed Area granted prior to July 1, 1970, shall be continued without change after the coming into force of this Convention provided that:

a. Activities pursuant to such authorizations shall, to the extent possible, be conducted in accordance with the provisions of this Convention;

b. New activities under such previous authorization which are begun after the coming into force of this Convention shall be subject to the regulatory provisions of this Convention regarding the protection of human life and safety and of the marine environment and the avoidance of unjustifiable interference with other uses of the marine environment;

c. Upon the expiration or relinquishment of such authorizations, or upon their revocation by the authorizing Party, the provisions of this Convention shall become fully applicable to any exploration or exploitation of resources remaining in the areas included in such authorizations;

d. Contracting Parties shall pay to the International Seabed Resource Authority, with respect to such authorizations, production payments provided for under this Convention.

3. A Contracting Party which has authorized exploitation of the mineral resources of the International Seabed Area on or after July 1, 1970, shall be bound, at the request of the person so authorized, either to issue new licenses under this Convention in its capacity as a Trustee Party, or to sponsor the application of the person so authorized to receive new licenses from the International Seabed Resource Authority. Such new license issued by a Trustee Party shall include the same terms and conditions as its previous authorization, provided that such license shall not be inconsistent with this Convention, and provided further that the Trustee Party shall itself be responsible for complying with increased obligations resulting from the application of this Convention, including fees and other payments required by this Convention.

4. The provisions of paragraph 3 shall apply within one year after this Convention enters into force for the Contracting Party concerned, but in no event more than five years after the entry into force of this Convention.

5. Until converted into new licenses under paragraph 3, all authorizations issued on or after July 1, 1970, to exploit the mineral resources of the International Seabed Area shall have the same status as authorizations under paragraph 2. Five years after the entry into force of this Convention all such authorizations not converted into new licenses under paragraph 3 shall be null and void.

6. Any Contracting Party that has authorized activities within the International Seabed Area after July 1, 1970, but before this Convention has entered into force for such Party, shall compensate the licensee for any investment losses resulting from the application of this Convention.

ARTICLE 74

1. The membership of the Tribunal, the Commissions, and the Secretariat shall be maintained at a level commensurate with the tasks being performed.

2. In the period before the International Seabed Resource Authority acquires income sufficient for the payment of its administrative expenses the Authority may borrow funds for the payment of those expenses. The Contracting Parties agree to give sympathetic consideration to requests by the Authority for such loans.

CHAPTER VII

DEFINITIONS

ARTICLE 75

Unless another meaning results from the context of a particular provision, the following definitions shall apply:

1. "Convention" refers to all provisions of and amendments to this Convention, its Appendices, and its Annexes.
2. "Trustee Party" refers to the Contracting Party exercising trusteeship functions in that part of the International Trusteeship Area off its coast in accordance with Chapter III.
3. "Sponsoring Party" refers to a Contracting Party which sponsors an application for a license or permit before the International Seabed Resource Authority. The term "sponsor" is used in this context.
4. "Authorizing Party" refers to a Contracting Party authorizing any activity in the International Seabed Area, including a Trustee Party issuing exploration or exploitation licenses. The term "authorize" is used in this context. In the case of a vessel, the term "Authorizing Party" shall be deemed to refer to the State of its nationality.
5. "Operating Party" refers to a Contracting Party which itself explores or exploits the natural resources of the International Seabed Area.
6. "Licensee" refers to a State, group of States, or natural or juridical person holding a license for exploration or exploitation of the natural resources of the International Seabed Area.
7. "Exploration" refers to any operation in the International Seabed Area which has as its principal or ultimate purpose the discovery and appraisal, or exploitation, of mineral deposits, and does not refer to scientific research. The term does not refer to similar activities when undertaken pursuant to an exploitation license.
8. "Deep drilling" refers to any form of drilling or excavation in the International Seabed Area deeper than 300 metres below the surface of the seabed.
9. "Landlocked or shelf-locked country" refers to a Contracting Party which is not a Trustee Party.

CHAPTER VIII

AMENDEMENT AND WITHDRAWAL

ARTICLE 76

Any proposed amendment to this Convention or the appendices thereto which has been approved by the Council and a two-thirds vote of the Assembly shall be submitted by the Secretary-General to the Contracting Parties for ratification in accordance with their respective constitutional processes. It shall come into force when ratified by two-thirds of the Contracting Parties, including each of the six States designated pursuant to sub-paragraph 2(a) of Article 36 at the time the Council approved the amendments. Amendments shall not apply retroactively.

ARTICLE 77

1. Any Contracting Party may withdraw from this Convention by a written notification addressed to the Secretary-General. The Secretary-General shall promptly inform the other Contracting Parties of any such withdrawal.

2. The withdrawal shall take effect one year from the date of the receipt by the Secretary-General of the notification.

CHAPTER IX

FINAL CLAUSES

ARTICLE 78

APPENDIX A

TERMS AND PROCEDURES APPLYING TO ALL LICENSES IN THE INTERNATIONAL SEABED AREA

1. Activities Requiring a License or a Permit

1.1. Pursuant to Article 13 of this Convention, all exploration and exploitation operations in the International Seabed Area which have as their principal or ultimate purpose the discovery or appraisal, and exploitation, of mineral deposits shall be licensed.

1.2. There shall be two categories of licenses:

(a) A non-exclusive exploration license shall authorize geophysical and geochemical measurements, and bottom sampling, for the purposes of exploration. This license shall not be restricted as to area and shall grant no exclusive right to exploration nor any preferential right in applying for an exploitation license. It shall be valid for two years following the date of its issuance and shall be renewable for successive two-year periods.

(b) An exploitation license shall authorize exploration and exploitation of one of the groups of minerals described in section 5 in a specified area. The exploitation license shall include the exclusive right to undertake deep drilling and other forms of subsurface entry for the purpose of exploration and exploitation of minerals described in paragraphs 5.1(a) and 5.1(c). The license shall be for a limited period and shall expire at the end of fifteen years if no commercial production is achieved.

1.3. The right to undertake deep drilling for exploration or exploitation shall be granted only under an exploitation license.

1.4. Deep drilling for purposes other than exploration or exploitation of seabed minerals shall be authorized under a deep-drilling permit issued at no charge by the International Seabed Resource Authority, provided that:

(a) The application is accompanied by a statement from the Sponsoring Party certifying as to the applicant's technical competence and accepting liability for any damage that may result from such drilling;

(b) The application for such a permit is accompanied by a description of the location proposed for such holes, by seismograms and other pertinent information on the geology in the vicinity of the proposed drilling sites, and by a description of the equipment and procedures to be utilized;

(c) The proposed drilling, including the methods and equipment to be utilized, complies with the requirements of this Convention and is judged by the Authority not to pose an uncontrollable hazard to human safety, property, and the environment;

(d) The proposed drilling is either not within an area already under an exploitation license or is not objected to by the holder of such a license;

(e) The applicant agrees to make available promptly the geologic information obtained from such drilling to the Authority and the public.

2. General License Procedures

2.1. An Authorizing or Sponsoring Party shall certify the operator's financial and technical competence and shall require the operator to conform to the rules, provisions and procedures specified under the terms of the license.

2.2. Each Authorizing or Sponsoring Party shall formulate procedures to ensure that applications for licenses are handled expeditiously and fairly.

2.3. Any Authorizing or Sponsoring Party which considers that it is unable to exercise appropriate supervision over operators authorized or sponsored by it in accordance with this Convention shall be permitted to authorize or sponsor operators only if their operations are supervised by the International Seabed Resource Authority pursuant to an agreement between the Authorizing or Sponsoring Party and the International Seabed Resource Authority. In such event fees and rentals normally payable to the International Seabed Resource Authority will be increased appropriately to offset its supervisory costs.

3. Exploration Licenses -- Procedures

3.1. All applications for exploration licenses and for their renewal shall be accompanied by a fee of from $500 to $1,500 as specified in an Annex and a description of the location of the general area to be investigated and the kinds of activities to be undertaken. A portion [a figure between 50% and 66-2/3% will be inserted here] of the fee shall be forwarded by the Authorizing or Sponsoring Party to the Authority together with a copy of the application.

3.2. The Authorizing or Sponsoring Party shall transmit to the Authority the description referred to in paragraph 3.1 and its assurance that the activities will not be harmful to the marine environment.

3.3. The Authorizing or Sponsoring Party may require the operator to pay and may retain, an additional license fee not to exceed $3,000, to help cover the administrative expenses of that Party.

3.4. Exploration licenses shall not be renewed in the event the operator has failed to conform his activities under the prior license to the provisions of this Convention or to the conditions of the license.

4. Exploitation Licenses -- Procedures

4.1. All applications for exploitation licenses shall be accompanied by a fee of from $5,000 to $15,000, per block, as specified in an Annex. A portion [a figure between 50% and 66-2/3% will be inserted here] of the fee shall be forwarded by the Authorizing or Sponsoring Party to the Authority together with a copy of the application.

4.2. Pursuant to section 5 below, applications shall identify the category of minerals in the specific area for which a license is sought.

4.3. When a license is granted to an applicant for more than one block at the same time, only a single certificate need be issued.

4.4. The Authorizing or Sponsoring Party may require the operator to pay, and may retain, an additional license fee not to exceed $[illegible],000, to help cover the administrative expenses of that Party.

4.5. The license fee described in paragraph 4.1 shall satisfy the first two years' rental fee.

5. Exploitation Rights -- Categories and Size of Blocks

5.1. Licenses to exploit shall be limited to one of the following categories of minerals:

(a) Fluids or minerals extracted in a fluid state, such as oil, gas, helium, nitrogen, carbon dioxide, water, geothermal energy, sulfur and saline minerals.

(b) Manganese-oxide nodules and other minerals at the surface of the seabed.

(c) Other minerals, including category (b) minerals that occur beneath the surface of the seabed and metalliferous muds.

5.2. An exploitation license shall be issued for a specific area of the seabed and subsoil vertically below it, hereinafter referred to as a "block". The methods for defining the boundaries of blocks, and of portions thereof, shall be specified in an Annex.

5.3. In the category described in paragraph 5.1(a) the block shall be approximately 500 square kilometres, which shall be reduced to a quarter of a block when production begins. Each exploitation license shall apply to not more than one

block, but exploitation licenses to a rectangle containing as many as 16 contiguous blocks may be taken out under a single certificate and reduced by three quarters to a number of blocks, a single block, or a portion of a single block when production begins. The relinquishment requirement shall not apply to licenses issued for areas of one quarter of a block or less.

5.4. In the category described in paragraph 5.1(b) the block shall be approximately 40,000 square kilometers, which shall be reduced to a quarter of a block when production begins. Each exploitation license shall apply to not more than one block, but exploitation licenses to a rectangle containing as many as four contiguous blocks may be taken out under a single certificate and reduced to a single block, or to a portion of a single block comprising one-fourth their total area, when production begins. The relinquishment requirement shall not apply to licenses issued for areas of one quarter of a block or less.

5.5. In the category described in paragraph 5.1(c) the block shall be approximately 500 square kilometers, which shall be reduced to one eighth of a block when production begins. Each license shall apply to not more than one block, but exploitation licenses to as many as 8 contiguous blocks may be taken out under a single certificate and reduced to a single block, or to a portion of a single block comprising one eighth their total area, when production begins. The relinquishment shall not apply to licenses issued for one eighth of a block or less.

5.6. Applications for exploitation licenses may be for areas smaller than the maximum stated above.

5.7. Operators may at any time relinquish rights to all or part of the licensed area.

5.8. Commercial production shall be deemed to have commenced or to be maintained when the value at the site of minerals exploited is not less than $100,000 per annum. The required minimum and the method of ascertaining this value shall be determined by the Authority.

5.9. If the commercial production is not maintained, the exploitation license shall expire within five years of its cessation, but when production is interrupted or suspended for reasons beyond the operator's control, the duration of the license shall be extended by a time equal to the period in which production has been suspended for reasons beyond the operator's control.

6. Rental Fees and Work Requirements

Rental Fees

6.1. Prior to attaining commercial production the following annual rental fees shall be paid beginning in the third year after the license has been issued: (a) $2 - $10 per square kilometer, as specified in an appropriate Annex, for the category of minerals described in paragraph 5.1(a); $2 - $10 per 100 square kilometers for the category of minerals described in paragraph 5.1(b) of Appendix A; $2 - $10 per square kilometer for the category of minerals described in paragraph 5.1(c).

6.2. The rates in paragraph 6.1 shall increase at the rate of 10% per annum, calculated on the original base rental fee, for the first ten years after the third year, and shall increase 20% per annum for the following two years, calculated on the original base rental fee.

6.3. After commercial production begins, the annual rental fee shall be $5,000-$25,000 per block, regardless of block size.

6.4. The rental fee shall be payable annually in advance to the Authorizing or Sponsoring Party which shall forward a portion [a figure between 50% and 66-2/3% will be inserted here] of the fees to the Authority. The Authorizing or Sponsoring Party may require the operator to pay, and may retain, an additional rental fee, not to exceed an amount equal to the amount paid pursuant to paragraphs 6.1 - 6.3, to help cover the administration expenses of that Party.

Work Requirements

6.5. Prior to attaining commercial production, the operator shall deposit a work requirement fee or post a sufficient bond for that amount, for each license at the beginning of each year.

6.6. The minimum annual work requirement fee for each block shall increase in accordance with the following schedule:

Para. 5.1(a) and (c) minerals

Years	Amount per annum
1-5	$ 20,000
6-10	180,000
11-15	200,000
	$ 2,000,000

Para. 5.1(b) minerals

Years	Amounts per annum
1-2	$ 20,000
3-10	120,000
11-15	200,000
	$ 2,000,000

The minimum annual work requirement for a portion of a block shall be an appropriate fraction of the above, to be specified in an Annex.

6.7. The work requirement fee shall be refunded to the operator upon receipt of proof by the Authorizing Party or Sponsoring Party that the amount equivalent to the fee has been expended in actual operations. Expenditures for on-land design or process research and equipment purchase or off-site construction cost directly related to the licensed block or group of blocks shall be considered to apply toward work requirements up to 75% of the amount required.

6.8. Expenditures in excess of the required amount for any given year shall be credited to the requirement for the subsequent year or years.

6.9. In the absence of satisfactory proof that the required expenditure has been made in accordance with the foregoing provisions of this section, the deposit will be forfeited.

6.10. If cumulative work requirement expenditures are not met at the end of the initial five-year period, the exploitation license shall be forfeited.

6.11. After commercial production begins the operator shall make an annual deposit of at least $100,000 at the beginning of each year; or shall post a sufficient bond for that amount, which shall be refunded in an amount equivalent to expenditures on or related to the block and the value of production at the site.

6.12. If production is suspended or delayed for reasons beyond the operator's control, the operator shall not be required to make the deposit or post the bond required in subparagraph 6.11.

7. Submission of Work Plans and Data Under Exploitation Licenses Prior to Commencement of Commercial Production

7.1. Exploitation license applications shall be accompanied by a general description of the work to be done and the equipment and methods to be used. The licensee shall submit subsequent changes in his work plan to the Sponsoring or Authorizing Party for review.

7.2. The licensee shall furnish reports at specified intervals to the Authorizing or Sponsoring Party supplying proof that he has fulfilled the specified work requirements. Copies of such reports shall be forwarded to the Authority.

7.3. The licensee shall maintain records of drill logs, geophysical data and other data acquired in the area to which his license refers, and shall provide access to them to the Authorizing or Sponsoring Party on request.

7.4. At intervals of five years, or when he relinquishes his rights to all or part of the area or when he submits a production plan as described in Section 8, the operator shall transmit to the Authorizing or Sponsoring Party such maps, seismic

sections, logs, assays, or reports as are specified in an Annex to this Convention. The Authorizing or Sponsoring Party shall hold such data in confidence for ten years after receipt, but shall make the data available on request to the Authority for its confidential use in the inspection of operations.

7.5. The data referred to in paragraph 7.4 shall be transmitted to the Authority ten years after receipt by the Authorizing or Sponsoring Party, and made available by the Authority for public inspection. Such data shall be transmitted to the Authority immediately upon revocation of a license.

8. Production Plan and Producing Operations

8.1. Prior to beginning commercial production the licensee shall submit a production plan to the Authorizing or Sponsoring Party and through such Party to the Authority.

8.2. The Authorizing or Sponsoring Party and the Authority shall require such modifications in the plan as may be necessary for it to meet the requirements of this Convention.

8.3. Any change in the licensee's production plan shall be submitted to the Authorizing or Sponsoring Party and through such Party to the Authority for their review and approval.

8.4. Not later than three months after the end of each year from the issuance of the license the licensee shall transmit to the Authorizing of Sponsoring Party for forwarding to the Authority production reports and such other data as may be specified in an Annex to this Convention.

8.5. The operator shall maintain geologic, geophysical and engineering records and shall provide access to them to the Authorizing or Sponsoring Party on its request. In addition, the operator shall submit annually such maps, sections, and summary reports as are specified in Annexes to this Convention.

8.6. The Sponsoring or Authorizing Party shall hold such maps and reports in confidence for ten years from the time received but shall make them available on request to the Authority for its confidential use in the inspection of operations.

8.7. Such maps and reports shall be transmitted to the Authority and shall be made available by it for public inspection not later than ten years after receipt by the Sponsoring or Authorizing Party.

9. Unit Operations

9.1. Accumulations of fluids and other minerals that can be made to migrate from one block to another and that would be most rationally mined by an operation

under the control of a single operator but that lie astride the boundary of adjacent blocks licensed to different operators shall be brought into unit management and production.

9.2. With respect to deposits lying astride the seaward boundary of the International Trusteeship Area, the Operations Commission shall assure unit management and production, giving the Trustee and Sponsoring Parties and their licensees a reasonable time to reach agreement on an operation plan.

10. Payments on Production

10.1. When commercial production begins under an exploitation license, the operator shall pay a cash production bonus of $500,000 to $2,000,000 per block, as specified in an Annex to this Convention, to the Authorizing or Sponsoring Party.

10.2. Thereafter, the operator shall make payments to the Authorizing or Sponsoring Party which are proportional to production, in the nature of total payments ordinarily made to governments under similar conditions. Such payments shall be equivalent to 5 to 40 per cent of the gross value at the site of oil and gas, and 2 to 20 per cent of the gross value at the site of other minerals, as specified in an Annex to this Convention. The total annual payment shall not be less than the annual rental fee under paragraph 6.3.

10.3. The Sponsoring Party shall forward all payments under this section to the Authority. The Authorizing Party shall forward a portion [a figure between 50% and 66-2/3% will be inserted here] of such payments to the Authority.

11. Graduation of Payments According to Environment and Other Factors

11.1. The levels of payments and work requirements, as well as the rates at which such payments and work requirements escalate over time, may be graduated to take account of probable risk and cost to the investor, including such factors as water depth, climate, volume of production, proximity to existing production, or other factors affecting the economic rent that can reasonably be anticipated from mineral production in a given area.

11.2. Any graduated levels and rates shall be described and categorized in an Annex in such a way as to affect all licensees in each category equally and not to discriminate against or favor individual Parties or groups of Parties, or their nationals.

11.3. Any increases in such levels of payments or requirements shall apply only to new licenses or renewals and not to those already in force.

12. Liability

12.1. The operator and his Authorizing or Sponsoring Party, as appropriate, shall be liable for damage to other users of the marine environment and for clean-up and restoration costs of damage to the land environment.

12.2. The Authorizing or Sponsoring Party, as appropriate, shall require operators to subscribe to an insurance plan or provide other means of guaranteeing responsibility, adequate to cover the liability described in paragraph _____.

(Note: More detailed provisions on liability should be included.)

13. Revocation

13.1. In the event of revocation pursuant to Article 52 of this Convention, there shall be no reimbursement for any expense incurred by the licensee prior to the revocation. The licensee shall, however, have the right to recover installations or equipment within six months of the date of the revocation of his license. Any installations or devices not removed by that time shall be removed and disposed of by the Authority, or the Authorizing or Sponsoring Party, at the expense of the licensee.

14. International Fees and Payments

14.1. The Authority shall specify the intervals at which fees and other payments collected by an Authorizing or Sponsoring Party shall be transmitted.

14.2. No Contracting Party shall impose or collect any tax, direct or indirect, on fees and other payments to the Authority.

14.3. All fees and payments required under this Convention shall be those in force at the time a license was issued or renewed.

14.4. All fees and payments to the Authority shall be transmitted in convertible currency.

APPENDIX B

TERMS AND PROCEDURES APPLYING TO LICENSES IN THE INTERNATIONAL SEABED AREA BEYOND THE INTERNATIONAL TRUSTEESHIP AREA

1. Entities Entitled to Obtain Licenses

1.1. Contracting Parties or a group of Contracting Parties, one of which shall act as the operating or sponsoring Party for purposes of fixing operational or supervisory responsibility, are authorized to apply for and obtain exploration and exploitation licenses. Any Contracting Party or group of Contracting Parties, which applies for a license to engage directly in exploration or exploitation, shall designate a specific agency to act as operator on its behalf for the purposes of this Convention.

1.2. Natural or juridical persons are authorized to apply for and obtain exploration and exploitation licenses from the International Seabed Resource Authority if they are sponsored by a Contracting Party.

2. Exploration Licenses - Procedures

2.1. Licenses shall be issued promptly by the Authority through the Sponsoring Party to applicants meeting the requirements specified in Appendix A.

3. Exploitation Licenses - Procedures

3.1. The Sponsoring Party shall certify as to the technical and financial competence of the operator, and shall transmit the operator's work plan.

3.2. An application for an exploitation license shall be preceded by a notice of intent to apply for a license submitted by the operator to the Authority and the prospective Sponsoring Party. Such a notice of intent, when accompanied by evidence of the deposit of the license fee referred to in paragraph 4.1 of Appendix A, shall reserve the block for one hundred and eighty days. Notices of intent may not be renewed.

3.3. Notices of intent shall be submitted sealed to the Authority and opened at monthly intervals at previously announced times.

3.4. Subject to the compliance with these procedures, if only one notice of intent has been received for a particular block, the applicant shall be granted a license, except as provided in paragraphs 3.6. - 3.8.

3.5. If more than one notice of intent to apply for a license for the same block or portion thereof is received at the same opening, the Authority shall notify the applicants and their Sponsoring Parties that the exploitation license to the block or portion thereof will be sold to the highest bidder at a sale to be held one hundred and eighty days later, under the following terms:

(a) The bidding shall be on a cash bonus basis and the minimum bid shall be twice the license fee;

(b) Bids shall be sealed;

(c) The bidding shall be limited to such of the original applicants whose applications have been received in the interim from their sponsoring Parties;

(d) Bids shall be announced publicly by the Authority when they are opened. In the event of a tie, the tie bidders shall submit a second sealed bid to be opened 28 days later;

(e) The final award shall be announced publicly by the Authority within seven days after the bids have been opened.

3.6. In the event of the termination, forfeiture, or revocation of an exploitation license to a block, or relinquishment of a part of a block, the block or portion thereof will be offered for sale by sealed competitive bidding on a cash bonus basis in addition to the current license fee. The following provisions shall apply to such a sale:

(a) The availability of such a block, or portion thereof, for bidding shall be publicly announced by the Authority as soon as possible after it becomes available, and a sale following the above procedures shall be held within one hundred and eighty days after a request for an exploitation license on the block has been received;

(b) The bidding shall be open to all sponsored operators, including, except in the case of revocation, the operator who previously held the exploitation license to the block or to the available portion thereof;

(c) If the winning bid is submitted by an operator who previously held the exploitation right to the same block, or to the same portion thereof, the work requirement will begin at the level that would have applied if the operator had continuously held the block.

3.7. Blocks, or portions thereof, contiguous to a block on which production has begun shall also be sold by sealed competitive bidding under the terms specified in paragraph 3.6.

3.8. Blocks, or separate portions thereof, from which hydrocarbons or other fluids are being drained, or are believed to be drained, by production from another block shall be offered for sale by sealed competitive bidding under the terms specified in paragraph 3.7. at the initiative of the Authority.

3.9. Geologic and other data concerning blocks or portions thereof open for bidding pursuant to paragraphs 3.6. - 3.8. which are no longer confidential shall be made available to the public prior to the bidding date. Data on blocks, or separate portions thereof, for which the license has been revoked for violations shall be made available to the public within 30 days after revocation.

3.10. Exploitation licenses shall only be transferable with the approval of the Sponsoring Party and the Authority, provided that the transferee meets the requirements of this Convention, is sponsored by a Contracting Party, and a transfer fee is paid to the Authority in the amount of $250,000. This fee shall not apply in transfers between parts of the same operating enterprise.

4. Duration of Exploitation Licenses

4.1. If commercial production has been achieved within fifteen years after the license has been issued, the exploitation license shall be extended automatically for twenty additional years from the date commercial production has commenced.

4.2. At the completion of the twenty-year production period referred to in paragraph 4.1, the operator with the approval of the Sponsoring Party shall have the option to renew his license for another twenty years at the rental fees and payment rates in effect at the time of renewal.

4.3. At the end of the forty-year term, or earlier if the license is voluntarily relinquished or expires, pursuant to paragraph 5.9 of Appendix A, the block or blocks, or separate portions of blocks, to which the license applied shall be offered for sale by competitive bidding on a cash bonus basis. The previous licensee shall have no preferential right to such block, or separate portion thereof.

5. Work Requirements

5.1. The annual work requirement fee per block shall be specified in an Annex in accordance with the following schedule:

Paragraph 5.1(a) and (c) minerals

Years	Amount per annum	
1-5	$ 20,000	- 60,000
6-10	180,000	540,000
11-15	200,000	600,000
	$2,000,000	6,000,000 Total

Paragraph 5.1(b) minerals

Years	Amount per annum	
1-2	$ 20,000	- 60,000
3-10	120,000	360,000
11-15	200,000	600,000
	$2,000,000	6,000,000 Total

The minimum annual work requirement for a portion of a block shall be an appropriate fraction of the above, to be specified in an Annex.

5.2. Work expenditures with respect to one or more blocks may be considered as meeting the aggregate work requirements on a group of blocks originally licensed in the same year, to the same operator, in the same category, provided that the number of such blocks shall not exceed sixteen in the case of category 5.1(a) of Appendix A, four in the case of category 5.1(b) and eight in the case of category 5.1(c).

5.3. Should the aggregate work requirement expenditure of $2,000,000 to $6,000,000 be spent prior to the end of the thirteenth year, an additional work requirement of $25,000 - $50,000 as specified in an Annex, shall be met until commercial production begins or until the expiration of the fifteen-year period.

5.4. After commercial production begins the operator shall at the beginning of each year, deposit $100,000 to $200,000 as specified in an Annex, or with the Sponsoring Party post a bond for that amount. Such deposit or bond shall be returned in an amount equivalent to expenditures on or related to the block and the value of production at the site. A portion [a figure between 50% and 66-2/3% will be inserted here] of any funds not returned shall be transmitted to the Authority.

6. Unit Management

The Operations Commission shall assure unit management and production pursuant to Section 9 of Appendix A, giving the licensees and their Sponsoring Parties a reasonable time to reach agreement on a plan for unit operation.

APPENDIX C

TERMS AND PROCEDURES FOR LICENSES IN THE INTERNATIONAL TRUSTEESHIP AREA

1. General

1.1. Unless otherwise specified in this Convention, all provisions of this Convention except those in Appendix B shall apply to the International Trusteeship Area.

2. Entities Entitled to Obtain Licenses

2.1. The Trustee Party, pursuant to Chapter III, shall have the exclusive right, in its discretion, to approve or disapprove applications for exploration and exploitation licenses.

3. Exploration and Exploitation Licenses

3.1. The Trustee Party may use any system for issuing and allocating exploration and exploitation licenses.

3.2. Copies of licenses issued shall be forwarded to the Authority.

4. Categories and Size of Blocks

4.1. The Trustee Party may license separately one or more related minerals of the categories listed in paragraph 5.1 of Appendix A.

4.2. The Trustee Party may establish the size of the block for which exploitation licenses are issued within the maximum limits specified in Appendix A.

5. Duration of Exploitation Licenses

5.1. The Trustee Party may establish the term of the exploitation license and the conditions if any, under which it may be renewed, provided that its continuance after the first 15 years is contingent upon the achievement of commercial production.

6. Work Requirements

6.1. The Trustee Party may set the work requirements at or above those specified in Appendix A and put these in terms of work to be done rather than funds to be expended.

7. United Management

7.1. When a deposit most rationally extracted under unit management lies wholly within the International Trusteeship Area, or astride its landward boundary, the Trustee Party concerned shall assure unit management and production pursuant to Section 9.1 of Appendix A, and shall submit the plan for unit operation to the Operations Commission.

7.2. With respect to deposits lying astride a boundary between two Trustee Parties in the International Trusteeship Area, such Parties shall agree on a plan to assure unit management and production, and shall submit the operation plan to the Operations Commission.

8. Proration

8.1. The Trustee Party may establish proration, to the extent permitted by its domestic law.

9. Payments

9.1. Pursuant to sub-paragraph (e) of Article 28, the Trustee Party may collect fees and payments related to the issuance or retention of a license in addition to those specified in this Convention, including but not limited to payments on production higher than those required by this Convention.

9.2. The Trustee Party shall transfer to the Authority a portion (a figure between 50% and 66-2/3% will be inserted here) of the fees and payments referred to in paragraph 9.1 except as otherwise provided in paragraphs 3.3, 4.4 and 6.4 of Appendix A.

(NOTE: Further study is required on the means to assure equitable application of the principle contained in paragraph 9.2 to socialist and non-socialist parties and their operations.)

10. Standards

10.1. The Trustee Party may impose higher operating, conservation, pollution and safety standards than those established by the Authority, and may impose additional sanctions in case of violations of applicable standards.

11. Revocation

11.1. The Trustee Party may suspend or revoke licenses for violation of this Convention, or of the rules it has established pursuant thereto, or in accordance with the terms of the license.

APPENDIX D

DIVISION OF REVENUE

1. Disbursements

1.1. All disbursements shall be made out of the net income of the Authority, except as otherwise provided in paragraph 2 of Article 74.

2. Administrative Expenses of the International Seabed Resource Authority

2.1. The Council, in submitting the proposed budget to the Assembly shall specify what proportion of the revenues of the Authority shall be used for the payment of the administrative expenses of the Authority.

2.2. Upon approval of the budget by the Assembly, the Secretary-General is authorized to use the sums allotted in the budget for the expenses specified therein.

3. Distribution of the Net Income of the Authority

3.1. The net income, after administrative expenses, of the Authority shall be used to promote the economic advancement of developing States Parties to this Convention and for the purposes specified in paragraph 2 of Article 5, and in other Articles of this Convention.

3.2. The portion to be devoted to economic advancement of developing States Parties to this Convention shall be divided among the following international development organizations as follows:

(NOTE: A list of international and regional development organizations should be included here, indicating percentages assigned to each organization.)

3.3. The Council shall submit to the Assembly proposals for the allocation of the income of the Authority within the limits prescribed by this Appendix.

3.4. Upon approval of the allocation by the Assembly, the Secretary-General is authorized to distribute the funds.

APPENDIX E

DESIGNATED MEMBERS OF THE COUNCIL

1. Those six Contracting Parties which are both developed States and have the highest gross national product shall be considered as the six most industrially advanced Contracting Parties.

2. The six most industrially advanced Contracting Parties at the time of the entry into force of this Convention shall be deemed to be: _____ _____. They shall hold office until replaced in accordance with this Appendix.

3. The Council, prior to every regular session of the Assembly, shall decide which are the six most industrially advanced Contracting Parties. It shall make rules to ensure that all questions relating to the determination of such Contracting Parties are considered by an impartial committee before being decided by the Council.

4. The Council shall report its decision to the Assembly, together with the recommendations of the impartial committee.

5. Any replacements of the designed members of the Council shall take effect on the day following the last day of the Assembly to which such a report is made.

ANNEX VI

INTERNATIONAL RÉGIME

Working paper submitted by the United Kingdom[1]

1. The régime should be established by means of an international agreement

(a) Depending upon the range of questions to be regulated by the régime, one or several international instruments may be needed. If several agreements were necessary, these could either be concluded simultaneously, bringing the régime into full effect at one time, or over a period of time, so that the régime might progressively embrace a broader range of matters.

(b) To ensure that the régime will be effective, it should command the acceptance of the great majority of Member States of the United Nations and specialized agencies, including the major maritime nations. The substantive provisions of the agreement, and those for its entry into force, should be drafted with this aim in mind.

(c) Such an agreement should contain provision for review after an appropriate period of time to take account of international experience and of technological developments. The review would be without prejudice to acquired rights and would not affect the conditions attaching to existing licences and sub-licences without the consent of the licensees and sub-licensees.

2. The régime should govern the exploration of the sea-bed and ocean floor, and of their subsoil and the exploitation of the natural resources of this area

The agreement should specify precisely which resources are concerned. For this purpose the definition of resources of the Convention on the Continental Shelf might be drawn on. The régime would thus embrace the mineral resources of the sea bed beyond national jurisdiction at present known, including hydrocarbons, manganese nodules, phosphate deposits and mineralized muds, but

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1/ Originally issued as document A/AC.138/26.

not minerals recovered from the actual waters of the seas. It would seem more natural to regard such minerals as pertaining to the high seas. Sedentary living resources capable of commercial development would also be subject to the régime, although we do not at present know of any such existing at substantial depth.

3. The agreement should define the area in which the régime is to apply

When the régime eventually comes into force, the international community must know to what area it applies.

4. The agreement should provide that the establishment of the régime does not affect the legal status of the superjacent waters as high seas or that of the air space above those waters

5. The agreement should provide that, subject to the right to take responsible measures for the exploration of the area and the exploitation of its natural resources, as provided under the régime, the laying or maintenance of submarine cables or pipelines should not be impeded. Moreover, the exploration of the area and the exploitation of its resources should not result in any unjustifiable interference with other uses of the sea-bed or of the high seas, including the conservation of the living resources of the sea, or in any interference with the freedom of scientific research

The agreement should provide measures to eliminate or reduce as far as possible conflicts between the legitimate interests of the operator and those of other users of the high seas and the sea-bed, and to this end could deal, amongst others, with the following questions:

(a) the prevention and control of pollution of the marine environment resulting from research into and exploration of the area, or exploitation of its natural resources;

(b) the conservation of the natural resources of the area;

(c) the prevention of unjustifiable interference with navigation, overflight and fishing;

(d) the promotion of international co-operation in scientific research in the area and arrangements for making accessible to all the results of such research.

Scientific research would be defined in such a manner as to distinguish it clearly from commercial prospecting.

6. The agreement should provide for the establishment of an international body to administer appropriate parts of the régime in accordance with its provisions

(a) Such an international body might form a part of the United Nations family.

(b) The agreement might provide for a plenary conference of the States parties to the agreement. The plenary conference's powers and functions would be defined in the international agreement establishing the régime and the conference might elect a Board of Governors who would be responsible for administering such of the provisions of the agreement as were within the competence of the international body. Such a Board of Governors might be small in size in the interests of administrative efficiency and its membership should reflect a balance which would inspire confidence and would reflect the interests of, and the technical contribution which could be made by, the developed and developing countries, both landlocked and maritime. In principle such a Board might work on a majority voting basis. The international body should also have a secretariat responsible for the day to day conduct of the business of the international body and for the preparation of matters for decision by the Board of Governors.

(c) The agreement establishing the régime would need not only to specify the form of the international body, but also to lay down in particularly clear and precise provisions the rules by which it would operate and the criteria it should follow, in order to reduce to the minimum the scope for disagreement.

(d) However precise the terms of the agreement, the possibility cannot be discounted that there may be international disagreements about the way the international body should operate or about the meaning and implementation of its decisions. The agreement should, therefore, provide separate arrangements for the settlement of disputes between States parties or between States parties on the one hand and the international body on the other.

7. The agreement should provide for the allocation of licences to States

(a) The possible range of methods for the allocation of rights to explore and develop resources within the régime is described in the second part of the Secretary-General's study in document A/AC.138/12 and in A/AC.138/23. There are major difficulties about the actual conduct of operations on the sea-bed by or on behalf of an international agency.

(b) The most suitable régime might be one under which licences (either for all minerals or for specific minerals) would be issued by the international body to Member States only, such States being then responsible for sub-licensing operators under their own legislation, vouching for the technical and financial competence of such operators and ensuring that agreed standards and safeguards (which could be set out in the agreement) were complied with.

8. Equitable allocation of licences between States parties

(a) The agreement might provide for division of the whole of the sea-bed outside national jurisdiction into areas (called "blocks" and possibly defined by reference to co-ordinates of latitude and longitude) large enough to permit of efficient exploration and exploitation but small enough to allow fair opportunities to all States parties to the agreement. Different kinds of resources may require different sizes of blocks. These sizes will be influenced by geological and economic factors (including the depth of water at the site of operations, distance from land and from sources of supplies, and kinds of equipment necessary) about which there is insufficient knowledge at present to form a basis for judgment.

(b) The agreement should determine what proportion of the blocks available would be open for application by each signatory State. It would be for consideration what criteria should determine the proportions to be available to each signatory State. If any State failed to ratify within an agreed period after the entry into force of the agreement arrangements might be made for its share to be reallocated.

(c) Upon entry into force of the agreement, any State party would be free to apply for blocks available in the period in question up to the maximum number open to it. States might be required to show that an operator or operators was available who would be interested in working in the area. The international body would automatically allot licences in respect of blocks for which there was no more than one bid. In the case of competition for a block, allocation might be either to the first applicant State on the basis of a timed and dated application or by mutual agreement between the applicant States, which might include joint operations, or by the applicant States being given an opportunity to amend their applications so as to refer to blocks not already allocated, or failing all else by determination of the international body based solely on random selection by computer.

(d) Provision might be made for a fixed proportion of blocks to be licensed for development during successive periods of fifteen years following the entry into force of the agreement. While the number initially available would thus be restricted, the blocks would not be restricted to any particular geographical location.

(e) The agreement might provide for the relinquishment of parts of holdings at stipulated periods. Such areas would revert to the pool of unlicensed blocks and the State concerned could be credited with a reduction in its total holding.

9. <u>The nature of the licences to be issued would require precise definition</u>

(a) For the purpose of allocating licences, the process of exploring and exploiting should be divided into two phases, the first (here called "prospecting") involving comparatively low investment, the second ("development") beginning at the point where it becomes necessary to make very substantial investments. These phases may be tentatively defined as follows:

(i) <u>prospecting</u>: broadly based surveys, generally of large areas in the first instance, leading, by progressive narrowing of the search, either to the location of mineral occurrences of possible economic importance or to the identification of areas where hydrocarbons may occur;

(ii) <u>development</u>: all activity beyond the prospecting stage up to and including production and beginning with the detailed investigation of mineral occurrences or the establishing whether hydrocarbons are present in potentially favourable areas.

(b) The best régime might be one under which licences would be issued for prospecting and for development of the resources of the sea-bed in the form of a system comprising (i) non-exclusive prospecting licences and (ii) exclusive development licences.

(c) Broadly based search, over large areas, could be on the basis of a non-exclusive prospecting licence. Non-exclusive licences would authorize prospecting in any area not subject to exclusive licences, but the programme of work would have to be filed with the international body by the licensee State. Non-exclusive licences would not count against a State's licence quota. Such licences might be subject to renewal at the option of the licensee State, say every three years. Non-exclusive licences would lapse if the licensee State failed at the proper time to exercise the option for renewal.

(d) On the other hand, the more detailed work in smaller areas involved in establishing whether hydrocarbons are present, evaluating a deposit and production can be undertaken only on a basis of exclusive development licences. Similarly the development of other minerals can only be on an exclusive basis.

(e) Exclusive development licences should be issued for a period long enough to ensure that the mineral resource potential is fully evaluated, to offer the operator an adequate return and to enable the economic potential to be realized.

(f) Subject to (e) above, upon termination of the period of validity of an exclusive licence, the block(s) concerned should revert to the pool of unlicensed blocks.

(g) To avoid the possibility of allocated blocks remaining undeveloped, it would be necessary to stipulate a minimum work programme for exclusive development licence holders, possibly expressed in terms of expenditure. The licensee State might be required to deposit a bond equal to the cost of the work programme which might be forfeit if the work programme were not fulfilled.

(h) The international body could revoke licences if the licensee State failed to discharge properly other major obligations of the licence.

(i) Operators would be subject to the laws, including the tax régime, of the State from which they had derived their sub-licence (whether exclusive or non-exclusive) during the currency of the sub-licence and thereafter in respect of acts performed during the period.

(j) A sub-licensee would require protection against unreasonable surrender of the licence by the State.

10. <u>The agreement should provide for the payment of international royalties and for the licensing fees in respect of operations conducted under the régime</u>.

(a) The level of such payments would have to be calculated carefully to ensure that they did not have the effect of discouraging the development of sea-bed resources.

(b) Licensing fees should be limited to what is necessary to cover the administrative costs of the international body. They would be payable by the State which would be entitled to recover such fees from its sub-licensees, together with such other administrative expenses as might be incurred by it in the exercise of its own responsibilities under the agreement.

(c) The State would be obliged to pay an international royalty which should be distributed for the benefit of States parties to the agreement establishing the régime, taking account of the special needs and interests of the developing countries. As the Secretary-General points out in his study, such funds could be administered either through some new arrangements or by making use of existing machinery.

(d) Royalties should be calculated by reference to the volume or weight of production and not on the basis of revenue or profits.

(e) The scale of royalties which a State will be called upon to pay throughout the period of its activities should be known in advance, although this might include provision for a variable scale of payments (depending for example on levels of production or the year of development) in order to encourage orderly development at an economic rate. Similarly the terms which an operator would be called upon to meet should be known in advance.

11. The agreement should make provision for operating rules

The agreement might lay down that each State would be responsible to the international body for ensuring that its sub-licensees, whether working in blocks allotted to it or under a non-exclusive licence, did so in accordance with the provisions of the régime and met appropriate standards, particularly in the following respects:

(a) technical standards in performing the work;

(b) prevention of waste in the development of the resources;

(c) safety of personnel and equipment;

(d) prevention of unjustifiable interference with other uses of the high seas;

(e) prevention of pollution and other damage to other resources and to the environment.

The general standards to be achieved could be laid down in the treaty but more detailed rules might be drawn up by the international body or by the individual States; the States in turn would notify the international body of the rules they had laid down.

12. Arrangements would be needed to verify that States were complying with the agreement

(a) The international body might have the right under clearly defined arrangements to inspect operations which were being carried out, to satisfy itself that required standards were being observed. To assist the international body in this respect, the

agreement might contain provisions enabling it to call on States for summaries of the progress made by their sub-licensed operators, the locations at which operations were being carried on and could be inspected, and other useful information (e.g. geological data).

(b) The agreement should also contain appropriate safeguards against the disclosure of operators' commercially valuable information.

13. Liability for damage

Provisions governing liability for damage (including to other operators, other users of the sea, the living resources of the sea and the coasts of States) would need to be included in the agreement. These provisions would aim at securing reimbursement of the cost of remedying the damage.

ANNEX VII

ESTABLISHMENT OF A REGIME FOR THE EXPLORATION AND THE EXPLOITATION OF THE SEA-BED

Proposals submitted by France[1/]

The French Government has examined with great interest the various documents and proposals which have been distributed on the subject of the establishment of a régime for the exploration and the exploitation of the sea-bed beyond the limits of national jurisdiction, in particular the interim report of the Economic and Technical Sub-Committee (document A/AC.138/SC.2/L.6, dated 24 March 1970) which includes various proposals put forward at meetings (annexes I to VI), the report of the Secretary-General on international machinery (document A/AC.138/23, dated 23 May 1970) and the statement by President Nixon (document A/AC.138/22, dated 25 May 1970).

Following this examination, the French Government wishes to submit to the Sea-Bed Committee a first outline of its views on the structure and machinery of an international régime:

I. - General Principles

In the opinion of the French Government, the régime governing the exploration and the exploitation of the resources of the sea-bed must fulfil two basic requirements:

(a) Economic efficiency, since works of this nature presuppose considerable financial investments and demand undeniable technical skill;

(b) International equity, so that a share of the wealth which may be derived from the exploitation of the sea-bed which belongs neither to the States nor to the companies may contribute to the development of the most underprivilleged countries, under conditions to be defined hereafter (c.f. para. IV).

These two requirements should lead to the rejection of any extreme solutions, particularly:

1/ Originally issued as document A/AC.138/27.

(a) Any scheme which would lead to the appropriation pure and simple by States of more or less extensive areas of the sea-bed, since this would conflict with its international character;

(b) Any scheme which would lead to the takeover pure and simple by an international organization invested with considerable powers, of the exploration and exploitation of the sea-bed, since this might be difficult to reconcile with the requirement of economic efficiency.

The French Government has accordingly tried to find a middle way.

At the March session of the Sea-Bed Committee in New York, the French delegation suggested that, for the international régime to be established for the exploration and exploitation of the sea-bed beyond the limits of national jurisdiction, it would be desirable to establish a distinction between two types of exploitation:

- one for minerals where exploration - at the decisive stage - and exploitation require mobile equipment: this could be the case with manganese nodules scattered over the ocean bed and recoverable by dredging;

- the other for minerals where the same operations entail the use of fixed installations (as with hydrocarbons).

This distinction should normally lead to two different types of régime with different provisions.

The system for the first type (mining with mobile equipment) would take the form of simple registration with an international organization, accompanied by a declaration of the areas to be explored or exploited, and without any exclusive rights. Exploration and exploitation would be subject to the international regulations for the protection of life at sea, for respect for the freedom of the high seas, for protection against pollution of the sea, etc. The rules applicable to exploration and exploitation would be set out in a list of conditions laid down by an international convention, which would fix the period of validity of each registration with the possibility of renewal.

For the second type, exploration and exploitation rights would be exclusive and States would be granted areas, within which they would issue licences. The structure of the régime to be applied to this type is explained in the following chapters.

II. - General structure of the plan

(A) Form: First, a general convention should be drawn up (following possibly the precedent of the International Telecommunication Union), setting out the basic principles (to be defined by the Legal Sub-Committee), the broad outlines of a régime (to be defined by the Economic and Technical Sub-Committee) and the structure of an organization.

Secondly, detailed international regulations should be drawn up by smaller sub-committees consisting mainly of technicians and economists, setting out all the rights, limitations and obligations, which, in all circumstances, both the organization and the States and companies, would be obliged to observe. These regulations would be open to revision, say every fifteen years.

Thirdly, from these regulations and all other international obligations affecting the sea bed (pipelines, telegraphic cables, anti-pollution measures, etc.), lists of conditions would be drawn up applicable to every operation giving rise to the granting of an area to a State for the issue of a licence to a company, it being understood that the Convention would provide for the grouping of States for the granting of areas, and for the grouping of companies for the issue of licences.

(B) Substance:

(a) Principles applicable to the régime:

(1) States shall be allotted, for a given period of time, areas within which they grant licences themselves.

(2) The granting of an area to a State shall be subject to the submission of an application from a company for a licence within that area.

(3) The law governing relations between the international community, represented by the organization, and States shall be international law exclusively; the law governing relations between States and the companies shall be partly international, partly municipal.

(4) States shall undertake to explore, and later to exploit the areas granted to them, so as to avoid a "freezing" of those areas. However, the establishment of reserves ("provisional freezing") shall not be ruled out, provided it is limited to a reasonable period and properly justified;

(5) Agreement on the sanction for the infringement by any State or company of the principles stated in paragraph 4, or of the technical provisions of the International Regulations in the first instance be sought by negotiation; only if agreement proves impossible shall some arbitral procedure be employed.

Obviously areas might be granted to groups of States, either members of an existing international organization or associated for that specific purpose. In that case, the rules set out in this document should be adopted as required.

(b) Principles applicable to the organization:

(1) It would comprise, first, a Permanent Board to examine all applications and take decisions in simple cases; this Board would centralize all information collected, act in a supervisory capacity and be empowered to issue warnings to States in the case of any violation of the Regulations;

(2) It would comprise, secondly, a Conference of Plenipotentiaries, assisted by a Technical Committee, which would be responsible for taking decisions on applications presenting difficulties (in the case of competition for the same area), and for considering, and if possible settling, cases of violations.

(3) The Conference and the Committee would thus be meeting-places for exchanges of views, negotiations and possible arbitration. They should be able to bring in, alongside the representatives of States, representatives of the companies, whatever their legal status (public or private).

III. - Structure of the régime

(a) Conditions for the allocation of areas and permits

In order to avoid both uncertainty over the allocation of areas, and a too unbalanced allocation that would be contrary to the interests of the international community, it is advisable that the allocation of areas and permits should be hedged round by a fairly tight ring of restrictive rules:

(a) No State may claim for a monopoly of the areas adjacent to its continental shelf;

(b) No State or group of States may on its own account claim for more than a certain number of square kilometres, either in one piece or in several, in a period of ten years, unless it has given back parts of areas in accordance with the conditions set out below (B.b.);

(c) Every company applying for a licence must have an establishment in the territory of the State applying for the corresponding area: for the purposes of the régime, the company is then regarded as having the nationality of the applicant State.

(d) Every company must produce adequate technical and financial assurances, to be guaranteed by the applicant State.

(e) Licences granted to companies by States are exclusive for one or more given substances. Only the State holding the area may issue other licences within the said area, for other substances.

(f) In the event of a discovery, the prospecting licence, subject to its restriction in scope to the size of the area concerned, shall be converted into an exploitation licence when it is duly established that the discovery can be exploited either immediately or within a reasonable time.

(B) Conditions for exploration and exploitation

(a) Whether or not there is any exploration activity, the area covered by the exploration licences granted by a State to a company shall be automatically halved every five years;

(b) If, in an area held by a State, the latter does not within three years allocate new licences for the areas given back to it, the corresponding part of the area shall be regarded as once more open to the international community and may be granted to another State;

(c) Withdrawal by a State of a licence allocated to a company shall have the same effects for the said State as described in paragraph B (b).

(C) Legal relations between State and companies;

(a) The international regime established by the Regulations shall decide the general principles for the granting of licences for the exploration and the exploitation of deposits, and also related problems raised by the setting up of permanent installations, impediments to shipping and fishing, nuisances, etc...

(b) States shall apply their municipal law to companies operating in the areas granted to them, with respect to working conditions, social welfare of workers, criminal law, collection of dues and taxes, and customs control of products extracted.

IV. - Royalties

The French Government considers it both legitimate and necessary that the developing countries, including the landlocked countries, should be able to profit from the exploitation of resources which form part of the common heritage of mankind.

It considers that the most appropriate method of distributing the resources, from the standpoint both of international equity and economic efficiency, is not by the assessment and direct collection by the international organization of predetermined taxes on production from deposits.

On the contrary States should levy a tax on companies holding exploitation licences in the areas allocated to them. When an exploitation licence is allocated, the State concerned should undertake both to establish and recover such a tax, and also to contribute an appreciable share of it to any international, regional or bilateral programme of assistance to the developing countries which it may select.

Execution of this undertaking will be supervised by the Permanent Board. Should a State not fulfil this voluntarily accepted obligation, the penalty would be either the refusal of any grant of new areas, or the withdrawal of areas already held, as decided by the Conference of Plenipotentiaries.

V. - Powers of the organization

(a) The funds needed to operate the organization might be raised by means of a moderate tax levied on the surface area covered by exploration licences, at the time of the allocation of areas to each State;

(b) In straightforward cases, the allocation of areas would be carried out by the Board on the basis of predetermined criteria;

(c) Such automatic procedures would have to be abandoned where there were rival applicants and the granting of areas had to be done by the Conference of Plenipotentiaries or its delegated Technical Committee. Since the method of adjudication to the highest bidder is liable to lead to over-bidding, which would not be in the interests of companies from smaller States, the best course would perhaps be to try to secure amicable agreement on a balanced distribution.

The French Government feels obliged to point out the desirability of harmony between States and mutual goodwill in this matter, so as to achieve solutions acceptable to the international community and prevent litigation and disputes which would impair the rational exploitation of an asset common to the whole of mankind.

ANNEX VIII

LIST OF DOCUMENTS OF THE COMMITTEE

- Letter dated 4 February 1969 from the Permanent Representative of Belgium addressed to the Secretary-General	A/AC.138/1
- Draft programme of work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction - Submitted by Argentina, Brazil, Chile, El Salvador, Mexico, Peru, and Trinidad and Tobago [dated 5 February, 1969]	A/AC.138/2
- Draft programme of work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction - Submitted by Bulgaria, Czechoslovakia, Poland, Romania, and the Union of Soviet Socialist Republics [dated 6 February 1969]	A/AC.138/3
- Outline of programme of work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction - Submitted by the United States of America [dated 6 February 1969]	A/AC.138/4
- Programme of work for 1969 of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction - Submitted by India, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Sierra Leone, Sudan, Thailand, United Arab Republic and Yugoslavia [dated 7 February 1969]	A/AC.138/5
- Economic considerations conducive to promoting the development of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction in the interests of mankind - Preliminary note by the Secretariat [dated 4 March 1969]	A/AC.138/6
- Proposals and views relating to the adoption of principles - Working paper prepared by the Secretariat [dated 6 March 1969]	A/AC.138/7 and Corr.1-4
- Organization of work - Proposals by the Chairman presented in accordance with the agreement reached at the meeting of the Committee held on 7 February 1969 [dated 7 March 1969]	A/AC.138/8
- Supplement to the survey of national legislation concerning the sea-bed and the ocean floor, and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction (A/AC.135/11, and Corr.1 and Add.1) - Document prepared by the Secretariat [dated 11 March 1969]	A/AC.138/9

- Letter dated 27 February 1969 from the Chairman of the IOC addressed to the Secretary-General (Circulated at the request of the representative of UNESCO)	A/AC.138/10
- Malta : draft resolution [dated 18 March 1969]	A/AC.138/11
- Study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction and the use of their resources in the interests of mankind - Report of the Secretary-General [dated 18 and 30 June 1969]	A/AC.138/12 and Corr.1 and Add.1 and Add.1/Corr.1
- (Reproduced in Annex II to Report of the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction, Official Records of the General Assembly: Twenty-fourth Session, Supplement No.22 (A/7622))	
- Study on marine pollution which might arise from the exploration and exploitation of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction - Note by the Secretary-General [dated 28 July 1969]	A/AC.138/13
- Note by the Secretary-General [transmitting the draft comprehensive outline of the scope of the long-term and expanded programme of oceanic exploration and research, prepared by the Special Working Group of the IOC on the Long-Term and Expanded Programme]	A/AC.138/14 and Corr.1
- Note by the Inter-Governmental Maritime Consultative Organization (IMCO) [dated 15 August 1969]	A/AC.138/15
- Statement by the Chairman at the eighth meeting of the Committee on 27 August 1969	A/AC.138/16
- Report of the Economic and Technical Sub-Committee [dated 27 August 1969]	A/AC.138/17
- Report of the Legal Sub-Committee (covering its March and August sessions) [dated 28 August 1969]	A/AC.138/18 and Add.1
- Letter 10 October 1969 from the Chairman of the Committee addressed to the Secretary-General	A/AC.138/19
- Letter dated 21 October 1969 from the Secretary-General addressed to the Chairman of the Committee	A/AC.138/20
- Government measures pertaining to the development of mineral resources on the continental shelf - Review prepared by the Secretariat [dated 27 January 1970]	A/AC.138/21 and Corr.1

- Letter dated 25 May 1970 from the representative of the United States of America addressed to the Chairman of the Committee — A/AC.138/22

- Study on international machinery - Report of the Secretary-General [dated 26 May 1970] — A/AC.138/23

- Possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from the exploitation and the resources of the area beyond national jurisdiction - Preliminary note by the Secretariat [dated 9 June 1970] — A/AC.138/24

- Draft United Nations Convention on the International Sea-Bed Area - Working paper submitted by the United States [dated 3 August 1970] — A/AC.138/25

- International régime - Working paper presented by the United Kingdom [dated 5 August 1970] — A/AC.138/26

- Proposals concerning the establishment of a régime for the exploration and the exploitation of the sea-bed - Submitted by France [dated 5 August 1970] — A/AC.138/27

- Letter dated 14 August 1970 from the Chairman of the Delegation of Peru addressed to the Chairman of the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction — A/AC.138/28

- Report of the Economic and Technical Sub-Committee [dated 24 August 1970] — A/AC.138/29

- Statement by the representative of UNESCO, Mr. Alfonso de Silva, to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction at its 40th meeting on 26 August 1970 — A/AC.138/30

- Report of the Legal Sub-Committee [dated 27 August 1970] — A/AC.138/31

Limited Documents

- Draft report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction [dated 25 August 1969] — A/AC.138/L.1

- Statement by the Chairman at the Twenty-fourth meeting of the Committee on 6 March 1970 — A/AC.138/L.2

- Draft Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction [dated 21 August 1970] — A/AC.138/L.3 and Add.1-4

Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (Official Records of the General Assembly, Twenty-fourth session, Supplement No. 22 (A/7622)).

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