UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.138/SC.I/SR.5-31
3 December 1971

ENGLISH
Original: ENGLISH/FRENCH

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

SUB-COMMITTEE I

SUMMARY RECORDS OF THE FIFTH TO THE THIRTY-FIRST MEETINGS

held at the Palais des Nations, Geneva,
from 20 July to 27 August 1971

Chairman:	Mr. SEATON	United Republic of Tanzania
Rapporteur:	Mr. PROMASKA	Austria

NOTE: The list of participants is to be found in documents A/AC.138/INF.5 and Corr.1-3, INF.5/Add.1 and Add.1/Corr.1, INF.5/Add.2-4.

GE.71-25428
72-35012

(398 p.)

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SUMMARY RECORD OF THE FIFTH MEETING

held on Tuesday, 20 July 1971, at 10.45 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

ORGANIZATION OF WORK (A/AC.138/SC.I/L.4)

The CHAIRMAN invited comments on his note (A/AC.138/SC.I/L.4), which contained suggestions concerning the organization of the Sub-Committee's work during the present session.

Mr. ZEGERS (Chile) said that at the Sub-Committee's March 1971 session it had been decided that the Sub-Committee should begin its work with a general debate which would cover all the subjects coming within its terms of reference. The draft treaty which the Sub-Committee had been asked to draw up[1/] should likewise cover all the items in question - in other words, the three subjects listed in the second paragraph and the two subjects referred to in the fourth paragraph of document A/AC.138/SC.I/L.4. It had been agreed at the March 1971 session that the question of setting up working groups should not be discussed until the general debate had been concluded and, in his view, that was the right way to organize the work of the session, since the general debate would cover, inter alia, the two reports of the Secretary-General (A/AC.138/36 and A/AC.138/37 and Corr.1 and 2) and any complete or partial draft treaties which had been or might be submitted.

The CHAIRMAN said that he agreed with the Chilean representative's remarks. He hoped, however, that speakers in the general debate would not talk in abstract terms but would confine their remarks to certain specific issues, so that they could be clarified by the discussion. Once the Sub-Committee had completed that stage of its work, it could consider whether it wished to set up working groups to discuss, for instance, the two reports of the Secretary-General and the problems and needs of land-locked countries. It might equally well decide to discuss the subjects in plenary. Again, if it felt that the discussion had adequately clarified ideas concerning the type, status and functions of an international regime and the structure, organization and powers of the proposed international machinery, it might wish to set up a working group to draft treaty articles. If agreement could not be reached on a single set of articles, alternative texts could be prepared so that the

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1/ See A/AC.138/SR.45, p.70.

Committee or the General Assembly could in due course express its views on them. If the Sub-Committee decided to set up one or more working groups, he thought that in the interests of efficiency the membership should be relatively small.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he welcomed the Chairman's flexible approach to the organization of work and shared his desire that representatives should concentrate on specific issues in their statements in the general debate. Thus, while it was recognized that delegations could, if they wished, state their positions on certain general problems, they could also submit and introduce draft treaties. He thought it would be useful at some stage to fix a deadline for the conclusion of the general debate, on the understanding that if any delegation wished to supplement its statements later it could do so during the discussion of specific drafts.

Mr. THOMPSON-FLORES (Brazil) said that he envisaged three stages in the Sub-Committee's work at its present session. First, there would be a general debate in which representatives should concentrate on the main issues relating to the international machinery to be set up and could, if they wished, submit working papers or a draft treaty on the international regime. Secondly, after the issues had been clarified in the general debate, working groups could be set up not with a view to the immediate drafting of articles on the various aspects of the international regime, but rather to discuss any drafts which were before the Sub-Committee, and to take decisions of a general nature on them. Such decisions would have to be taken before drafting could begin. Participants should be permitted to submit working papers or draft treaties not only in plenary but also in the working groups. The third stage of the work would be the preparation of draft articles. In other respects, he was in agreement with the Chairman's suggestions.

Mr. ARIAS-SCHREIBER (Peru) said that he agreed with the views expressed by earlier speakers. A general debate was essential so that delegations could make known their hopes and preoccupations. Any drafts which were submitted would require very careful study so that all their implications could be considered; and he thought that the Sub-Committee should devote the greater part of the present session to that task.

Mr. D'ANDREA (Italy) said that, if he had understood the position correctly, the Chairman had said that at some time it might be necessary to set up a working group to draft articles. That might raise difficulties for his delegation, since only persons with special legal qualifications could participate in that kind of work. If each Sub-Committee decided to set up a working group to draft articles, Italy would be unable to participate in all of them.

Furthermore, the work done by Sub-Committee I would be highly relevant to the work of the other Sub-Committees. Therefore, if a working group was set up to draft articles, its work should be co-ordinated with that of the other Sub-Committees.

The CHAIRMAN, summing up the position, said that, subject to a few reservations which had been expressed by some representatives, there seemed to be general agreement on the suggested organization of work. The reservations expressed related to the various stages in the work of the session. The first stage would comprise a general discussion on all the main issues connected with an international regime and international machinery. During the general debate draft articles and draft working papers might be presented, and it was hoped that certain issues, at least, would be clarified. In the second stage one or more working groups might be set up to discuss issues which had been raised in the general debate and to attempt to draft articles. Additional draft treaties or working papers could be submitted at that stage and it was possible that the working groups might succeed in drafting some articles. Irrespective of the procedure which it decided to follow, he hoped that at the end of two or three weeks the Sub-Committee would be ready to draw up its report for submission to the main Committee.

Mr. JEANNEL (France) stressed the need for considerable flexibility in the Sub-Committee's approach to the difficult problems which had to be solved. The Sub-Committee should not tie itself down to a specific programme at the present juncture. The best way to achieve practical results was to be extremely pragmatic, and to modify the procedure whenever it was necessary to do so in the interests of efficiency.

GENERAL DEBATE

Mr. WARIOBA (United Republic of Tanzania) introduced the draft statute for an international sea-bed authority submitted by his Government in document A/AC.138/33. The proposals contained in it were motivated by three considerations.

In the first place, the marine environment was an indivisible whole and should be dealt with as such. Although geographically it exhibited different features at different depths and the use which man made of it varied according to his needs, nevertheless the water spaces had an inherent unity which could not be ignored.

Secondly, the so-called legal regimes applicable to the marine environment were inadequate because they were so vague that no-one could be certain where one State's rights began and another's ended; they were inequitable because they reflected the attempt by each State to grab as much of the common heritage of mankind as it felt strong enough to defend; and they were out-of-date because they tried to perpetuate attitudes and practices devised by the former imperial Powers to facilitate and maintain their domination, and did not adequately anticipate the rapidity of man's technological progress.

Thirdly, the present division of the world into a few "have" and many "have not" nations was intolerable and current systems tended to perpetuate disparities rather than overcome them. A new and determined attempt must therefore be made to devise a more just and humane system for sharing the world's resources and pooling knowledge and technology.

It was apparently an extremely difficult task to transform the present inequitable distribution of land resources and the laws and economic practices developed to justify and protect them. However, it seemed rational and still possible to devise and establish a system of laws and practices for the sea and its resources which would serve the present and future generations. That task should be an exercise in the application of a common development strategy on a global basis. The objective should be to bring the interests of the members of the world community closer together. The instrument required to regulate and harmonize the political, economic, military and other interests of States should be as clear as possible.

His delegation was aware that in view of the controversial nature of the subject it could not hope to submit an ideal solution; but it had submitted specific proposals in the hope that discussion of them might reveal points of common agreement with other delegations.

The draft statute was relatively short but broad in scope, setting out general principles of co-operation and defining the basic structure necessary for effective co-operation. It therefore had the advantage of being flexible and leaving room for other instruments to be drawn up for the regulation of particular aspects of international co-operation in the area, such as criteria and standards for

exploitation, research and anti-pollution measures. To attempt to embody regulations for every conceivable aspect of sea-bed activity in one instrument would be to repeat the mistakes of the United Nations Conference on the Law of the Sea held at Geneva in 1958.[2] The instruments drawn up at that time, particularly the Convention on the Continental Shelf,[3] had become a source of difficulty because legal thought had not grasped the full import of rapid technological development. The draft statute therefore contained general principles, whose application could be regulated under separate instruments.

The draft statute provided for universal membership, since it would be inconceivable to exclude any part of the international community wishing to participate. The unit of membership was the individual sovereign State and the general membership should have the right to decide which entities did or did not constitute States.

The assembly would be the legislative arm of the proposed organization and the repositary of its supreme powers. Such an arrangement seemed appropriate for a body in which the representatives of all members would meet to discuss and take decisions on policies designed to give meaning to the concept of "the common heritage of mankind". In accordance with democratic principles and the de jure sovereign equality of States, each member would be entitled to one vote in the assembly.

The council, as the executive arm of the organization responsible for carrying out the assembly's policy decisions, would have fairly strong powers and would be authorized to take administrative and technical decisions. To avoid the danger of its becoming too strong, the council would be relatively limited in size but the diverse groups comprising the organization's total membership would be represented in it.

The most striking difference between the Tanzanian proposal and the United States draft convention on the international sea-bed area[4] submitted to the Committee at its twenty-ninth meeting, on 3 August 1970, was the elimination of the categories of permanent and non-permanent members and of special voting privileges, such as the veto.

2/ See United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.: 58 V.4, vol. I-VII).

3/ United Nations, Treaty Series, vol. 499, p.311.

4/ See Official Records of the General Assembly, Twenty-fifth Session Supplement No. 21 (A/8021), annex V.

The provision that substantive decisions required a two-thirds majority veto was considered a sufficient guarantee that the council would always act on the basis of a wide consensus of opinion. As the term of office for members of the council was to be only three years, all members of the organization would have a chance to serve in rotation, although there was nothing to prevent re-election if it was felt desirable to ensure continuous participation in the council's work by States with highly advanced maritime industries or other special qualifications.

A was clear from the provisions of article 31, the secretariat would be independent of the council but closely associated with it. The council would be empowered to make regulations governing licensing, inspection, technical assistance and other matters, but the secretary-general would have the authority to designate members of the staff to inspect State activities. The secretary-general would prepare the budget but the council would consider it before its approval by the assembly. Other organs, such as the distribution agency, might be empowered to make rules and regulations of an economic, legal and technical nature, which the assembly would approve and the secretariat would help to implement. The secretariat would thus be an administrative instrument both of the assembly and of the council.

Article 37, which provided for the establishment of headquarters and regional centres, was designed to streamline the administrative process. No encroachment was intended on the powers of the council or secretariat in matters that were the exclusive responsibility of headquarters, but headquarters could delegate such powers as it deemed appropriate.

Article 3 concerning delimitation was perhaps the most important in the draft statute. The delimitation of the area of the sea-bed and ocean floor was essentially tantamount to the definition of the continental shelf. The two methods used in the 1958 Geneva Convention on the Continental Shelf - the 200-metre depth and the exploitability test - had caused serious problems and there was still no precise delimitation of the continental shelf of any State. With the depth test, States whose land masses had gentle slopes would be entitled to large areas, whereas States having sharp slopes would have scarcely any shelf. Under the exploitability test, with the advance of technology, the whole mass of the sea-bed and ocean floor might be divided inequitably between coastal States. The original proposal in article 3(1) was based on the depth method, with a proviso giving States the right to use a definite distance method; but on further reflection his Government had decided that such a provision would give rise to problems similar to those raised by the

definition of the continental shelf in the 1958 Convention. It hoped that the distance to be agreed upon would be set within reasonable limits. Some problems could be anticipated in reaching agreement. Too narrow a limit might cut across many present-day claims and ignore the special interests of coastal States; but too wide a limit would swallow up all the areas ripe for exploitation and thus prejudice the establishment of the international authority. He hoped that an agreement would emerge that would accommodate the special interests of coastal States and the wider interests of the international community.

One argument frequently advanced against the distance method was that it did not favour coastal States which could not benefit from the depth method - namely, States with very narrow geophysical shelves. The claim that appreciable benefits could be obtained only within a depth of 200 metres might have been valid in 1958 when the essential resources had been oil, gas and sedentary fisheries. Today, however, much more was at stake. Moreover, if the distance method were applied, areas with a depth of 200 metres or less could be included within the international area, which would be helpful in the endeavour to establish an international authority. At a later stage it would be possible to propose a specific distance.

In accordance with article 13, exploration and exploitation could be conducted by or on behalf of the authority or a contracting party. Article 16 listed the powers of the authority, which would include the power to explore and exploit the sea-bed on its own. That might seem to raise certain problems, such as whether the authority would have the necessary resources and skills to carry out such activities, and whether they could not be carried out more efficiently by less cumbersome bodies. His delegation considered, however, that the authority should reserve the right to exploit the area, although its exercise of powers in that respect might normally be confined to the regulation and control of activities in the area.

Regarding relationships with other international organizations, article 17 provided for reports to be submitted to the United Nations General Assembly and to other United Nations organs on matters within their respective competence. That raised the fundamental issue of the relations between the authority and the United Nations. For example, would a decision of the Economic and Social Council on a matter reported to it be binding or recommendatory? Article 17 implied that decisions by organs of the United Nations would merely be recommendations, except for decisions by the Security Council which might be considered as binding because of

that body's predominant responsibility for world peace and security. It might prove necessary to define more precisely the extent of the authority's autonomy in respect of other international organizations.

It was almost universally agreed that there should be an equitable sharing of the benefits derived from exploitation of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction, and that particular regard should be given to the interests and needs of developing countries. Differences of opinion among delegations related mostly to the relative significance of the amount of revenue likely to be available for distribution and the optimum method of sharing. Assuming that the area under international control included areas other than the deep oceans, his delegation believed that the revenues available for distribution would be substantial. A method favoured by some States was that the revenues should be handed over to existing international organizations, such as United Nations specialized agencies, for allotment to applicants for aid in accordance with the procedures of the respective agencies. In his delegation's view, there was no need for indirect intervention by other international organizations: the income derived from the "common heritage of mankind" belonged by right to the whole international community. The only point in question was the means of distribution, and it seemed that the best method was to have a distribution agency within the authority to distribute shares of revenue direct to member States according to criteria which they themselves approved in the assembly.

Unless there were some assurance that exploitation of the resources of the sea-bed would not result in drastic reductions in the prices of land-based minerals, many States now exporting large quantities of such minerals would undoubtedly be opposed to granting jurisdiction over a wide area to an international regime. To gain the confidence of the governments and peoples of those countries, the proposed international authority should have ample powers to deal with the problem of mitigating the adverse effects of sea-bed exploitation on the prices of land-based minerals. The draft statute would vest such powers in a subsidiary organ of the authority.

Under the existing international legal system, States had the right to seek the settlement of disputes by peaceful means of their choice, including negotiation, conciliation or mediation, arbitration or adjudication through the International Court of Justice. Some might favour the creation of a special tribunal for the settlement of disputes arising with respect to the exploration and exploitation of the sea-bed, on the grounds that such a tribunal would in time acquire a specialized body of knowledge and might be able to employ more flexible procedures than the International Court of Justice. On the other hand, a special tribunal might adopt a narrow approach, without reference to the main body of international law. Moreover, specialized knowledge could always be obtained by resort to arbitral procedures, and by selecting recognized experts in the relevant field as arbitrators. States might also prefer to settle their disputes by resort to regional arbitration tribunals under existing or ad hoc arrangements.

Accordingly, the draft statute, while affirming the obligation of pacific settlement of disputes, left the parties a wide choice of methods. The proposal created an obligation stricter than that envisaged in most international organizations - stricter, for example, than the obligation contained in Article 33 of the United Nations Charter. However, it seemed only right that such an obligation should exist in an international organization which it was hoped would be more just, rational and humane than existing international organizations.

The meeting rose at 11.55 a.m.

SUMMARY RECORD OF THE SIXTH MEETING

held on Wednesday, 21 July 1971, at 10.45 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. STEVENSON (United States of America) said he wished to comment briefly on some of the points made by the Tanzanian representative at the Sub-Committee's fifth meeting. His delegation welcomed the draft statute submitted by the delegation of Tanzania (A/AC.138/33), which was an important contribution to the Sub-Committee's work. It would also welcome the submission of any additional drafts by other delegations.

During his discussion of international machinery, the representative of Tanzania had made certain references to the draft United Nations convention on the international sea-bed area submitted by the United States. 1/ His delegation wished to emphasize that the United States had not proposed a system of permanent membership and veto powers such as existed in the Security Council. What it had sought to do was to devise international machinery with sufficient authority to perform the substantial functions envisaged by most delegations. The only way to accomplish that was to ensure that the council of the international sea-bed authority was in a position to command support from the various sections of the international community. The United States had accordingly proposed a council of 24 members, 18 of which would be elected and 6 designated. The 6 designated members would be the most industrially advanced countries; they could be expected to change from time to time. Decisions of the council would require a majority of each group. The draft also provided that 12 of the 18 elected members had to be developing countries, while at least 2 members would be land-locked or shelf-locked countries. Under that system, no decision could be taken over the objection of a substantial section of opinion in the developing countries or in the major industrialized countries.

As the representative of Tanzania had said, the problem of limits was perhaps the most fundamental of all. One of the most difficult aspects of that problem was the unequal distribution of continental shelves and continental margins around the

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1/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), annex V.

world. Although large petroleum resources were known to exist beyond 200 metres, virtually all reserves were located in the continental margins and, on the basis of past experience, it could be expected that petroleum and natural gas located in the margins would have a much greater economic potential than the hard minerals located beyond the margins on the deep ocean floor. No possible boundary could, in itself, compensate for the unequal distribution of continental margins. That was one of the reasons why his delegation had proposed the "trusteeship zone" concept. Absolute national jurisdiction being limited to areas landward of the 200-metre depth line, the resources in the continental margins would, in essence, be divided in half. Beyond the 200-metre line, the international régime would apply and there would be international sharing of benefits.

The accommodation of coastal and international interests could not, however, be achieved in an equitable fashion by drawing one line which would separate absolute national areas from absolute international areas. It was evident that both those interests would have to be accommodated within continental margin areas beyond a relatively narrow limit. Accordingly, the United States had proposed that a new international régime for the sea-bed should apply to the broadest practicable area, namely, the area beyond the 200-metre depth line outside a territorial sea of 12 miles. It did not propose, however, that coastal State interests should be disregarded beyond such a limit. The régime would accommodate them by providing the coastal State with carefully defined but substantial rights and functions.

The trusteeship zone would thus be a coastal area of substantial size under the international régime, in which there was a mixture of international and coastal functions. The precise mixture of rights would have to be an equitable one. He hoped that, when discussing the various issues raised, other delegations would comment on the trusteeship concept and on the appropriate mixture of international and coastal functions.

Mr. JOHNSON (Jamaica) said that rapid technological advances and the scientific development of ocean space had produced an economic phenomenon which had to be seen in a special light and given very special treatment. It was essential that the Sub-Committee should take those factors into account in its work on the international régime and the development of machinery for the sea-bed area beyond the limits of national jurisdiction.

Such an international régime and machinery would have to be sensitive and responsive to the social development forces and objectives of the developing countries. Social justice in the distribution of the benefits resulting from the exploration and exploitation of the marine environment was essential. The world could not afford to repeat the errors of the past. Technology had opened up new and bright prospects for mankind and, if properly harnessed, would enable man to build a new society and a new international community worthy of the environment in which he lived. In the creation of that new society, technology must be man's slave and not his master. Consequently, adequate provisions must be built into the régime to compensate for the existing technological imbalance and meet the interests of the developing countries.

In respect of the granting of licences for exploration and exploitation, a basic principle should be prior notification of and consultation with the coastal States nearest to the region of the proposed activity. The same principle should also apply to ventures undertaken by the international authority itself. As a further safeguard, licences should in no event be granted without guarantees of the ability of the contracting party or parties to provide adequate compensation to a damaged third party. That principle would, of course, be of particular interest to countries which were heavily dependent on tourism, fishing, marine farming and similar activities.

The purpose of the international régime and machinery was to ensure the orderly development of the resources of ocean space for the benefit of mankind. The régime should not merely legitimize a scramble for prospecting and exploitation claims across the international sea-bed. The progress of exploration and exploitation should be gradual and controlled, so as to maintain the ecological integrity of the entire marine environment and a rational economic equilibrium between land-based resources and those from the sea-bed. Consequently, his delegation thought that the agreement on the sea-bed régime should specifically provide for "reserve areas" in which no exploitation would be permitted over a period of time. Such reserve areas should be at least one-third of the entire international sea-bed. They would be held exclusively for direct exploitation by the international sea-bed authority on behalf of the international community as a whole. That would not mean, of course, that the authority thereby relinquished any of its rights to direct exploitation within the remaining areas.

In the allocation of licences for exploration or exploitation, the authority would not allocate title to the resources within the particular area covered by such licences. Title to sea-bed resources before their exploitation rested entirely with the international community and, when granting licences for exploration, the international community would not wish to relinquish the title to more than a fixed percentage of the resources exploited.

A fundamental requirement of the régime should also be prior notification to the major producing countries of land-based mineral resources of an intention to grant licences for the exploration and exploitation of particular resources of major concern to them. That would be one way of ensuring that economic dislocation in mineral-producing countries was kept to a minimum, since they would have an opportunity to indicate their views to the supreme body of the international authority.

The meeting rose at 11.30 a.m.

SUMMARY RECORD OF THE SEVENTH MEETING

held on Friday, 23 July 1971, at 10.45 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

later: Mr. THOMPSON-FLORES Brazil

later: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. SIMPSON (United Kingdom) said that on 22 March 1971, at the Committee's fifty-fifth meeting, the United Kingdom representative had stressed that the paper on the international régime submitted by the United Kingdom in August 1970[1/] was a working paper intended as a basis for discussion, and not a blueprint. It was an attempt to provide for the equitable participation of States both in the sharing of the revenues which it was hoped the international community would derive from the exploitation of the sea-bed, and also more directly in the operations to be conducted within the international area. His delegation would expand on the ideas contained in the working paper when the Sub-Committee considered the various aspects of its mandate.

The interest that the exploitation of the resources of the sea-bed was arousing in the United Kingdom and the ideas of the United Kingdom Government were illustrated by the answers to two questions in the United Kingdom Parliament.

In the answer to the first question, on 10 May 1971, it was stated that the United Kingdom Government had examined the United States proposals put forward as a draft convention in August 1970[2/] and supported the concept of a 200-metre depth limit to national jurisdiction and a trusteeship area within which coastal States would have certain entrenched rights by international agreement. It was further stated that much detailed work remained to be done and that it was too early in the Committee's work to say what decision would eventually emerge: it was important that the ultimate solution should be acceptable to the international community as a whole.

1/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), annex VI.

2/ Ibid., annex V.

The second answer, given on 12 July 1971, stated that the entrenched rights of the coastal State within the trusteeship area should include all necessary jurisdiction over such matters as licensing of activities in connexion with the exploration and exploitation of the resources of the area and the supervision and legal protection of such activities. It was also stated in the second answer that on a number of aspects of the United States draft sea-bed convention, in which the trusteeship concept was proposed, the United Kingdom Government would wish to put forward other proposals based on its working paper submitted at the Comittee's August 1970 session. It would be remembered that the United States Government had introduced its draft as a basis for discussion and nad expressly stated that it did not necessarily represent that Government's definitive views.

It would be clear from those two answers that the United Kingdom Government supported the trusteeship concept. It did so because that concept aimed at achieving an equitable compromise between the economic rights and interests of States which had broad continental shelves and States which had not. The concept protected the interests of coastal States, but the inner limit of the zone was shallow and revenues would therefore begin to accrue to the international community at a far earlier stage than would be the case if a single broad limit were decided upon.

With regard to the régime, the principle characteristics as envisaged by the United Kingdom were that it should provide both for the equitable distribution of sea-bed revenues and for access for all States parties to the Convention on an equitable basis to the resources of the sea-bed - the latter to be achieved by a licensing procedure offering fair opportunities to all States. The international machinery to administer the régime should be kept as simple as possible.

In considering the institutions which might be set up to administer the régime there was no lack of precedents in the United Nations, the specialized agencies and other organizations. The international sea-bed resource authority would consist of an assembly, of which all parties to the sea-bed convention would be members, and of a council elected by the assembly. The composition, powers and functions of the council would require careful consideration so as to achieve a proper balance between the respective interests of the industrialized countries and those of the developing countries, and also between the interests of the landlocked or shelf-locked countries and those of the coastal States.

The idea embodied in the draft statute for an international sea-bed authority, submitted by the United Republic of Tanzania at the fifth meeting that there should be a distribution agency charged with the equitable sharing of income from sea-bed operations, merited close examination. He agreed with the suggestion in the Tanzanian draft that the authority might need some form of regional organization and a corps of inspectors reporting to the secretary-general of the authority on the observance of the technical and other standards to be laid down in the sea-bed convention.

The convention should also contain a procedure for the settlement of disputes, which would undoubtedly include the International Court of Justice in view of its status by virtue of Articles 7 and 92 of the United Nations Charter. He was pleased to note that it was recognized both in article 46(2) of the United States draft convention and in article 39(2) of the Tanzanian draft statute that the International Court of Justice would have a role to play. There might, however, be some kinds of dispute for which conciliation would be more appropriate, either as a preliminary to or as a substitute for recourse to the International Court.

He had given only a brief outline of his Government's ideas on the institutions to administer the sea-bed régime. The Sub-Committee would no doubt wish to discuss other matters such as the distribution to States parties to the convention of the benefits from operations in the international area including the trusteeship zone; the licensing system for prospecting or exploitation; and most important of all, the precise functions of the international sea-bed resource authority - a topic which the Sub-Committee might well take up first.

Mr. Thompson-Flores (Brazil), Vice-Chairman of the Sub-Committee took the Chair.

Mr. DEUSTUA (Peru) said that he proposed to outline his country's views on the general powers and functions of an international sea-bed authority.

As stated in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, adopted in General Assembly resolution 2749 (XXV), the area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction were the common heritage of mankind. Hence the need to create an international sea-bed authority responsible for protecting and administering the common heritage and acting as a trustee for all mankind. Since in accordance with the Declaration

of Principles, utilization of the common heritage of mankind was to be undertaken with particular consideration for the interests and needs of the developing countries whether land-locked or coastal, it would be necessary to look beyond existing patterns in international co-operation, none of which gave any useful guidance.

During the past three years, discussions on the nature of an international machinery had moved between two extremes. A number of delegations, mainly those of developed, technically advanced countries, had favoured the creation of an authority that would be nothing more than a licensing authority for the exploration of the area and the exploitation of its resources. A large number of delegations from developing countries had advocated an agency with wider powers which could itself carry out exploration and exploitation.

The obviously mercantilist nature of a system of licences which would encourage the principle of laissez-faire and would therefore be similar to existing practices in international trade - the justice of which was open to question - gave rise to certain misgivings. It was difficult to reconcile such a system with the common heritage principle and the need for new measures in an area which was new for international law. Those measures should not consist merely of guaranteed access and security of investment, which would protect only the interests of the investors; they should benefit the international community as a whole.

Direct exploitation by an authority representing the international community would ensure that the area was used for the benefit of all mankind and would meet the requirements of the Declaration of Principles contained in General Assembly resolution 2749 (XXV). The idea had been dubbed utopian because of the vast resources it would require; the truth was that no one was ready to provide those resources. There was a very difficult gap to be bridged, since the critics of direct exploitation by an international authority had endorsed the principle of common heritage and alleged that their proposals were in keeping with it.

His delegation, along with many others thought that a system could be devised which would reconcile the wish for guaranteed access to the area and the need for the authority to maintain control over all activities in the international area, in order to ensure joint administration by the world community and the equitable distribution of the benefits derived from exploitation.

That could be achieved by creating machinery by which the international authority, as representative of the owners of the area and its resources - namely, mankind - would permit exploitation by State undertakings and other corporate bodies in association with it, until it was able to carry out the exploitation itself. He had in mind a joint venture system in which the resources, capital and technology of all participants would be combined on the lines of the system adopted by many countries, including his own, for mining hydrocarbons.

The authority should be empowered to conduct all types of activity itself, from scientific research and exploration to production and marketing, as well as exploitation. Scientific research and exploration could be carried out under a licensing system; but to ensure that the exploitation could eventually be carried out by the authority itself through the appropriate organization, the authority should retain control so as to build up the necessary fixed assets and technology and the means to ensure orderly development and sound administration of the area and its resources.

It seemed clear that with a dual system permitting direct exploitation simultaneously by the authority itself or in association with corporate bodies, and by enterprises with licences for exploitation, the authority - whether alone or in association with other groups, - could never be competitive. It was essential therefore to exclude the possibility of any exploitation otherwise than in association with the international authority.

The idea he had been outlining appeared in the Secretary-General's report entitled "Study on International Machinery",[3/] in paragraph 96 of which it was stated that 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, but that a lesser range of powers would be required for the machinery to undertake joint ventures with other bodies.

3/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No.21 (A/8021), annex III, part III, 4.A.(2) (Direct exploitation).

Obviously, to carry out its mandate as trustees of the common heritage, the central body would have to have sufficient powers to cover the whole process of utilization of the area and exploitation of its resources, including prevention of damage to the marine environment and co-ordination and promotion of scientific research.

The fundamental task of the equitable distribution of benefits, which would also be the responsibility of the international authority, was the subject of the Secretary-General's report 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 beyond the limits of national jurisdiction (A/AC.138/38 and Corr.1). His delegation had received the report too late to study it fully; but at first sight it seemed that section 1 (Assessment of the problem) evaded the question of a system of joint ventures controlled by the international authority. For example, no mention was made in paragraph 37 of direct exploitation as described by the Secretary-General in his report on international machinery, which would not in fact require the initial capital referred to in that paragraph. The system of joint ventures mentioned by the Secretary-General would nullify the statement in paragraph 38 that "for some time to come, the handling of physical output is likely to be concentrated to a large extent in the hands of the advanced industrial countries." He was also concerned about the assumption in paragraph 41 that revenues would come from licensing arrangements for exploration and exploitation.

In the view of his delegation, the creation of a central authority to maintain control of the various operations in the area would help to ensure the most practical and equitable system for distributing benefits.

There was a close link between the distribution of benefits and the problems of the land-locked countries, which were the subject of the Secretary-General's report entitled "Study of the question of free access to the sea of land-locked countries and of the special problems of land-locked countries relating to the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction (A/AC.138/37 and Corr.1 and 2). As was well known, Peru considered that special criteria should be applied to those countries, such as a system of distributing benefits which would give them something more than equalitarian treatment.

As one of the sponsors of General Assembly resolution 2750 A (XXV), Peru attached great importance to the subject of the Secretary-General's report on the possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment (A/AC.138/36). In that report an attempt was made to dispel any possible fears on the part of the developing countries which were exporters of commodities that might be produced from the sea-bed beyond the limits of national jurisdiction. But that attempt was not in keeping with the facts as they were likely to be in the future. There was no need to stress the dependence of many developing countries on mineral exports. In drafting a régime for the sea-bed beyond the limits of national jurisdiction, the Sub-Committee was legislating for a period extending far beyond what was described as "the foreseeable future". He recalled a statement by the delegation of a Western nuclear Power to the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1968, to the effect that when the exploitation of the mineral resources of the sea-bed became commercially feasible, the developing countries would no longer be dependent on the production of primary commodities. However, the widening gap between the producers of primary commodities and the exporters of capital, and the stupendous advances in technology, lessened the validity of that assertion.

The Secretariat had perhaps been a little hasty in its conclusion that mineral production would not have an adverse effect on the interests of the inland developing producer countries. It seemed undeniable that the economic effects of the exploitation of the sea-bed would be particularly detrimental to the developing producer countries because of their dependence on markets beyond their control. Their share in the world market would diminish especially if, as suggested in the Secretary-General's report (A/AC.138/38 and Corr.1), production were mainly in the hands of the advanced industrial countries, which meant that most of the actual production would be carried out in those countries.

In resolution 2750 A (XXV) the General Assembly requested the Secretary-General to co-operate with the specialized agencies, and in particular with the United Nations Conference on Trade and Development (UNCTAD), to keep the question under constant review. In view of UNCTAD's special competence and since it had already started work on the problem, it would be useful if a representative of UNCTAD could attend a meeting of the Sub-Committee as soon as possible to explain that organization's views.

From a preliminary consideration of the problem it was clear that firm rules were needed in anticipation of sea-bed mineral production in order to ensure that that production did not prejudice the interests of the developing producer countries. The Under Secretary-General for Economic and Social Affairs had expressed his concern in that regard in a statement to the Committee at its thirty-ninth meeting, in August 1970, a statement which the Peruvian delegation had interpreted as an appeal to the international community, which had a decisive role to play, to perform that role through an authority conscious of its concern for the healthy development of the world economy.

Mr. OLMEDO VIRREIRA (Bolivia) said that Bolivia attached special importance to the preparation of the new international law of the sea, which should be envisaged as a whole, namely, as covering matters relating to the exploitation of the sea-bed beyond the zones of national jurisdiction as well as the delimitation of national jurisdiction.

It was impossible not to be disturbed by the prospect of massive and irrational exploitation of the sea-bed, and the prospect of arbitrary extension, without prior consultation, of the limits of national jurisdiction was no more reassuring. While the former would increase the imbalance in economic development, the second would be a denial of the principle of solidarity, leaving the land-locked countries every day at a greater distance from the high seas.

He wished also to draw attention to the danger implicit in unregulated exploitation of the marine resources both of the ocean and of the extensive zones considered to be under national jurisdiction, the latter being precisely the richest in resources that were competitive with those of the countries producing mineral raw materials.

The relation between those materials and the land-locked countries' right of access to the sea was particularly important and should be the subject of mutual agreements between coastal and inland countries.

In conclusion, he wished to place it on record that his statement reflected the permanent concern felt by the Government and people of Bolivia, who could see more clearly every day that their inland position was becoming a brake on their economic and social development.

The high seas were those parts of the sea lying to seaward of the territorial sea. The law governing the high seas was the result of a prolonged historical evolution. The difficulties arising over the determination of the area of the high seas were linked with uncertainties regarding the method of drawing the base-line of the territorial sea and determining its maximum breadth; and the situation had been complicated in recent years as a result of claims by coastal States to the continental shelf.

Neither the 1958 nor the 1960 United Nations Conference on the Law of the Sea[4/] had been able to reach agreement on delimitation of the breadth of the territorial sea although, without such delimitation, there could be no high seas and no freedom of navigation. The delimitation of sea areas belonging to coastal States had always had an international aspect and could not be dependent solely upon the will of the coastal State as expressed in its municipal law. It was true that the delimitation itself was necessarily a unilateral act, since only the coastal State was competent to undertake it, but the validity of such delimitation depended upon international law.

In international practice, a majority of States fixed the limit of their territorial sea at 12 miles and it might be said that a maximum limit of 12 miles had become generally recognized. The limit appeared a reasonable one, which would not prejudice the freedom of the sea, provided that the right of innocent passage was guaranteed and freedom of navigation fully safeguarded.

By a proclamation in 1945, the United States Government had declared its jurisdiction over the sea-bed of the continental shelf adjacent to its shore line, thus introducing an entirely new concept into international law. The Geneva Convention of 1958 on the Continental Shelf[5/] had adopted that new principle, but had gone much too far in delimiting the area. It had asserted that the jurisdiction of the coastal State over adjacent ocean waters and the soil to beneath extended to a depth of 200 metres or to such depth as was capable of

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4/ United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.58.V.4, vol. I-VII) and second United Nations Conference on the Law of the Sea, Official Records, (United Nations publication, Sales No. 60.V.6).

5/ United Nations, Treaty Series, vol.499, p.311.

exploitation. The vague nature of that concept had led to a bewildering variety of national definitions and claims. Rapid progress in the technology of deep-sea exploration for petroleum and other minerals had made the exploitability criterion indefinitely extensible, and had encouraged States to claim jurisdiction over vast areas of the high seas adjacent to their territorial seas. That situation had created a difficult problem - that of establishing the boundary between national jurisdiction and the areas under the proposed international régime. On the one hand, it would be unrealistic to leave the coastal States only a narrow margin of sea-bed area; but, on the other hand, if the ambiguous criterion of exploitability were retained the international régime would be left with a constantly shrinking area and with no resources. In the interest, therefore, of the community of nations as a whole, the continental shelf should be delimited by means of certain fixed boundaries which were applicable to all States. Such a criterion could either be depth - e.g., the 200-metre isobath - or distance. His own delegation proposed that the second criterion should be adopted and that the outer limit of the continental shelf under national jurisdiction should be a distance of 40 miles from the coast of the State in question. Since the adoption of the United Nations Declaration of Principles, which stated that the sea-bed and ocean floor were the common heritage of mankind, it could no longer be seriously maintained that the régime of the continental shelf should extend to the continental slope and even, as marine technology developed, to the deep ocean floor. It was, incidentally, in the interests of the developing countries to have a fairly limited area of continental shelf, since the greater area over which they had jurisdiction and for which, consequently, they bore responsibility, the more costly would be its supervision. It would also put them at the mercy of powerful private companies, since the States concerned lacked the science, technology and capital to develop the area.

In his delegation's view, there should be an intermediate zone covering the area of the international sea-bed between the outer limit of the continental shelf and a boundary 20 miles to seaward, i.e. 60 miles from the coast. The coastal State would then exercise control over the exploitation of and exploration for mineral resources within that area as a trustee for the international community. It would exercise essentially the same control in that zone as on the continental shelf, and would apply its municipal law to companies operating in the area with

respect to working conditions, social welfare, criminal law, collection of duties and taxes and customs control of products extracted. The coastal State would also have the exclusive power of granting licences, but 25 to 30 per cent of the revenues from such licences would be paid to the international authority. Such a system might satisfy both the aspiration of States to control as much as possible of the continental shelf and the international community's desire to share in the revenue therefrom.

A United Nations declaration, adopted as General Assembly resolution 2749 (XXV), embodied the principles and object of the international régime and its machinery. That declaration affirmed the existence of an area of the sea-bed and ocean floor and sub-soil thereof beyond the limits of national jurisdiction, which should be regulated and governed by an international régime. The preamble to the declaration defined its aims and objects as the exploration of the area and the exploitation of its resources for the benefit of mankind. It also stressed the need for the earliest possible establishment of an international régime with appropriate machinery, reserved the area exclusively for peaceful purposes and stated that particular consideration should be given to the interests and needs of the developing countries.

The international régime for the high seas and sea-beds beneath would have functions of enormous complexity and would cover an extremely vast area. Those functions would necessarily include the maintenance of peace and order, enforcement of safety and anti-pollution rules, conservation of exhaustible and living resources, conduct of scientific research, issuance of licences and concessions for ocean exploration, exploitation and production, collection of royalties and taxes and the adjudication of maritime disputes between States or enterprises. The régime should, at the same time, accord due weight to the interests of all States, whether large or small, maritime or land-locked, developed or developing.

His delegation thought that such a régime could be established and hoped that all States would take part in establishing it at the earliest possible date. The régime would have to be given all the powers it needed to achieve its objectives and perform its duties. He would suggest that its organs and machinery might be along the following lines. Firstly, there would be a General Assembly including representatives of all Member States and members of the specialized agencies and other organizations in the United Nations system. It would meet at least once a

year on the request of 25 members or on convocation by the Secretary-General. Next, there would be a Council with a limited membership of 30, 15 representing the developing countries, 5 representing the highly industrialized countries, 3 representing other developed countries, 5 representing the relevant specialized agencies and 2 representing States which were land-locked or had short coasts only. Representation would be on a basis of geographical distribution. Each member would have one vote without any preferential rights or vetoes. Decisions would be taken by a simple majority for procedural matters and by a two-thirds majority for vital matters. There would also be a secretariat, headed by a secretary-general, elected by the generaly assembly by a two-thirds majority. The secretariat might have to be divided into a number of commissions dealing with various specific questions related to the régime. The personnel of the secretariat, including the commissions, would be highly-qualified international civil servants. It would also be necessary to have a tribunal for the settlement of disputes. The draft articles proposed by the United States delegation envisaged compulsory submission to the tribunal of all disputes arising out of the interpretation or application of the convention. The Tanzanian draft included a similar provision. His own delegation thought that there might be conflicts or disputes arising for other reasons or on other subjects which might also be referred to the tribunal. The tribunal should have its own statute, its members being elected in accordance with that statute. For the moment, Iraq reserved its opinion as to whether the jurisdiction of the tribunal should be compulsory or optional.

The revenues of the international régime from licences, production, sale of raw materials, etc., would probably amount to some millions of dollars in the early years of the régime and considerably more at a later stage. His delegation suggested that a special fund or special bank should be set up to hold those revenues, to perform various activities and functions in connexion with the régime and to distribute the benefits to member States. Since such revenues would be the property of all members, it would be the responsibility of the international régime to ensure their equitable distribution among the various States, taking into particular consideration the interest and needs of the developing countries. In that connexion, it might be necessary to define what was meant by a developing country. It should also be remembered that price fluctuations were of great concern to mineral-producing States, many of which were developing countries.

The international régime should so control production from sea-bed sources as to maintain a balance with land production and thus stabilize prices.

The Declaration of Principles was a balanced document which, taken in conjunction with the draft statutes submitted by various countries, formed a valuable basis for the work of the Sub-Committee. To be viable, the international régime would require international agreement embodied in more than one treaty or convention. Such treaties should seek to achieve the following objectives: a clear delimitation of the continental shelf; recognition that the sea-bed beyond the continental shelf was the common heritage of mankind; the establishment of international machinery to issue licences for exploration and exploitation; the use of the sea-bed for peaceful purposes only; the use of the funds and revenues derived from exploitation to close the gap between the developed and the developing countries; the establishment of a juridical body to settle any disputes that might arise in that connexion; protection against pollution and other unreasonable uses of the sea; the conservation of the living resources of the sea; the protection of the freedom of the high seas and freedom of navigation: the encouragement of scientific research; the prevention of any race to divide up the sea-bed and ocean floor before the conventions and/or treaties came into effect and, generally, the establishment of a stable relationship between the various States and the sea surrounding them.

Mr. BAUM (Secretariat) said he wished to assure the Peruvian representative that the report of the Secretary-General contained in document A/AC.138/36 had been prepared by the Secretariat in close consultation and co-operation with UNCTAD. It would be noted that annex II to that document, on the long-term prospects of the world manganese ore market, had been prepared by the Commodities Division of the UNCTAD secretariat. The report was merely a preliminary assessment and much further work remained to be done. He assured the Sub-Committee that, in the course of that work, co-operation with and consultation of the UNCTAD secretariat would continue.

The meeting rose at 12.05 p.m.

SUMMARY RECORD OF THE EIGHTH MEETING

held on Tuesday, 27 July 1971, at 3.20 p.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that at the Committee's fifty-sixth meeting, held on 23 March 1971, his delegation had made general observations concerning the regulation, under international law, of the activities of States engaging in the industrial exploration and exploitation of the resources of the sea-bed and its subsoil.

At the present session, it intended to put forward more specific ideas on the basis of those general observations. The Twenty-Fourth Congress of the Soviet Communist Party had adopted, in March-April 1971, a programme for strengthening international peace and security. Under that programme, the USSR, in collaboration with other States, was to seek solutions to the problems connected with the protection of the environment, the development of energy and industrial resources, transport and communications, and the conquest of the seas and oceans.

Having in mind the decisions taken by the Party's Central Committee and wishing to make a positive contribution to the preparation of rules governing the exploration and exploitation of the resources of the sea-bed and its subsoil, his country had therefore submitted the provisional draft articles of a treaty on the use of the sea-bed for peaceful purposes (A/AC.138/43). If such activities were governed by a convention, it would help to ensure that the resources thus obtained contributed to the economic progress and advancement of the developing countries, thus fostering international co-operation and the maintenance of world peace and security.

Outlining the main points in his country's provisional draft articles, he said that the text was designed to serve as the basis for a treaty which took into consideration all the major aspects of the activities which States might undertake in exploring and exploiting the resources of the sea-bed. Moreover, the Soviet draft was based on universally accepted principles of international law and on the United Nations Charter and the 1958 Geneva Conventions on the Law of the Sea.[1/] It was also in line with the relevant General Assembly resolutions, including the Declaration of Principles contained in resolution 2749 (XXV).

1/ United Nations Conference on the Law of the Sea, Official Records, (United Nations publication, Sales No.:58.V.4, vol.II), annexes, pp.132 et seq.

Bearing in mind the existing rules and the need to use sea-bed resources for the benefit of all, his country envisaged that the sea-bed and its subsoil would be open to all States without discrimination and would be exploited with special regard to the needs of the developing countries. But the exploration and exploitation of the sea-bed should be conducted without prejudice to fundamental liberties in any field, particularly as regards navigation, fishing and scientific research.

The Soviet provisional draft also contained a provision prohibiting the use of the sea-bed and its subsoil for military purposes. That provision did not, of course, cover measures that had already been taken or might be taken in connexion with disarmament. For instance, the Treaty adopted by the General Assembly in its resolution 2660 (XXV) already prohibited the placing of nuclear weapons or weapons of mass destruction on the sea-bed or in its subsoil. The Committee on Disarmament would probably adopt other provisions designed to ensure the peaceful use of the sea-bed in the interests of mankind as a whole. His country was convinced that the use of the sea-bed for peaceful purposes could only be possible if military activities there were totally banned.

Apart from the general provisions, the Soviet provisional draft proposed specific rules which should make it possible to develop the resources of the sea-bed rationally and in an orderly fashion. In that respect, it should be understood that the USSR envisaged the industrial exploitation of the sea-bed by States themselves or by individuals or bodies corporate dependent on them, and not by the proposed international body. Such a body would have special functions and it would be wrong to give it responsibilities which might hamper the co-ordinative role it would have to play. It was States that would be allocated sectors of the sea-bed and that would exploit their resources.

Turning to the subject of the stationary and mobile installations which might be erected and emplaced to explore and exploit the sea-bed (A/AC.138/43, article 10, para.1), he stressed the need to preserve the environment, particularly the marine environment. That was why the Soviet provisional draft provided that exploration and exploitation of the sea-bed should be conducted in such a way as to avoid pollution and any damage to marine flora and fauna. Its purpose was to secure favourable conditions for the equitable exploitation of the resources of the marine environment for the benefit of mankind as a whole. The measures taken should help States which had the necessary technical knowledge to exploit the resources of the marine environment; but those States should do so not just for themselves but also

for others, bearing in mind the developing countries' need for additional resources. In particular, any disorderly or greedy exploitation should be banned.

Some delegations had stressed the need to take account of the interests of coastal States when activities were undertaken near their coasts. That point of view was fully justified, and his country was prepared to add to its draft a provision to the effect that activities undertaken near coasts should be carried out with the agreement of the coastal States concerned.

The Soviet provisional draft gave considerable prominence to provisions relating to the international machinery which would have to be created. His country envisaged an international sea-bed resources agency, of which all States parties to the treaty under consideration would be members. The proposed international machinery should be simple and its members should not have to bear an excessive financial burden. The main organs of the agency would be the conference of member States and the executive board. Their main task would be to supervise the implementation of the provisions of the treaty.

With regard to the working of the agency and the decisions it might be called upon to make, the basic principle should be that no State or group of States could utilize the body against the interests of other countries. Only on those terms could the body prove viable and the treaty on the sea-bed be effective and receive the support of all countries of the world.

To that end, the Soviet provisional draft provided that the executive board should consist of an equal number of representatives from the various groups of States and that decisions should be made by agreement. In order to ensure adequate representation of the land-locked countries, it was provided that they would have five members on the executive council, just like the geographical groupings.

In choosing the methods whereby decisions would be taken, his country had deemed it essential to find a solution that would safeguard the interests of all States, which should all be treated equally, including the developing countries. The Jamaican representative had rightly pointed out at the sixth meeting that, when they were still colonized, the newly independent countries had had no say in the solution of international problems; the Soviet provisional draft, however, gave all States equal rights and the chance to play an active part in decision-making. It was essential that the executive board should not be asked to take decisions without the agreement of any particular group of countries, including the developing countries. His country, for its own part, would not accept a decision imposed on one group by the others.

Co-operation and mutual confidence were of course essential if the activities undertaken by the various States with regard to the industrial exploration and exploitation of the sea-bed were to be successful. The Soviet provisional draft therefore provided for consultations and contained specific provisions for the settlement of disputes between States; if a member State believed that the activities of another member State were in violation of the treaty, it should not be possible for the second State to evade its responsibility and refuse to participate in the consultations called for by the first.

In certain instances, his country had not proposed any specific article but had merely indicated issues on which a text should subsequently be formulated. Such was the case with regard to questions relating to the limits of the sea-bed (article 3), to licences for industrial exploration and exploitation of sea-bed resources (article 9) and to the distribution of benefits (article 14).

The question of the limits of the sea-bed had been broached at the Committee's fifty-eighth meeting and was one to which a generally acceptable solution had to be found. One solution already advanced was to establish as the criterion a certain depth or distance from the shore-line. In that respect, account had to be taken of the fact that not all countries had a continental shelf extending beyond the limits of their territorial waters. That was true in particular of a number of Latin American countries. Their interests should be duly taken into consideration when the time came for establishing the limits of the sea-bed. As various delegations, particularly Mexico (see A/AC.138/SR.58), had already pointed out, under the 1958 Geneva Convention on the Continental Shelf[2/] the limit of the continental shelf was established at the isobath of 200 metres and it would not be realistic to try to impose as the limit an isobath corresponding to a depth of less than that minimum. That opinion was fully justified.

With regard to the highly important question of exploration and exploitation licences, the preceding debate had shown it to be closely linked with a number of other key questions such as the establishment of the breadth of territorial waters, the problem of free passage through straits, and fishing in territorial waters. All those issues were interdependent and could only be settled as part of an over-all solution. His delegation was accordingly prepared to add to its draft

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2/ United Nations, Treaty Series, vol.499, p.311.

articles any provisions deemed desirable for safeguarding the interests of peoples and States in that connexion. There was a particularly close link between the question of the breadth of territorial waters and that of the right of passage through straits, and some appropriate legal procedure should be found for solving them together.

His country also attached great importance to the distribution of benefits. The Soviet people were at present making tremendous efforts to raise their standard of living. The progress already made had permitted the introduction of a programme requiring the mobilization of the country's entire resources. The solution adopted with regard to the distribution of benefits should take account of the legitimate wishes and interests of the Soviet people, as well as those of other peoples. Moreover, that solution would be to the advantage of those States which the USSR was helping, including those it was protecting against attempted aggression.

Finally, the Soviet Union considered that the proposed treaty should in no way restrict freedom to carry out scientific research on the sea-bed and in its subsoil, a question to which his delegation would refer in detail in Sub-Committee III. The study of the sea-bed was important not only from the standpoint of industrial exploration and exploitation of the resources found there, but also in order to throw light on the evolution of the Earth. The costly research undertaken in that connexion by the USSR and other States had already produced results of interest to mankind as a whole. It must be possible to continue and develop scientific studies of that sort.

Being anxious to arrive at a satisfactory solution, his delegation was prepared to consider the views of other countries regarding its provisional draft articles and, where appropriate, to take them into account in the drafting of the final text.

Mr. ZAFERA (Madagascar) reminded the Sub-Committee of the terms of reference given it by the Committee in accordance with General Assembly resolution 2750 (XXV). The establishment of an appropriate international régime would guarantee that the sea-bed was explored and exploited for the benefit of the whole of mankind. By promoting international co-operation, such a régime would speed up the utilization of the sea-bed resources and help to bridge the gap between the rich countries and the poor.

Madagascar, because of its geo-economic position, attached special importance to the Sub-Committee's work. The Malagasy delegation agreed that the régime must be universal and have the support of all States. But the Sub-Committee's task would be

a heavy one, because of the complexity of the problems involved and the need to reconcile divergent or even conflicting interests. In that connexion, tribute should be paid to those delegations which had submitted draft treaties with a view to speeding up the work.

In accordance with General Assembly resolutions 2749 (XXV) and 2750 B (XXV), the objective was to arrive at general agreements on the exact limits of the area of application, on the matters to which the régime would apply, on rules concerning operations for exploring and exploiting the area, on a definition of the structure, functions and legal status of the competent body to be set up, on the establishment of rules covering the distribution of resources, on liability and the settlement of disputes.

His delegation agreed that it was urgently necessary to revise article 2 of the 1958 Geneva Convention on the Continental Shelf, the interpretation of which was open to dispute. For the sake of justice, the sovereignty of States over the sea-bed must not be abusively extended by that revision. The criterion of exploitability adopted in the 1958 Geneva Convention and the implementation of that criterion would have the effect, as technology progressed, of reducing the area of the sea-bed beyond national jurisdiction. His country believed that the whole of the sea-bed should be considered as a priori exploitable and the technical problems regarded as solved. It was therefore desirable to arrive at a clear and specific definition of the sea-bed and ocean floor beyond the limits of national jurisdiction. His delegation would return to that matter in detail in Sub-Committee II.

It was obvious that the development of the sea-bed and its resources would require adequate physical resources and techniques right from the exploration stage. But the necessary capital was only within the reach of the financially and technically developed countries: hence the need for a set of rules ensuring not only effective but also fair use of the resources of the sea-bed.

To translate into action the new idea of the common heritage of mankind new rules and standards were needed. It was therefore necessary to work out rules specifying the conditions under which licences for exploration and exploitation would be granted and the extent and limits of the holders' rights and duties.

Those rights would be set out in the licences, which meant that technical rules had to be worked out, areas demarcated and exclusive rights allocated.

It was also necessary to lay down, on the one hand, the duties of the holders regarding fees, the application of rules, standards of execution, security of personnel, regard for other activities being carried out on the sea-bed and the

underlying areas and the prevention of pollution in the marine environment and, on the other hand, the sanctions to be applied in the event of breaches of the rules and compensation for damages.

His delegation felt that it was particularly important to work out new rules in order to avoid a scramble for licences, over-exploitation of the resources of the sea-bed and destruction of the ecological balance of the marine environment.

If there were a scramble for licences, only the developed countries would be able to exploit the common heritage of mankind. If there were over-exploitation or if the ecological balance of the marine environment were destroyed, that common heritage would be impoverished.

The rules might vary according to whether they governed exploration, surveying or exploitation of the resources of the sea-bed and the ocean floor and their sub-soil. Moreover, they might be applied in different ways according to the type of resources involved, which would mean making a detailed and specific classification of those resources.

In drawing up the provisions establishing the international régime, care must be taken to work out detailed, precise and strict rules. The rules had to be strick so as to prevent any action that might impoverish the common heritage of mankind, whether over-exploitation or exploitation that did not benefit all mankind and did not take account of the particular needs of the developing countries.

The international régime must enable poor countries to take part in exploiting the resources of the sea-bed. It must provide for the possibility of associating those countries with development operations, for with the modest means at their disposal they could only increase their capacity by associating themselves with the developed countries. They should therefore receive assistance with regard to equipment, finance and training. Arrangements must be made to guarantee the developing countries not only a "passive" benefit through a share of the profits, but also an "active" benefit enabling them to participate, even on a small scale, with finance and personnel.

As regards the international machinery for the rational and equitable management of the sea-bed and its resources, it would be necessary to determine its structure, functions and legal status.

His country was in favour of a tripartite structure, with an assembly comprising all States, a governing council and a permanent secretariat.

The council must be so composed as to guarantee equitable regional distribution and take into account the interests of developing and land-locked countries.

The machinery should be flexible, and not involve a complicated, cumbersome and expensive bureaucracy.

It should be a supra-national organ and not a subsidiary body of the United Nations. It should have legal personality and all the authority necessary for it to operate properly, with the power to take decisions and to carry them out.

Its functions would include making rules, organizing exploration and exploitation, checking whether rules were applied, co-ordinating activities, issuing licences and distributing revenue.

The international machinery would not be merely a recording or executing body. The possibility of making it operational should not be excluded, in which case it might undertake the exploration and exploitation of the sea-bed and its resources, either alone or in partnership. However, that possibility must only be contemplated with caution, and perhaps at a later stage.

Concerning the distribution of revenue, Madagascar was in favour of the principle of fair sharing amongst all nations, with a three-way division between investors, the United Nations and the developing countries. The operational budget could be met from part of the revenue.

The share allotted to the developing countries would be devoted to developing national programmes. The percentage of the revenue given to the United Nations would enable it to increase its resources and extend its activities, notably by developing training programmes in the various fields of marine science and technology for the developing countries. On that point, his country supported the position taken up by the Committee during the discussion of the long-term and expanded programme of the Intergovernmental Oceanographic Commission (IOC) and the International Decade of Ocean Exploration. The Committee's view had been that institutions such as UNESCO, FAO, IMCO and IOC should intensify and accelerate their training programmes in the area in question.

However, the share received by the developing countries from the sea-bed resources should not be given as condescending aid. Rather, it should reflect the international desire to bridge the gap between rich and poor countries and promote universal peace and well-being.

Finally, full guarantees should be provided for the settlement of any disputes concerning the operation of the proposed international machinery, without, however, making the system top-heavy or involving an extra financial burden.

He reserved the right of his delegation to speak again on matters which it had not yet touched upon.

Mr. NJENGA (Kenya) said he would like to express his delegations's gratitude to the delegations of Tanzania (A/AC.138/33), the USSR (A/AC.138/43) and the United States[3/] for their drafts on the establishment of a régime and machinery for the sea-bed area. Unfortunately, the Kenyan delegation had not yet had an opportunity to study the Soviet draft; it would therefore confine its comments to the Tanzanian and United States drafts.

Both draft treaties rightly contained provisions for the delimitation of the area beyond national jurisdiction. To delimit that area, his delegation, in common with Tanzania, rejected a depth criterion, which would confer advantages on some countries, especially in North America, Europe and Asia, whose continental shelves descended in gentle slopes, to the disadvantage of countries in Africa and Latin America with steep continental shelves. That viewpoint was shared, moreover, by the Working Group of the Asian-African Legal Consultative Committee, which, at its meeting in New Delhi, in June 1971, had felt that the 200-metres depth criterion of the Geneva Convention on the Continental Shelf should be abandoned in favour of a uniformly applied distance limit. The Sub-Committee on the Law of the Sea of the Asian-African Committee had endorsed that view at its meeting at Geneva in July 1971. For that reason, article 1 (2) of the United States draft convention, which laid down that "The International Sea-bed Area shall comprise all areas of the sea-bed and subsoil of the high seas seaward of the 200-metre isobath adjacent to the coast of continents and islands", was totally unacceptable. The argument was often made that most of the known resources, particularly oil and gas, were to be found only within 200-metres of the continental shelf. Some scientists, however, were of the view that, unlike oil and gas, the quantity of hard minerals increased with depth, so that the deposits were more likely to be economic in deeper waters. Moreover, a uniformly applied distance criterion would make it easy to determine with certainty the limits of national jurisdiction of each coastal State, and thus incidentally obviate the need for the International Sea-bed Boundary Review Commission mentioned in articles 42 to 45 of the United States draft.

The Kenyan delegation's objections to a depth criterion applied also to the idea of a trusteeship area, because it would just compound the basic inequity of the

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3/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No.21 (A/8021), annex V.

200-metre isobath limit. Presumably, the area in question would extend right to the continental shelf edge. But the possibility of finding any petroleum or gas beyond that point - at 4,000 metres - was very remote. What, if any, benefits would the international community obtain from exploitation at such depths, given the present state of technology?

In the United States draft, the international trusteeship area would be considered part of the internationcal sea-bed area. The Kenyan delegation, however, believed that in fact and in law that area lay within the coastal State's national jurisdiction. How could it be otherwise when the coastal State had the right to decide whether, when and by whom exploration and exploitation was to be carried out? No trustee, in national or international law, had ever had such extensive powers. Consequently, the establishment of an international trusteeship area in accordance with the above criterion would bring nothing but illusory advantages to the international community.

His delegation therefore proposed fresh limits of national jurisdiction, and approached that issue with two basic assumptions. The first was that no State, however well endowed, was likely to agree to surrender any area of the sea-bed at a depth of less than 200 metres to the international community. The second was that, whatever distance was accepted as the limit of national jurisdiction, it should be uniform for all countries. A solution which, as in the Soviet draft, differentiated between States with a continental shelf and those without, was bound to be discriminatory. It was the view of the Kenyan delegation that the greatest breadth of the continental shelf, anywhere in the world, at 200 metres, should be the limit of national jurisdiction to be applied uniformly for all States, irrespective of the depth of the superjacent waters of each coastal State. That should give a distance of about 200 nautical miles from the baselines for measuring the territorial sea, with such modifications as might be necessary in the case of archipelagos.

Whatever solution on limits was arrived at, careful consideration would have to be given to the interests of land-locked countries, more than half of which were in Africa. A delimitation based on the depth criterion would discriminate against all developing countries, with or without sea coast. The solution of the land-locked countries' problem must be found within a regional framework, and his delegation was prepared to negotiate with other African delegations, to work out an acceptable formula. His country was prepared to give nationals of the 14 land-locked countries of Africa, within regional or bilateral agreements, the same treatment that it gave its own nationals within the limits of its national jurisdiction.

Regarding the international sea-bed resource authority, his delegation agreed with the Tanzanian delegation that membership should be open to all States. It should have, at least, an assembly, a council, a secretariat, a tribunal and such commissions as would be necessary for the rational and efficient management of the international sea-bed area. The powers of the authority enumerated in article 16 of the Tanzanian draft appeared to be sufficiently broad, notably for the exploration and exploitation of the resources of the international sea-bed area.

There seemed, however, to be a serious omission in the Tanzanian draft, with respect to the rights of coastal States to protect themselves against any activities in the international sea-bed area which could jeopardize their own interests or create a danger for their coasts. As for the assembly, the Kenyan delegation endorsed the view that it should be the supreme legislative body, and that each member should have one vote. It was also his delegation's view that on substantive issues, decisions should be taken by a two-thirds majority. Regarding the council, his delegation totally opposed any device such as preferential or weighted voting, or any other veto arrangements, as envisaged in article 38 of the United States draft, or article 23 of the new Soviet draft. However, certain special interests should be permanently represented in the council, subject to an equitable geographical distribution. Kenya would prefer a council of 30 members composed as follows: (a) 5 members designated as the most advanced in sea-bed technology; (b) 10members designated by the assembly from the various geographical areas; (c) at least 3 members elected by the assembly from among the land-locked and shelf-locked countrie countries; (d) and 22 other members elected by the assembly in such a way as to ensure equitable representation for other countries.

Decisions of the council on important issues would be decided by a two-thirds majority, irrespective of any special groups. His delegation supported the proposal to establish a rules and recommended practices commission and an operations commission, as laid down in articles 42 to 45 of the United States draft, but for the reason stated previously, was opposed to the establishment of an international sea-bed boundary review commission. A projects commission and an apportionment commission might also be added. In any case, none of the commissions should have more than 10 members.

His delegation disagreed with the rôle assigned to the International Court of Justice in the Tanzanian draft, for it did not consider the Court to be suited or qualified to deal with the highly technical disputes that might arise for the sea-bed

area. Rather, his delegation agreed with the proposal in the United States draft treaty to establish a specialized tribunal with compulsory jurisdiction where parties failed to resolve their dispute on an amicable basis. Such a tribunal, composed of 9 members, could request the International Court of Justice to give an advisory opinion on purely legal matters.

Finally, there should be detailed rules on the sharing of benefits, in order to facilitate the work of the apportionment commission. It was sometimes erroneously assumed that the only benefits to be derived from the sea-bed would be revenues from royalties, licensing fees and so on. The Secretary-General's report on possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from exploitation of the resources of the area beyond the limits of national jurisdiction (A/AC.138/38 and Corr.1) distinguished two types of benefit, financial and non-financial. All those benefits should accrue to the whole international community, not merely to those countries with a developed technology for the exploration and exploitation of the sea-bed; it would be for the competent Commission to share out the benefits.

ORGANIZATION OF WORK

The CHAIRMAN proposed that the general debate should be closed after a few meetings, leaving the list of speakers open so that delegations which wished to make a statement at one time or another could do so. He referred in that connexion to the suggestion made by the United Kingdom representative at the seventh meeting that the Sub-Committee should begin its work with the question of the precise functions of the international sea-bed authority. He also referred to the desirability of submitting a draft treaty or draft articles on the international régime for the sea-bed to the General Assembly at its next session.

The officers of the Sub-Committee had thought that, after the suspension of the general debate, one or two small working groups could be established, one of which would concern itself with drafting articles on the functions of the Authority and the other with the economic implications of sea-bed resources development and the sharing of the resulting benefits. It would be understood that the Sub-Committee could be convened again whenever delegations wished to make a statement.

Mr. THOMPSON-FIORES (Brazil) suggested that the Sub-Committee should wait two or three days before deciding to establish working groups, since other drafts might be submitted in the meantime.

Mr. TUNCEL (Turkey) said he was opposed to the idea of small working groups. The General Assembly had recently increased the membership of the Committee, which meant that it wanted as many States as possible to participate in its work. He agreed with the representative of Brazil, moreover, that it was too early to decide to establish working groups. No conclusions had yet been reached on what the functions of an international authority or régime would be, and the Sub-Committee had not even started to consider the question of the economic implications of the development of the sea-bed.

Mr. DEJAMMET (France) said he was grateful to the officers for informing the Sub-Committee of their views on the advisability of establishing working groups, so that delegations could consult each other informally on the organization of their work. He considered, however, that the Sub-Committee had nothing to lose by continuing its general debate for a few days more. He wished, therefore, to associate himself with the Brazilian and Turkish representatives in requesting the Sub-Committee to postpone any decision concerning the closure of the general debate.

Mr. WARIOBA (United Republic of Tanzania) said that in his view there had already been too much delay in closing the general debate. He agreed with the Chairman that working groups should be established but he did not share the opinion of the Turkish representative regarding the membership of those groups. He considered that, by the very nature of the Sub-Committee's work, small groups were essential, since it was easier for a small group to carry out the detailed work involved in drafting articles.

Mr. POLLARD (Guyana) said he wished to associate himself with the representative of Tanzania in requesting that the general debate should be closed in a few days time and that working groups should then meet. On the other hand, he did not share the Tanzanian representative's view regarding the limited membership of those groups.

Mr. ARIAS SCHREIBER (Peru) said he agreed with the Brazilian, Turkish and French delegations that it would not be advisable to establish working groups immediately. It was preferable to wait for the submission of any new drafts and to begin consideration of the most important questions in plenary. It could be decided later, in the light of the debate, whether small groups should be established to draft the articles or to prepare specific drafts.

Mr. NJENGA (Kenya) said he strongly supported the Chairman's proposals regarding the closure of the general debate, the establishment of working groups and the limited membership of those groups.

The CHAIRMAN said he wished to draw members' attention, before the procedural debate came to an end, to the fact that the Rapporteur would reply at the present meeting to questions that had been put to him concerning the drafting of the Sub-Committee's report.

He explained that he had merely wished to communicate to the Sub-Committee the views of the officers regarding the possible closure, whether temporary or not, of the general debate. It was only at the end of the general debate that the question of the establishment and membership of working groups could be considered.

Mr. MALINTOPPI (Italy) said that there were two procedural questions.

There was, first of all, the question of the closure of the general debate. According to some delegations, that question was connected with the submission of drafts of a general nature. Consideration of the various drafts could be based on the general principles that had previously emerged. A number of different drafts had already been submitted, but it was essential to ensure that all drafts of general interest were examined before the closure of the general debate.

He therefore agreed with the speakers who had favoured postponing a decision on that question.

So far as the problem of the working groups was concerned, on the basis of international experience in that regard, two types of groups could be established: either working groups responsible for considering questions of principle, or working groups of a technical nature for the study of specific questions.

In the first case, the groups would have a very large membership or would at least be open to all those who wished to participate. In the second case, the membership of the groups would have to be restricted.

The question of the establishment and membership of working groups should be settled as the problems arose. It was, of course, important that the Sub-Committee should move forward in its work, but certain specific problems, such as the aims and structure of the proposed international authority, could be considered by the Sub-Committee in plenary.

Mr. STEVENSON (United States of America) said that he shared the views expressed by the previous speaker in the last part of his statement. The general debate should serve as a preamble to the work of the groups. Apart from the general debate, if it continued, and that depended on whether there were any additions to the list of speakers, arrangements could be made for meetings in which delegations would have an opportunity to express their views in a more formal way on certain specific drafts.

Mr. OKAWA (Japan) said that his views coincided with those of the representative of Kenya and that it was important to retain a certain amount of flexibility in the discussion. He understood the spirit in which the Chairman of the Sub-Committee had explained the point of view of the officers.

It would be possible to leave the list of speakers open and at the same time set up working groups. He favoured detailed consideration of the questions already discussed. The time seemed to have arrived for establishing working groups.

The Turkish representative had expressed misgivings on that point, but delegations had suggested various formulas for the working groups. They could be organized in such a way that any interested person could follow the discussions as an observer, for example, without participating directly.

Mr. BONNICK (Jamaica) said he would restrict himself to a number of observations on questions of substance. The Chairman had spoken of an international sea-bed authority, whereas the Committee was the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction. His delegation wished to express forthwith its reservations concerning the reference made by the Chairman since such a title might be prejudicial to the discussion of any texts relating to the sea-bed which had been or might be submitted.

The Chairman had proposed the establishment of two working groups. His delegation was of the opinion that the two questions entrusted to the second of the proposed working groups should not necessarily be examined together, the question of the general economic implications being quite separate from the question of the distribution of benefits.

It would be a good idea for the Chairman to hold consultations with the regional groups before the Sub-Committee took a decision on the establishment and membership of the working groups.

Mr. THOMPSON-FLORES (Brazil), speaking as Vice-Chairman of the Sub-Committee, pointed out that the officers had only discussed the possibility of closing the debate and had not dealt with the question of setting up working groups or their membership at all.

Mr. JAGOTA (India) said that, for the moment, the Committee had not to come to a decision on the question of working groups, but only to take note of the views of the officers.

With regard to the working groups, two considerations must be taken into account; the efficient working of the Committee and the representation of countries in the groups.

On the first point, the Sub-Committee could not study in detail every problem that was to be referred to a working group, which would by definition be limited in numbers. If delegations wished to take part in the work of the groups, they should be able to be present at their meetings and express their opinions, which would be recorded in the groups' reports to the Sub-Committee.

As to the membership of the working groups, if the Committee wished the groups to take into account opinioms expressed on problems examined during the general debate, the debate should not be closed immediately. The Sub-Committee should consider continuing the general discussion until, perhaps, the end of the current week. Once the general debate was closed, the establishment of working groups could be considered and their membership agreed on.

Mr. YANKOV (Bulgaria) said that the Sub-Committee had a tendency to go in for procedural debates. The maximum and best possible use should be made of the time available, a deadline should be set for the entry of names on the list of speakers and the time needed for the general debate should be fixed. The more opinions were expressed during the general debate, the easier would be the study of particular problems.

The officers might decide to close the list of speakers on the following Friday. It could be decided then what further steps should be taken. It was still too early to set up working groups and even more so to work out their terms of reference and decide on their membership.

It would be preferable first to consult the regional groups, and the Contact Group responsible for the organization of work.

Mr. POLLARD (Guyana) could not accept the idea that the officers should decide on the procedure to be followed by the Sub-Committee.

Mr. PROHASKA (Austria), Rapporteur, said that he had been asked about the content and preparation of the report. Account must be taken of the recommendations made by the General Assembly at its twenty-fifth session and of the Committee's programme of work.

As to the methods to be applied, at the fifth meeting of the Sub-Committee, the Chairman himself had said that its work might be carried out in three stages: general debate, then study of specific issues which had emerged in the general debate, and lastly, drafting.

Delegations could submit proposals during all three stages. As far as the Rapporteur was concerned, the second and third stages would determine the size and content of the report, taking into account the proposals received. The report

should also indicate the conclusions which might be reached on the basis of the Secretary-General's report (A/AC.138/38 and Corr.1). Proposals had already been made at the spring session and at the current session.

The time factor was important. The Committee expected a report from the Sub-Committee at the beginning of the third week in August. In view of the time required for its adoption, the report must be ready by 16 August.

The CHAIRMAN, summing up the discussion, said that it was in response to a suggestion by the Bulgarian representative that the officers had raised the question of a possible closure of the general debate. The Chairman had informed the Sub-Committee of the officers' wishes and then, with reference to questions raised by the United Kingdom representative, had proposed that the Sub-Committee should consider the question of its future work.

It was fully understood that the officers could not take a decision on behalf of the Sub-Committee. Many delegations wished the list of speakers to be closed. The Bulgarian representative had requested temporary closure of the general debate, a suggestion which had been supported by some and opposed by others.

He understood that the Sub-Committee was ready to wait until the following Friday to come to a decision on the establishment of working groups and their membership and noted that the question of land-locked countries had not been referred to during the discussion. The Sub-Committee could continue the discussion on particular points, such as the economic implications, land-locked countries and the functions of the régime.

He asked whether members of the Sub-Committee wished to close the list of speakers or to end the general debate. If the Sub-Committee wished to pass on to the second stage of its work, it must at some point end the general debate. As it seemed that not many people were in favour of outright closure, he wondered if a temporary closure should be considered.

The Sub-Committee might wish to continue the general debate for a few days before deciding how to tackle the second stage of its work, the study of particular issues emerging from the general debate. He would consult the regional groups on the matter. Once those consultations were finished, the members of the Sub-Committee could decide whether they should establish working groups or whether the Sub-Committee itself should study those particular issues.

The fact that the Sub-Committee passed on to the second stage of its work would in no way prejudice the consideration of draft proposals other than those already submitted.

He thought therefore that the general debate could be suspended at the end of the week and that the Sub-Committee could then pass on to the second stage of its work.

Mr. ABDEL-HAMID (United Arab Republic) said that time must be allowed for members to think over the questions raised by the Chairman. In any case, the Chairman himself had to hold consultations.

Mr. ZEGERS (Chile) thought it would be preferable not to come to any decision at the present meeting. In that respect he agreed with the representative of the United Arab Republic. The general debate should continue until all delegations wishing to do so had been able to submit drafts. Two possible solutions might then be considered: either the closure of the general debate or the continuation of the debate during the second stage of the Sub-Committee's work.

He himself preferred a compromise solution. He was opposed to even a temporary close of the general debate and in favour of informal negotiations, which might make it possible to reach a solution by the end of the week.

The CHAIRMAN noted that no decision had been made concerning the closure of the general debate.

The meeting rose at 5.55 p.m.

SUMMARY RECORD OF THE NINTH MEETING

held on Thursday, 29 July 1971, at 10.45 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

TRIBUTE TO THE MEMORY OF PRESIDENT WILLIAM TUBMAN OF LIBERIA

On the proposal of the Chairman, the members of the Committee observed a minute's silence in tribute to the memory of President William Tubman of Liberia.

GENERAL DEBATE (continued)

Mr. PROHASKA (Austria) said that his country's geographical position and policy had already been described at other meetings. At the present stage he wished to comment on some practical issues relating to the draft of the régime for the international sea-bed area.

First, on the question of representation of the land-locked and shelf-locked States, his delegation had noted with satisfaction that the three draft treaties for the establishment of a régime for the exploration and exploitation of the sea-bed made provision for representation of the group of countries to which Austria belonged. He was grateful to the authors for recognizing the existence of a group of shelf-locked and land-locked countries which deserved representation on the council, but stressed that representation should be proportionate to the number of such countries which were States Members of the United Nations or members of the specialized agencies. There were 24 States Members of the United Nations which did not have coastlines and the anticipated admission of Bhutan would bring the number to 25. To those should be added Switzerland which was one of the land-locked countries outside the United Nations but members of specialized agencies.

There were also about 20 shelf-locked countries which shared the general interests and objectives of land-locked countries and to which should be added the Federal Republic of Germany which was one of the shelf-locked countries outside the United Nations but members of specialized agencies. In order to ensure adequate representation for those States, therefore, at least one out of three or one out of four members of the governing organs of the international régime would have to belong to the group of land-locked and shelf-locked countries.

The USSR draft treaty (A/AC.138/43) came close to his objectives on that issue, although it did not make provision for shelf-locked States.

He suggested that the seats allocated under the Treaty to the shelf-locked and land-locked countries should be allocated for each of the two groups separately. He believed that representatives from the land-locked and shelf-locked countries agreed with that view.

The second issue concerned the question of the limits of the régime. Discussions in the Committee suggested that a proposal to establish limits 200 miles off-shore would find some acceptance. That was not true for his own delegation. The natural resources of the ocean floor whose exploitation was feasible and profitable were mostly located in the submerged parts of the continent, which meant that in the foreseeable future only the exploration and exploitation of the continental shelf, slope and rise offered reasonable economic prospects. One of the motives for establishing an international régime was to ensure a rational exploitation of the common heritage of mankind with the ultimate goal - among others - of helping to reduce the gap between developing and developed countries. The international régime should therefore cover an area which was likely to provide the necessary yield for that purpose: it would have to apply to a part of the ocean which had good prospects for the exploitation of resources, that is to a sizeable part of the continental margin.

From the maps and other documentary evidence made available to delegations, it would be seen that the continental shelf, slope and rise constituted 20.60 per cent of the ocean area. It also appeared that limits placed 200 miles off-shore would constitute about 35 per cent of the ocean area. Simplifying those conclusions it would be legitimate to say that only a small percentage of the ocean area which offered reasonable possibilities for the exploitation of resources would fall within the jurisdiction of the international régime if a 200-mile limit were accepted. A look at the map would show that in this case only a small part of the continental shelf off Argentina, the Union of Soviet Socialist Republics and Canada would be governed by the international régime.

In view of those facts and of the objectives set for the international régime, his delegation would be reluctant to accept such broad limits. It would favour narrow limits defined by a distance criterion as advocated by the Tanzanian delegation (A/AC.138/33), which should in no case exceed the 200-metre isobath. He was favourably disposed towards the United States proposal[1] regarding an

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1/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No.21 (A/8021), Annex V.

intermediate zone. The difficulty with the proposal was due, in the first place, to its being a compromise intended to reconcile the claims of those who advocated broad limits and of those who were interested in narrow limits. The difficulty of securing its acceptance as a compromise was probably due to the fact that it had been introduced before the extreme positions on limits had been well enough formulated in the Committee. In the long run, the concept of a trusteeship zone might become the only politically acceptable solution. At the present stage, however, his delegation still preferred clear-cut narrow limits and urged that they should be defined and established as speedily as possible. Any loss of time would lead to the rejection of the 200-metre isobath and perhaps to the adoption of the trusteeship concept which after all was only a second-best solution.

The last of the three issues to which he wished to refer concerned the powers and functions of the international machinery. The machinery to be set up under the treaty should be given the powers necessary to ensure the implementation of what was stipulated in the treaty. For example, the executive organ would be responsible for seeing that the principle of common heritage was not rendered meaningless. He was aware, from discussions inside and outside the meeting, that some delegations considered that in that context the question of access to the sea was important and should be included in the discussions and in the drafting of the régime. It might help to allay the concern of those delegations and to reassure them if it could be decided to establish a régime with sufficient powers to guarantee the faithful implementation of the basic principle on which the régime was founded.

Mr. OKAWA (Japan) said that the purpose of the general debate as his delegation understood it at the present stage was not to draw premature conclusions but to crystallize the relevant issues and suggest possible alternative approaches on the basis of which working groups might later draft specific articles. His delegation would like to listen further to the views of other members of the Committee before taking a position on a number of important points. It was grateful to the Governments of the United States of America, the United Republic of Tanzania and the Union of Soviet Socialist Republics for

submitting comprehensive proposals, and to the Governments of the United Kingdom[2] and France[3] for providing very useful working papers. All those papers were important contributions to the Sub-Committee's work.

His Government fully supported General Assembly resolution 2749 (XXV) which provided that the new régime, based on the concept that the international sea-bed area and its resources were the common heritage of mankind, should "ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries". In order to translate that principle into reality, the international sea-bed area, to which the new régime would apply, had to be broad enough to be of economic value. The economic significance of the sea-bed régime would depend on whether it covered the continental shelf and the continental rise where a substantial amount of hydrocarbon resources were to be found. His delegation agreed with those who thought that it might be difficult to find an immediate answer to the question of delimitation of the international sea-bed area; but everyone should bear in mind that the answer would have a considerable bearing on the modalities of the régime to be established.

With regard to the functions of the international machinery under the new régime his delegation supported, in principle, the idea that it should be empowered to issue licences for the exploration and exploitation activities to be undertaken in the sea-bed area and to collect fees and royalties in return. More specific conclusions would depend on the characteristics of different types of exploration and exploitation. His delegation had suggested at the Committee's 1970 summer session that while exploration which required drilling should be permitted only under an exclusive licence, a more simple registration system might suffice for other types of exploration which did not require drilling.

As for exploitation, drilling activities with fixed installations should be regulated under an exclusive licencing system. His delegation was not yet convinced of the need to apply the same system to dredging activities using mobile equipment: a non-exclusive licence would be more appropriate.

2/ Ibid., annex VI.

3/ Ibid., annex VII.

The question of the criteria on which the machinery should issue licences might be left open until a more thorough consideration of various aspects of the problem had been completed. For example his Government was in favour of a licencing system on a "first-come-first served" basis, but that might not be the only solution if adequate safeguards could be devised against an arbitrary allocation of licences by the international machinery or the arbitrary monopolization of vast areas of the sea-bed by a handful of operators. The question whether licences should be issued only to States or also to natural or to juridical persons could not be properly answered until the full legal and technical implications of the alternatives were known.

On the structure and composition of the international machinery, he stressed that when the question was discussed in detail, the guiding consideration should be that the machinery to be established should be effective and practical. To be effective it should accommodate the interests of all members equitably and its main organs should be composed so as to reflect the views of States at different stages of economic development and also of States belonging to different geographical groups. To be practical it was essential to avoid establishing in the initial stages elaborate machinery which might prove to be out of proportion to actual needs. In that connexion he recalled the statement made by the Japanese delegation at the Committee's fifty-third meeting that, as more knowledge and experience were acquired, the scope of the régime could be enlarged and new rules established as the need arose.

The problem of the possible impact of sea-bed mineral production on world markets was understandably a matter of deep concern to the producers of land-based mineral resources. The Secretary-General's report on the possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment (A/AC.138/36) contained some interesting analyses but, in view of its preliminary nature, it would be wise not to draw hasty conclusions from it. It was encouraging to note, however, that mineral production from the international sea-bed area was unlikely in most cases to affect the market to any substantial degree in the coming 10 or 20 years because of its relatively small share in world supply. If that prospect was reasonably accurate it would be an incentive to development of the sea-bed mineral resources by the international

community. The subject should be kept under constant review, since future technological progress might considerably change the cost and scale of sea-bed mineral production. If the need for regulatory measures arose, the correct approach would be a commodity-by-commodity approach which would not favour sea-bed production at the expense of land-based production but would equitably balance the interests of both.

Another question warranting consideration by the Sub-Committee was the extent to which States should be held responsible for the activities of private individuals in the international sea-bed area. In accordance with the Declaration of Principles embodied in General Assembly resolution 2749 (XXV), every State had the obligation to ensure that exploration and exploitation in the international sea-bed area were carried out in conformity with the new régime to be established: States would be required to enact legislation governing the sea-bed activities to be authorized by them, to control and supervise such activities, to punish offences and to ensure prompt and adequate payment for damage. The drafts submitted by the United States of America, the United Republic of Tanzania and the Union of Soviet Socialist Republics all contained provisions in that respect with which his delegation agreed in substance. He was hesitant, however, about associating himself with the concept of State responsibility which seemed to be embodied in all three drafts, which were essentially identical in stating that each contracting party should be responsible for damage caused by activities which it sponsored. If those provisions implied the principle of absolute responsibility of States, they seemed to be going a little too far.

In supporting the Declaration of Principles, his Government had stressed that the question of liability should be examined with extreme care because - with due recognition of State responsibility for ensuring the orderly and safe development of sea-bed resources - the principle of absolute liability might impose an undue administrative and fiscal burden on both developing and developed contracting parties. Damage caused by sea-bed activities could range from simple collision of ships to extensive damage resulting from an accidental oil blast, but most damage could also arise in connexion with other ordinary marine activities, to which the principle of absolute liability of States did not apply. Unless account were taken of the variety of legal techniques available for dealing with different types of liability, immense confusion would be caused in the steadily evolving international legal systems concerning liability.

With regard to the settlement of disputes, the proposals submitted by the United States of America and the United Republic of Tanzania both envisaged compulsory procedure as the ultimate recourse, but the USSR proposal seemed to be based on a different approach. The need for such provisions was obvious in the interests of orderly development of sea-bed resources and the promotion of investment in the exploitation of such resources. The United States proposal for the establishment of a tribunal, and the Tanzanian proposal for recourse to the International Court of Justice, were both interesting and deserved careful study. The merits of the Tanzanian proposal, however, should be examined in the light of the need to revise the Statute of the International Court of Justice to enable international organizations to become parties to proceedings before the Court; and also in connexion with the possibility of including non-governmental entities, such as private corporations, as parties to the disputes to be adjudicated.

He wished to re-emphasize his delegation's view that the proposed régime should not apply to the living resources of the international sea-bed area. As the Declaration of Principles was somewhat vague as to the resources to be covered by the new régime, his Government, in supporting the adoption of the Declaration by the General Assembly at its twenty-fifth session, had recorded its understanding that the régime should apply only to the exploration and exploitation of the sea-bed mineral resources. That was consistent with past discussions in the Committee and with the nature of the régime now contemplated.

There was nothing unnatural about excluding living resources since their basic characteristic of being renewable under appropriate conservation measures made it necessary for them to be treated differently from mineral resources which were non-renewable. That was why national mining law was kept distinct from fisheries law and why living resources could not be arbitrarily included within the scope of mining law, or the reverse, merely because certain living and mineral resources happened to be found in the same area. It was unfortunate that the 1958 Convention on the Continental Shelf[4/] had failed to pay adequate attention to that fact and had created confusion by placing sedentary living resources under a régime

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4/ United Nations, Treaty Series, vol.499, p.311.

originally conceived for mineral resources alone. That error should not be repeated in respect of the new international sea-bed régime by the artificial separation of sea-bed living resources from those of the superjacent waters when such resources as a whole should remain under the established régime concerning high seas fisheries.

Mr. TUNCEL (Turkey) said that his delegation was grateful for the draft articles submitted by the representatives of the United States of America, the United Republic of Tanzania and the Union of Soviet Socialist Republics, which would help to render the Sub-Committee's work more practical and specific.

The convention proposed by the United States of America corresponded more closely than the other drafts to the requirements of the subject. The articles themselves contained, in fact, almost all the components for such a convention. Aspects such as institutes and structures, management responsibilities and the distribution of revenue were fully covered. It might, of course, be possible for experts to make further improvements, but the proposal certainly constituted a highly important working paper which deserved further consideration and discussion from many angles.

The Committee had, at the outset, asked the Secretary-General to submit a report on the need for an international régime and international machinery. In response to that request, the Secretary-General had submitted two reports,[5/] the second of which had been considered by the Committee at its 1970 summer session. Owing to lack of time, however, it had not been able to complete its consideration of the report, which had been overtaken by events, since a general consensus seemed to have emerged in favour of the international régime and international machinery. Two of the proposals before the Sub-Committee went well beyond the study and assumed that an international régime and appropriate machinery would, in fact, be established.

In view of the climate of opinion, it appeared that there would be little difficulty in reaching agreement on a suitable régime but, in the case of the

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5/ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No.22 (A/7622 and Corr.1), annex II, and ibid., Twenty-fifth Session, Supplement No.21 (A/8021), annex III.

international machinery, certain difficulties seemed likely to arise and the three sets of draft articles gave some inkling of what they would be. The articles proposed by the United States defined the machinery in great detail, the Tanzanian draft articles went into rather less detail, while the articles proposed by the Union of Soviet Socialist Republics were even more hesitant. He thought that those differences were significant ones and that the Sub-Committee would have to undertake a great deal of laborious work before a general understanding was reached.

The crux of the matter was that there was as yet insufficient information about the mineral resource which would be the subject of any agreement in the international area. Until the Sub-Committee had a better knowledge of their extent, it was hardly in a position to say whether the complex machinery contained in the draft articles submitted by the United States was actually necessary or not.

On the subject of delimitation, the three sets of draft articles once again adopted different stands. The United States working paper presupposed limits based on depth and, more particularly, the 200-metre isobath, but that was not necessarily the United States delegation's last word. The 200-metre isobath had been strongly criticized by at least one delegation and his own Government did not think it was suited to the needs of the international community, and especially to those of coastal States.

The Tanzanian draft articles accepted the depth concept - though without specifying which depth - while adding the distance concept as a criterion at the discretion of the coastal State. The USSR draft articles were much more interesting. They proposed the breadth of the continental shelf, but the text was not very clear as to what was meant by the continental shelf. The legal continental shelf, since the 1958 Convention on the Continental Shelf, had been the area landward of the 200-metre isobath. The Soviet representative had, however, stated that the geological continental shelf was meant. According to the draft articles, therefore, the area of national jurisdiction would cover the continental shelf in a geological sense. Without a careful study of hydrological maps and charts, it was difficult to see what the consequences of that definition would be.

The other concept of distance was covered by article 3 and, where there was no continental shelf, the coastal State would be given jurisdiction over an area of the sea-bed of the high seas. It was difficult to see that there was any point in giving a State jurisdiction over an area of deep ocean floor which it was impossible either to explore or to exploit.

The question also arose of the implications for the 1958 Convention on the Continental Shelf of the introduction of the concept of the geological continental shelf. If the latter were incorporated in the new Convention, it would simply annul the 1958 Convention, which many representatives had praised highly, urging that it should remain in force.

All three sets of draft articles included provisions for the settlement of disputes, but their approaches were slightly different. The United States proposal was that a tribunal should be set up to judge any such disputes. Like all the other structures in the United States draft articles, the tribunal was a highly complex and detailed piece of machinery; and, there again, the question arose whether such machinery would be justified. It would certainly be far better to use already existing methods of settlement, if that were possible. The USSR draft articles proposed consultations and, if consultations failed, the States concerned were to settle their disputes by applying the means for peaceful settlement listed in Article 33 of the United Nations Charter. In itself, that appeared a perfectly satisfactory procedure, but its adequacy would depend on the number and kind of disputes which might be encountered. The Tanzanian draft articles, on the other hand, proposed reference to the International Court of Justice. It was not at all clear whether, disputes concerning activities on the sea-bed could be brought before the International Court of Justice. It might be advisable to consult the United Nations Office of Legal Affairs on the point.

He had not touched upon any technical aspects, since he thought they would be better left to working groups made up of specialists familiar with their own national legislation on similar subjects.

Mr. JEANNEL (France) said that the contributions made by the United States of America, the Union of Soviet Socialist Republics, the United Kingdom and the United Republic of Tanzania, together with the very comprehensive statements by the representatives of Peru, Iraq and other countries, had made it possible for the Sub-Committee to pass on from the preliminary stage of its work to the first over-all consideration of the topic.

He intended to deal with the fundamental question of the type of international régime to be established. Although data had been provided and a number of clarifications given, that did not mean that all the difficulties had been overcome. On the contrary, it was only too clear that, over and above the numerous differences of opinion with respect to details which would probably be settled gradually, there was fundamental opposition between two possible concepts of the régime. Some countries favoured a régime providing for the direct exploitation of the resources of the sea-bed by an international body, while others advocated a régime providing for the co-operation of States within the framework of a new international agency.

He did not think that that was a question which had to be settled as a priority issue; probably the two schools of thought would continue to have their partisans for a long time to come. However, as it might be useful to discuss that conflict of doctrine in the general debate, he wished to indicate at once the reasons why his delegation would have the greatest difficulty in accepting the establishment of a system of direct exploitation of the resources of the sea-bed by an international authority. In the course of his analysis, he would also emphasize certain aspects of the French position, which was close to that of the second school of thought namely, that the sea-bed should be exploited by States within the framework of co-operation defined by a treaty and supervised and implemented by international machinery.

His delegation's reservations concerning the system of direct exploitation of sea-bed resources by an international authority were based both on legal and practical considerations. From the legal standpoint, there were two possible arguments in favour of the direct exploitation system, first, that it would constitute the logical application of the principle that the sea-bed was the common heritage of mankind and, secondly, that it would constitute a stage in the progressive development of the law. Neither argument seemed to him very convincing. He did not believe that the concept of the common heritage of mankind necessarily implied the establishment of an authority for the direct exploitation of the resources of the sea-bed. His views on that point were based on the preparatory work on the Declaration of Principles which had been adopted by the General Assembly in 1970, on the text of the Declaration itself and on national and international systems of law which contained a concept similar to that of a

common heritage. The common heritage concept was probably of much earlier date than was generally thought. It could probably be attributed to a French jurist who had proposed 15 years earlier that the sea-bed and its resources should be deemed to be the common heritage of mankind, and it was certainly in evidence in the preparatory work for the 1958 and 1960 United Nations Conferences on the Law of the Sea. Later, in the former Sea-Bed Committee, the delegations of Brazil and Malta, among others, had made a very constructive contribution to the elaboration of the legal content of the concept. However, at no time had they stated or even implied that the general recognition of that principle should of necessity lead to the establishment of a system for the direct exploitation of the sea-bed by a supra-national authority. While such a system was not perhaps excluded, it was certainly not put forward as the only one compatible with the recognition of the sea-bed as the common heritage of mankind. He would therefore be very surprised if anyone were to say now that the concept of the common heritage meant that States must renounce any spirit of enterprise, and hand over to an international authority the powers and rights to which they were entitled as part of the human race. The Declaration of Principles adopted by the General Assembly in 1970 did not state or even imply that States should abandon all their activities in favour of an international authority which was supposed to personify the whole of mankind. It stated, on the contrary, that "no State.... shall.... acquire rights with respect to the area or its resources incompatible with the international régime...". That meant that the international régime would permit States to acquire certain rights, which was confirmed paragraphs 5, 6 and 12 of the Declaration. Paragraph 12 provided that States should in their activities in the area - including those relating to its resources - pay due regard to the rights and legitimate interests of coastal States in the region, as well as of other States, and that consultations should be maintained with the coastal States concerned. Such consultations had no meaning in the context of direct exploitation by an international authority. If the concept of common heritage inevitably implied direct exploitation by an international authority, the text should have stated that in their activities in the area States or the international authority representing them should pay due regard to the rights and legitimate interest of coastal States. If there was no reference to direct exploitation in the Declaration, it was because the drafters had not thought that the concept of the common heritage of mankind, which was clearly defined in the Declaration, implied direct exploitation.

The position of France with regard to the relationship between the principle of the common heritage and the nature of the international régime seemed to him to be confirmed both by the language used in the Declaration and by other considerations based on international and national law. In that connexion, he referred to the establishment of the High Authority of the European Coal and State Community, and later of the Commission of the European Economic Community. Although all the States concerned agreed that the powers given to those authorities should be very extensive, they had not thought fit to entrust them with the direct management of the resources in question.

Examples of the common heritage concept were to be found in national laws as well. In certain countries the State was declared to be the owner of the subsoil and its resources, but the Government did not necessarily decide to exploit them itself. The granting of concessions and the delegation of authority often proved to be more advantageous than direct exploitation.

In private law and in countries which recognized the right of inheritance, would one say that children which were heirs to a joint estate should assign their right of management to a third party? Was it really a progressive development of international law to apply that principle in the case of States?

It was alleged that the direct exploitation formula would contribute to the development of international law by counteracting national egoism, abolishing out-of-date State powers, and accelerating the establishment of a coherent and equitable international order. In theory, those arguments had a certain validity, but United Nations practice seemed to show that States were disinclined to give up their responsibilities. In fact, each State wished to retain its freedom of action and not to hand over the protection of its interests to others.

A word of warning was necessary in another respect. If direct exploitation by an international authority was to contribute to the progressive development of international law, it must be successful. That implied that the benefits must be substantial. If there seemed to be little possibility that operations at a great distance from the coast would be immediately profitable, States in favour of direct exploitation by an international authority would wish to extend to the maximum the limits of the international area and thus reduce the areas under national jurisdiction.

States which believed that a reasonably extensive area should be left under national jurisdiction hesitated to adopt the principle of direct exploitation by an international authority, since they doubted whether it would promote economic development. In fact, in his delegation's view, the disadvantages of the direct exploitation system were many. It might transform the common heritage into a common burden for all countries for a long time to come; and the disadvantages of the system would affect the developing countries as much, if not more, than the developed countries. For at least ten years no appreciable profits could possibly be derived from the international area. Countries contributing to the United Nations Capital Development Fund would have to immobilize capital to set up the administrative and technical services of the new international authority; and thus the economic take-off of developing countries would be retarded. When the authority had been set up, who would fill the many important technical, engineering and administrative posts, which would have to be filled if the authority were to carry out its task efficiently? For a long time to come, only a few developed countries would be able to provide either the necessary staff or equipment. Were those the benefits which the developing countries were hoping to derive from the system? There were other serious disadvantages, too. What would happen in the case of a conflict, if stocks, ships and warehouses had to be moved? Should the headquarters of the authority be located in a neutral country or in an enclave to minimize that risk? Moreover, once the authority was established and making profits, it would be necessary to ensure that funds could be moved freely from the country in which the headquarters were located, but that would be impossible if such movements threatened the balance of payments position of the country concerned or even the stability of its currency. Also, the establishment of a direct exploitation system would deprive the developing countries of the possibility of exploiting the sea-bed themselves.

The Committee and its Sub-Committees had been thinking in terms of promoting the progress of all countries through co-operation. Slow but sure progress had been made. The adoption of the concept of the common heritage of mankind had put an end to the laissez-faire system. A stand had been taken against disorderly exploration and exploitation of the sea-bed. Exploitation was to be carried out within the framework of international machinery. The latter must be able to carry out its functions, but should not be allowed to develop by itself and for itself.

Its function was to serve all States Members of the United Nations, whose rights, interests, duties and obligations had been embodied in the Declaration of Principles. To serve States did not mean to deprive them of their opportunities to explore and exploit the sea-bed and its resources, or merely to pay into their exchequers sums which would for a long time in any case remain nominal. To serve States meant to encourage them to exploit the sea-bed under specific conditions which ensured that no inequity resulted in the sharing of sea-bed resources. The international machinery could achieve that objective by reconciling the rights of States with the idea of international authority. That meant that the international agency would have to allocate to States specified areas which they would be able to exploit, on the understanding that a fair share of the profits would revert to the international community. The four documents before the Committee on the subject all contained that suggestion, although in slightly different forms. The granting of licences or of zones of exploitation implied a decision by the machinery, an authorization which would sometimes be the result of laborious negotiations. There was no question of simple registration. Licences or zones, under the system which his delegation had in mind, would not simply be registered. They would be granted by the international authority, which could also refuse them.

The proposal which his delegation had submitted at the thirtieth meeting of the Committee, on 4 August 1970,[6/] would not only promote international co-operation but would also make a genuine contribution to the development of developing countries. As he had stated at the March 1971 session, his delegation had abandoned the idea of making a distinction between systems of exploitation based respectively on fixed and mobile installations. Both types of exploitation would have to be carried out within a perimeter accorded to a State by the international authority. In that connexion, his delegation had in 1970 included in its working paper a precise proposal which he would now clarify. Exploiting enterprises would be required to take the nationality of the State to which a given area had been allocated. When a State applied for an area to be allocated to it, it would have to prove its potential capacity to exploit the area. If it could not exploit the area itself, it would have to use the services of a company which would have to be a juridical person prepared to take the nationality of the

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6/ see footnote 3 above.

State concerned as defined by its laws. That requirement meant that the developing country would have the right to fix its own conditions for the training of research workers, recruitment of staff and the salaries of staff. The developing countries would assume genuine control over one of the main factors in their development; and the developed countries would benefit from the opportunity of applying their technology, and also from the returns on their investments.

Mr. LIVERMORE (Australia) said that Australia had had constantly in mind the need for the Sub-Committees, the Committee and, eventually, the conference to work towards a convention which would be signed, and ratified by most - if not all - of the States concerned. Such a convention would have to be acceptable to States having a continental shelf and to States without a coastline or deriving no resources or financial benefits from the sea-bed within their jurisdiction. The convention would have either to reaffirm, or add to, the existing limits of national jurisdiction under conventional and customary international law, or else offer persuasive inducements to States to accept a change in the law which would alter their existing rights. His Government, while basing itself on the rights of coastal States embodied in international law in respect of the continental shelf adjacent to their coasts, recognized a number of guidlines for the drafting of the new convention: that there was, and would continue to be, an area of sea-bed and ocean floor under national jurisdiction; that there was an area of sea-bed and ocean floor beyond the limits of national jurisdiction and that the said area - yet to be defined - would constitute the common heritage of mankind; that the natural resources of the international area were or would be capable of exploitation with benefits which could be shared by all States; and that such exploitation and sharing of benefits should begin as soon as feasible.

His Government had not yet reached a definite view as to where the limit between national and international jurisdiction should be drawn. The existing law, conventional and customary, defining the continental shelf by using the criteria of depth, adjacency, exploitability and morphology, would of course continue in operation until lawfully modified. The existing law recognized, inter alia, the unquestionable sea-bed rights of the coastal State out to the 200-metre isobath and those rights had been widely exercised by many States whether parties to the 1958 Convention or not. Such rights would, at the very least, have to be maintained in whatever settlement was reached.

The proposals on limits currently before the Sub-Committee offered a range of attractions and benefits both to the coastal State and to the international community, including the land-locked and shelf-locked countries. Several suggestions had been made advocating a simple division of the sea-bed between national and international jurisdictions, based on the single criterion of distance. This had the obvious attraction of simplicity. If the distance were a wide one, such as 200 miles, it would have the effect of continuing national jurisdiction over most of the 200-metre shelves of most countries. In many cases, it would add materially to the area of the sea-bed under the jurisdiction of the coastal State. Inevitably, however, it would result in a substantial limitation of the area available to the international community, particularly of that part of the sea-bed in which hydrocarbon exploitation would be possible in the near future.

If a comparatively short distance were taken, unless it were combined with a depth formula, say 200 metres or some greater depth in special circumstances, it would involve a major change in international law and would require the surrender by many coastal States of continental shelves over which they currently enjoyed sovereign rights. Like many other delegations, the Australian delegation felt that States could not be expected to surrender their 200 metres continental shelf.

Another possibility was to combine the criterion of distance from the coast with continued coastal State jurisdiction over the 200-metre shelf. A combination of 100 miles distance with 200 metres depth would give a reasonably wide belt of jurisdiction where the coastal State had little or no 200-metre shelf while, at the same time, including a significant area of continental slope in the area of international jurisdiction. The draft articles presented by the Soviet Union contained something of this type of arrangement in that the coastal State was to enjoy jurisdiction over its continental shelf but, where such a State had no shelf beyond its territorial sea, a distance factor would be applied.

A third family of proposals on limits of national jurisdiction consisted of those which envisaged, in addition to the area of national jurisdiction and the area to be administered by an international authority, an intermediate zone in which rights, interests, responsibilities, and benefits would be shared between the adjacent coastal State and the international community. Representatives had suggested various criteria for the delimitation of the inner limit of the intermediate zone. There could be other variants based on a combination of distance and depth or the use of the criteria which currently determine the limits of the

continental shelf. As regards the outer limit a combination of distance, perhaps 100 miles combined with the morphological concept of the outer edge of the margin could perhaps be a more equitable alternative than the margin alone. The coastal State would retain at least the 200-metre shelf under national jurisdiction. The intermediate zone proposal, though somewhat complex, had the attraction for the international community of making available to it a significant area in that part of the sea-bed in which exploitation of mineral resources, notably of hydrocarbons, was already or soon would be technically feasible. At the same time, provided a satisfactory distance formula were included, it would have the virtue for the coastal State of enabling it to exercise, within the framework of the international régime, full control of resources operations within a reasonably wide belt of sea-bed adjacent to its coast.

The Australian Government had not yet reached a conclusion as to which, if any, of the alternatives put forward would provide an acceptable new settlement on the question of limits. Uncertainty concerning limits should not, however, prevent the Sub-Committee from reaching some detailed, albeit tentative, conclusions about the nature of the régime and the scope and structure of the machinery necessary for the international area.

It might well be that, on some key questions, the Committee would submit two or more alternatives to the conference. That would be preferable to a premature and unsatisfactory compromise and would constitute a recognition of the essential inter-relationship between most, if not all, of the issues which were the subject of the Committee's consideration. In the last analysis, States would expect to hammer out an over-all settlement at the conference.

The status of the international area was clearly, if generally, defined in the Declaration of Principles set out in General Assembly resolution 2749 (XXV). As the common heritage of mankind, the area was not to be subject to appropriation, it was to be used exclusively for peaceful purposes and neither States nor persons might claim, exercise or acquire any right to the area or its resources incompatible with the provisions of the régime. A number of specific drafts had been presented in which those basic principles were translated into draft articles for a treaty. The Sub-Committee had probably reached the stage in its work at which the various texts could be remitted to an ad hoc working group for consolidation into one or more working papers. His delegation was prepared to take part in the work of such a group.

Effective international machinery was clearly essential to ensure the orderly development of the resources of the international sea-bed area and the proper protection of the marine environment. His delegation had, however, consistently maintained that every effort should be made to avoid establishing machinery so expensive that it would absorb most, if not all, of the proceeds from sea-bed resources. It agreed with many other delegations that there should be four main elements: an assembly of all members, a smaller executive council or board, a management organ and a juridical tribunal or similar means of settling disputes.

It seemed to be generally agreed that the plenary assembly should include all States parties to the treaty and that each State should have one vote. The composition and role of the executive council or board presented greater difficulties. There was clearly a need for representation from the developing countries and from land-locked or shelf-locked States. There was also a need for representation from the major developed countries. It was unlikely that there would be any major disagreement concerning the basic need for representation of those groups in the council, but it might require some negotiation to fix upon the right and agreed proportions. On that point, the question of the boundary line between national and international jurisdiction became important. If, for example, there was to be some sort of trusteeship or intermediate zone which included the continental slopes of the world's continents, there would be several countries directly involved in the administration of a significant part of that portion of the international area. Even if the slopes were to be under direct international administration, the environment of the same countries could well be at risk through operations in the area. In his Government's view, therefore, the composition of the council should be such as to assure representation to countries with major areas of continental slope.

His delegation saw no reason to provide for any special entrenchment in voting rights for any particular group. A simple voting system of one vote per council member appeared equitable. He agreed with several earlier speakers that substantive questions should be decided by a two-thirds majority.

Some tribunal or similar procedure for the settlement of disputes would need to be established. The Declaration of Principles stated that parties to disputes should resolve them by the measures mentioned in Article 33 of the Charter or by any other methods agreed on in the international régime. The United States

proposals envisaged the establishment of a tribunal with compulsory jurisdiction over a large number of questions. There was much to be said for such an arrangement, but to require States to accept compulsory subordination to an international tribunal would present real difficulties and the procedures and scope of the tribunal would need to be spelt out with great care.

Operative paragraph 14 of General Assembly resolution 2749 (XXV) accepted that every State would have the responsibility of ensuring that activities undertaken in the deep sea-bed by its governmental agencies or by persons under its jurisdiction would be carried out in conformity with the régime to be established. If States were to be held liable for damage resulting from the activities of their operators, which could be enormous, it would seem only prudent for the régime to require that States be parties principal in the negotiation of contracts between their nationals and the international authority. At the thirtieth meeting of the Committee, his delegation had proposed that States or groups of States should be the basic entity authorized by the international machinery to participate in sea-bed operations and that, if a company was to be the operator, a State should be interposed between the company and the international machinery. His Government still held that view.

The treaty should include basic rules for the orderly and safe development and rational management of the international sea-bed area and its resources and the rules in question should be known in advance by countries or organizations implementing operations in the international area. The elaboration of such rules was another subject which could be remitted to an ad hoc working party, in which his delegation would be happy to participate.

The concept of the common heritage of mankind set out in the Declaration of Principles implied that all countries, rich and poor, coastal and land-locked, should benefit from the exploitation of the resources of the international sea-bed area. The resolution also clearly recognized the special position of the developing countries; but as the treaty was designed for the long-term, if not for perpetuity, his delegation thought that it should incorporate provisions which would ensure that all countries benefited to some extent. For that purpose, there might be a provision that the distribution of benefits would be governed inter alia by two interacting factors: population and per capita income. The benefits would be greater for countries with large populations than for those with small populations, and less for countries with a high per capita income than for those with a low per capita income.

The comprehensive studies prepared by the Secretary-General on the powers to be granted to an international sea-bed authority had been extremely helpful. Even under a licensing system, the powers of an international authority could theoretically be restricted to the granting of licences and the collection of revenues, but that was a narrow view which his delegation did not support. It held that the authority should have the power to control sea-bed resource operations either by licensing or, in due course, by direct conduct of the operations. The authority should also lay down, and supervise, safety measures, make inspections and control the distribution of benefits. There was every reason for all States, particularly coastal States, to support that view since inefficiency in deep sea-bed operations could create serious dangers of pollution, involving the waste of resources, and impede the safety of navigation and, more generally, the freedom of the high seas.

With regard to the question whether the international sea-bed authority should have the power to conduct exploration and exploitation operations on its own behalf in the international zone, the cost of equipping the authority to conduct its own operations might possibly be so high as to be unacceptable in the early stages. It should also be borne in mind that, since no national laws would govern the operations of the authority in the international zone, agreement would have to be reached on a system of laws, both civil and criminal, covering such important matters as workers' compensation. In the absence of an agreement to use the provisions of some existing national law, new provisions would have to be drafted, a novel and complex task but one that could, if necessary, be tackled. Because of the cost factors and other difficulties, however, his delegation believed that the power to conduct operations entrusted to the international authority should be permissive, with the understanding that it would not be used until the authority was in a position to conduct its operations with its own financial resources.

The meeting rose at 1.20 p.m.

SUMMARY RECORD OF THE TENTH MEETING

held on Friday, 30 July 1971, at 3.20 p.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. GREKOV (Byelorussian Soviet Socialist Republic) congratulated the Chairman on his conduct of the debate, which had passed from the theoretical stage to the study of specific drafts.

The Byelorussian delegation had carefully studied the Tanzanian draft statute for an international sea-bed authority (A/AC.138/33) and United States draft convention on the international sea-bed area[1/], the statements of the Ceylonese delegation at the Sub-Committee's third meeting and the provisional draft articles of a treaty on the use of the sea-bed for peaceful purposes submitted by the Union of Soviet Socialist Republics (A/AC.138/43).

In the light of those statements and drafts, it would seem that the agreement should not only define the structure of the international machinery, but should also set out the principles governing the activities of States in the use of the sea-bed beyond the limits of the continental shelf and should define the specific obligations which the contracting States would undertake for regulating the industrial exploration and exploitation of the resources of the sea-bed and the ocean floor. The agreement should be open to all States without any discrimination, whether or not they belonged to the United Nations or the specialized agencies. Its universal character would entail the establishment of a system of participation by all the geographical areas of the world, taking into account the interests and rights of land-locked States, in the decision-making bodies of the international machinery, on a basis of equal rights.

Article 21 of the Soviet draft, which fully complied with the principle of the need to take into consideration the interests of the various regions, whether they consisted of large or small, developed or developing, coastal or land-locked countries, allowed all the geographical areas of the world and the land-locked countries to be represented on the executive board under equitable conditions.

1/ See Official Record of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), annex V.

Participation in the work of the executive board under such conditions would give the land-locked countries a real opportunity of taking the practical measures which were essential for the enjoyment of their special rights.

The principles of equality and equity and the need to take the interests and rights of various groups of States into account must not be invoked to justify the settlement of disputes by any kind of majority vote. In the field under discussion, only decisions taken by common agreement could provide a satisfactory basis for the co-operation of all States.

Unanimity was essential, not only for the settlement of specific problems concerning the activities of Governments, but also for reaching agreement on the sea-bed régime. Byelorussia was convinced that such an agreement could not be realistic or effective unless it was based on a consensus of all groups of States.

In drawing up the agreement on the régime and the machinery, it was necessary to take into full account not only the existing level of development of techniques for exploring and exploiting the resources of the sea, but also the legal principles set out in the Geneva Conventions of 1958[2/], which largely governed the maritime activities of States and provided the essential starting point for the extension of rules for co-operation between States. Thus, for instance, extrapolation of the provisions of the Geneva Conventions might largely determine the scope of the agreement.

Under the 1958 Convention on the Continental Shelf[3/], the term "continental shelf" was used "as referring to the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas". It was now urgent to settle the question of the outer limit of the continental shelf. The aim, however, was not to abolish or undermine the legal bases which had led to international co-operation in the matter, but rather to strengthen them by dealing with questions which had not been settled in the past. Byelorussia

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2/ See United Nations Conference on the Law of the Sea. Official Record (United Nations publication, Sales No.: 58.V.4, vol.II), annexes, pp. 132 et.seq.

3/ United Nations, Treaty Series, vol. 499, p.311.

particularly welcomed the constructive attitude taken by certain delegations in that connexion, especially the Iraqi proposal (A/AC.138/SC.I/SR.7) for the adoption of the criterion of a depth of 200 metres and a distance of 40 miles from the coast, which was an excellent basis for seeking an agreed solution.

The definition of the continental shelf which corresponded most closely to the spirit of the Geneva Convention and to the objectives of an agreement on the sea-bed régime was indeed one based on the isobath of 200 metres, which was the mean limit of the geological shelf, and the distance of 40 miles from the base-line of the territorial sea. That definition met the interests of all coastal States, including States without a continental or geological shelf, and determined most accurately the limits of the sovereign rights of States with regard to the exploration and exploitation of the natural resources of the continental shelf.

It should be borne in mind that yielding to pressure for the extension of the limits of natural jurisdiction over the sea-bed might lead to a distribution of the sea-bed between coastal States, or at least of part of the sea-bed with an area of 40 million km^2, or 25 per cent of the submerged surface of the earth. It was difficult to exaggerate the complications which might arise from the absence of any specific delimitation of the continental shelf, since every State would then be able to extend its jurisdiction over the sea-bed up to the median line between its coast and that of the State opposite.

With a view to delimiting the continental shelf, all delegations seemed to agree that the sovereign rights of coastal States should extend only to the exploration and exploitation of natural resources, not to ownership of the shelf area, and should not affect the legal status of the superjacent waters, which were regarded as an integral part of the high seas, or that of the air space above those waters.

Byelorussia was in favour of the equitable distribution of the benefits derived from the exploitation of sea-bed resources, with due consideration for the economic situation of the developing countries. Nevertheless, two points must be taken into account. In the first place, those benefits were likely to be greatly reduced by the establishment of vast bureaucratic machinery, unless the functions of the international body were limited to the co-ordination and regulation of the activities of States on the sea-bed. To assign industrial, economic and technical functions to that body would lead to an enlargement of the administrative apparatus, to vast

unproductive expenses and to the loss of any prospect of economic viability, particularly since the early stages of sea-bed exploitation might not yield any tangible results. Secondly, the principle of equitable sharing of benefits would be violated if certain States were arbitrarily excluded from the list of beneficiary countries. He pointed out that his country did not appear in the list in table 2 of the Secretary-General's report on possible methods and criteria for sharing by the international community of proceeds and other benefits derived from the exploitation of the resources of the area beyond the limits of national jurisdiction (A/AC.138/38 and Corr.1), although there was hardly any need to stress that Byelorussia, which was a founder Member of the United Nations and of many specialized agencies and which participated in their work and their financing, was a fully-fledged member of the international community.

Byelorussia had always advocated the exploitation of sea-bed resources for peaceful purposes only. The exploitation of those resources was bound up with the maintenance and strengthening of international peace and security, since the absence of any rule of international law reserving those resources for peaceful activities would gravely endanger the cause of peace.

Byelorussia supported article 6 of the Soviet draft, which prohibited the use of the sea-bed and the sub-soil thereof for military purposes and provided for negotiations between member States with a view to the conclusion of new international agreements designed to exclude the sea-bed and the sub-soil thereof from the arms race.

Mr. BEESLEY (Canada) said that the two main questions to be considered by the Sub-Committee were the establishment of the proposed international régime and the setting up of the necessary machinery in order that the régime should work in an efficient and equitable manner.

His delegation would not deal in detail with the question of the area under international jurisdiction, since that was the task of Sub-Committee II. It was, however, perfectly possible to discuss certain broad principles which would have to be incorporated into any régime or machinery that might be set up, whatever the final decision on the limits of the area.

In that connexion, his delegation had suggested at the fifty-eighth meeting, during the March 1971 session, that every coastal State should, by a specified early date, define its continental shelf claims or, alternatively, the maximum

limit beyond which it would never claim in any event. His delegation welcomed the fact that, pursuant to a decision by the officers, approved by the Committee, the Secretary-General had requested information from member Governments concerning their most recent legislation with regard to the law of the sea.

It was also pleased that a number of delegations were interested in other aspects of the Canadian suggestion, in particular the establishment of temporary international machinery financed by voluntary contributions made by coastal States out of revenues accruing from off-shore resource exploitation beyond, and perhaps also within, the area under their national jurisdiction.

His delegation was also pleased that the General Assembly had adopted the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction (resolution 2749(XXV)), because the principles it set forth, which had met with general agreement, laid the foundations for the preparation of a treaty on the use of the resources of the sea-bed.

In its present statement, a more complete version of which would be circulated later, the Canadian delegation would merely consider those principles which were of special importance for the establishment of a régime and machinery which would enable a rational use to be made of the resources of the sea-bed.

Principle 7 of the Declaration of Principles might be included verbatim in the proposed treaty, but it would require further elaboration, which was provided in part by principle 9 in its reference to the "equitable sharing in the benefits". Payments to the international machinery must be at levels designed to ensure that they contributed significantly to the economic progress of the developing countries without blocking the very high flow of investment required for the development of sea-bed resources. Provision should also be made for the use of sea-bed revenues to cover the operating expenses of the international machinery, to provide for the protection of the marine environment, to advance the growth of knowledge of the sea-bed beyond national jurisdiction and to provide technical assistance to States for those purposes. Principle 7 also provided that particular account should be taken of the interests and needs of the developing countries. The question arose whether that meant that they should be entitled to some form of preference, not only in the distribution of revenues, but also in the allocation of licences and in marketing arrangements. On the latter point, the régime should facilitate to the

maximum possible extent the participation of developing States in sea-bed exploration and exploitation activities; but the particular emphasis on the interests and needs of developing countries should relate to the distribution of revenues. It must also be decided whether the distribution of revenues should be made via appropriate international development agencies or directly to the individual developing countries. In the latter event, there was the further question of the criteria upon which the distribution should be based. There was a very relevant precedent in that connexion, in the arrangements made within the specialized agencies of the United Nations with regard to the scale of contributions and the allocation of technical assistance. Lastly, the treaty might provide for contributions to be made to the international machinery be coastal States from revenues accruing from sea-bed resource exploitation within the area under their national jurisdiction. That possibility would be tied to some extent to the ultimate decision on the limits of the international sea-bed area.

Principle 8 of the Declaration could also be included practically verbatim in the future treaty; it need only be completed by a reference to the endorsement by the General Assembly in resolution 2660 (XXV), of the 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. A question which arose was whether the international sea-bed machinery should be granted at least the same powers of verification of suspect activities as were granted to States Parties to that Treaty; that was a difficult question, but his delegation considered such a provision desirable. On the other hand, it did not believe that the future sea-bed resource treaty should attempt to ensure that sea-bed resources would be used for peaceful purposes only, not because it disagreed with that objective but because it would be unrealistic and unenforceable except in the context of a world order which would guarantee that all resources from whatever source were devoted to peaceful uses. While further sea-bed arms control measures were essentially beyond the scope of the forthcoming conference on the law of the sea, such measures would be crucial in avoiding the possibility of conflict not only between individual States but also between States and the projected international machinery. They would also give non-nuclear coastal States such as Canada the vital assurance that nuclear activities on the sea-bed would not threaten their security and that even permissible defensive activities on the continental shelf would be limited to the coastal State concerned, apart from exceptions provided for in the sea-bed treaty.

The first sentence of principle 9 of the Declaration was in fact a directive which the Sub-Committee was in the process of carrying out. The second sentence, however, could be included virtually verbatim in the treaty establishing the régime whose essential objectives it so aptly summarized. The most important factor in achieving those essential objectives would be the creation of a sea-bed resource management system which would guarantee investment on a continuing and orderly basis, without which no benefits from the exploitation of the sea-bed would accrue to humanity as a whole or to the developing countries in particular. That would involve:

(a) The establishment of an impartial, enlightened and streamlined regulatory and administrative system for sea-bed resource development, free from unnecessary bureaucratic complications;

(b) Striking a balance between maximum benefits for the international community on the one hand and adequate returns for entrepreneurs on the other, in particular by keeping costs of exploratory licences low and taking major benefits in the form of royalties at the production stage;

(c) Setting and implementing terms and conditions for the granting of rights to explore and exploit sea-bed resources which would involve the minimum risk of political or other discrimination;

(d) Providing security of title or tenure for exploitation, while at the same time requiring that resource development programmes should be actively and progressively pursued upon penalty of forfeit of rights;

(e) Devising various types of terminable off-shore licences and permits to cover different minerals and different stages of development;

(f) Regulating and inspecting sea-bed resource activities to ensure safety of human life and the protection of the marine environment;

(g) Regulating the production of sea-bed resources to maximize physical and economic conservation, in particular through the encouragement of combined operations and the prevention of over-production, over-drilling and the dissipation of reservoir pressures;

(h) Promoting scientific research with respect to the sea-bed and marine environment, under appropriate conditions;

(i) Minimizing possible conflicts between sea-bed resource activities and other uses of the sea-bed and marine environment, and likewise conflicts between resource activities in the international sea-bed area and the interests of coastal States in the region of these activities;

(j) Preventing and settling disputes concerning the interpretation and application of the treaty;

(k) Providing for compensation for damages resulting from sea-bed resource activities;

(l) Regulating the production, marketing and distribution of raw materials from the sea-bed in order "to foster the healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by the fluctuation of prices of raw materials resulting from such activities" (General Assembly resolution 2749 (XXV), sixth preambular paragraph).

His delegation agreed that the proposed treaty must contain a provision along the lines of principle 10 of the Declaration. However, the present formulation of that principle should be amended to make it apply to the contracting States only and to delete the reference to peaceful purposes, since principle 8 already contained a general provision to that effect. It should be noted that part (b) of principle 10 in fact re-stated an essential principle concerning scientific research which had been incorporated in article 5, paragraph 8 of the Continental Shelf Convention, namely, that there should be access to information in return for access to areas where the research was to be carried out. If it was true that freedom of scientific research must be sacrosanct, then it was only true to the extent that such research contributed to the universal pool of human knowledge, freely available to and fully shared by all. Any such sharing, however, required that the developing countries should have adequate numbers of trained personnel to understand and utilize the information required. For that reason the future treaty should provide for the adoption, within the framework of international co-operation, of measures to strengthen the scientific capabilities of developing countries so that they might profit from research programmes and ultimately make a greater contribution to them. A reasonable interpretation must be given, however, to the provision for the dissemination of research results, in order to avoid placing unduly onerous burdens on those sponsoring the research. What mattered was that results should genuinely be made available.

Lastly, provision should be made in the future treaty to apply the same anti-pollution requirements to scientific research as to commercial exploitation, where such research involved the drilling of deep core-holes into the sea-bed or other projects likely to pollute the marine environment.

Turning next to principle 11 of the Declaration, he said that his delegation wholeheartedly agreed with it, but believed that the future treaty should contain more adequate provisions to prevent pollution in the course of exploiting sea-bed resources. In particular, the treaty should establish safety standards and provide for their effective enforcement, especially in the following respects: blow-out prevention, mud-circulation systems, casing practices, testing and plugging programmes, seaworthiness of platforms and other facilities, recognition of sea-bed geological hazards in the positioning of production and storage equipment, anchoring of drilling vessels and laying of pipelines. Authority should also be granted to the international machinery to prohibit the dumping or deposit of harmful materials on the sea-bed and ocean floor, subject, however, to such provisions as might be made with regard to ocean dumping in other treaties to be adopted by the 1973 Conference on the Law of the Sea.

A point to note in that connexion was that the international sea-bed régime and machinery might eventually be subject to the same conflict between conservation interests and economic interests as had already marked debates on national resources development policies at the domestic level. It was only through the enforcement of stringent safety standards from the very outset that such a development could be avoided or minimized.

Principle 12 of the Declaration was important, but controversial. Coastal States occupied a special position and had special interests in matters relating to the uses of the sea. They bore the brunt, for instance, of pollution damage caused by incidents both within and beyond the national jurisdiction; coastal populations dependent on home-water fisheries suffered most from the depletion of fisheries resources by roving factory fleets. The future sea-bed treaty must recognize the special rights and interests of coastal States. In his view, principle 12 did not go far enough in that direction. Indeed, as at present worded, it placed the interests of coastal States in the region of activities in the international sea-bed area on the same footing as those of other States. His delegation could not accept that equation of patently different interests, and also considered that the obligation to consult the coastal State concerned, at least upon the request of that State, should apply to any activity that might infringe its rights and interests, and not only to activities relating to the exploration of the sea-bed beyond national jurisdiction or the exploitation of its resources,

although the future treaty should impose any such obligation only with respect to those activities it governed. There could be some arrangement to allow coastal States a degree of special rights within an adjacent zone beyond the limits of national jurisdiction, at least with regard to the prevention of pollution liable to arise from the exploitation of sea-bed resources. That could be achieved in part through principle 13 (b), which should be incorporated, subject to minor changes, in principle 12.

Turning next to principle 13 (a) of the Declaration, he agreed that nothing in the future treaty should affect the legal status of the waters superjacent to the international sea-bed area or that of the airspace above those waters. However, that principle should be extended to provide that all activities in the marine environment should be conducted in such a manner as to avoid unjustifiable interference with the exploration and exploitation of the resources of the sea, and conversely that exploration and exploitation of those resources must not result in any unjustifiable interference with such other activities.

With regard to principle 13 (b), he said that his delegation had serious reservations about its negative formulation in the Declaration. It represented in fact a watered-down version of the rights of coastal States. His delegation had taken part in the negotiation of that principle and had accepted it as a compromise, but it believed that it should be phrased in a positive manner, by specifying, for instance, that coastal States could take measures to prevent, mitigate or eliminate any serious or imminent danger to their coastline. The text thus amended could be incorporated in principle 12 as suggested earlier.

Referring lastly to principle 14 of the Declaration, he said that his delegation agreed with its substance but considered that it should make clearer provision for the responsibility of each contracting party: (a) to enforce compliance with, and punish violations of, the provisions of the future sea-bed treaty, (b) to maintain public order on manned installations and equipment operated by that party or under its sponsorship, (c) to pay compensation for damage caused by activity carried out by it or under its sponsorship, whether such damage occurred within or beyond national jurisdiction. Furthermore, over and above the payment of compensation, each party should be required to take all necessary clean-up measures which might be required as a result of such activities. There was inherent in those provisions an element of delegation of responsibility or authority by the future international machinery to the sponsoring State and that might provide a practical and effective means of dealing

with a variety of matters involved in the development of the sea-bed, subject to agreed rules and standards to be fixed by the treaty and to provisions for the necessary supervision.

Turning next to the question of the international machinery to be established, he said that it should be a wholly new institution having legal personality and the capacity to contract, to own property, and to initiate legal proceedings. The question of privileges and immunities for that international machinery was a difficult one, particularly with regard to immunity from judicial process. Whatever its status within the United Nations family might be, it was clear that the nature of the task it was to perform was so radically different from anything now being undertaken that the new institution would require a new approach, not tied to traditions and practices intended for wholly different purposes. In a sense, it would be more like an enterprise than an ordinary United Nations agency. For that reason, it might be necessary to provide, at least in respect of some of its functions, that it should have the capacity to be sued. That question would depend to some extent on the nature of the functions and powers to be entrusted to it. For instance, if it was to have the capacity to exploit the resources of the sea-bed or undertake ventures of a commercial nature itself, then it would be necessary to make it liable to judicial proceedings, in the same way that government vessels on commercial service did not enjoy the same immunities as those granted to naval vessels and government vessels on non-commercial service.

With regard to the question to which the Chilean delegation attached such great importance, namely, whether the international machinery should have the legal capacity and the administrative and fiscal power to actually exploit the resources of the sea-bed, Canada considered that great caution was required. On the one hand, it was necessary to avoid making the proposed machinery too cumbersome and having its work entail overhead costs which would not be justified by returns. In that connexion, it would be most unrealistic to suggest that investment capital for the conduct of any exploration and exploitation activities by the international machinery should be provided by States parties to the treaty or by the United Nations as a whole. On the other hand, there was a very real danger of a conflict of interest between the sea-bed machinery's role as a regulatory body and its possible role as an operating body. Difficult questions could arise, for example, with regard to the possibility of giving preferential treatment to the international

machinery in the granting of licences and the enforcement of regulations. Moreover, it was States or their nominees which would be most likely to have at their disposal the necessary expertise for off-shore operations; for that reason Canada was inclined to think that it would be advisable to leave exploitation activities to States. Nevertheless, it would perhaps be useful to provide the proposed machinery with the power to engage in exploitation in the future, particularly if that would facilitate full participation by the developing countries in the exploration and exploitation of sea-bed resources, by means of joint ventures with the international machinery. However, other methods of facilitating full involvement of the developing countries should also be explored.

With regard to the structure of the future international machinery, the Canadian delegation considered that it should include the following elements:

(a) A legislative body or assembly, which would be the supreme organ of the international machinery with the power to approve its budgets, to elect or appoint members of its executive body, to decide on matters referred to it by that body and to approve amendments to the sea-bed treaty, subject perhaps to ratification by the States parties. That legislative body would be composed of all States parties to the treaty; in that connexion, it had been suggested that agencies other than States might be represented on such a body, but Canada could not agree to that proposal. Decisions of the legislative body would be taken by a two-thirds majority;

(b) An executive body or council, which would exercise authority delegated to it by the legislative body. More specifically, it would have the power to prepare and submit budgets to the assembly, to approve recommendations by other subsidiary bodies of the international machinery concerning the regulations for sea-bed exploration and exploitation activities, and concerning marketing procedures and possibly the distribution of benefits; it would also have the power to propose to the assembly amendments to the sea-bed treaty and to nominate the members of the other subsidiary bodies, which he would specify later. With regard to the membership of the council, the traditional geographical representation formula would be completely inapplicable, because in the present instance national interests would in no way correspond to the traditional groupings. The composition of the executive body must be such as to ensure a proper balance between those national interests. To that end, the essential criteria might be the level of a State's

expertise in off-shore technology and resource management, the length of the coastline, the area of the continental shelf, the fact that a country was land-locked or shelf-locked, and the level of its economic development. To reflect those criteria adequately, Canada considered that it would be desirable to create two classes of membership, one being composed of States parties designated by the assembly and the other of States parties elected by the assembly. There would be a choice between several combinations in determining which of those criteria could be used as a basis for the designation or election of members of the council and in determining the exact percentage to be given to each of the two classes of membership. In his delegation's opinion, the council should be a small body, with a maximum of 30 members. Decisions of the council should be taken by a two-thirds majority. His delegation had grave reservations about proposals for weighted votes or double majorities; that would be incompatible with the fundamental principle of the sovereign equality of States, since, in practice, it would give a veto to States or groups of States, in an international régime intended to benefit humanity as a whole.

(c) A recording or advisory body or secretariat, headed by a secretary-general appointed by the council, who would appoint his own staff in accordance with guidelines fixed by the council. The secretary-general would report to the assembly and to the council on the work of the international sea-bed machinery as a whole; his duties would relate essentially to technical information, but other duties might be assigned to him by the assembly or the council duly ensuring that he remained free from any national influence. Other functions, along the lines provided for in the statutes of IAEA or IBRD, for example, might also be envisaged.

(d) An administrative or regulatory body, which might be known as the resource management commission. That would consist of a group of experts appointed by the council and reporting to it, supported by the necessary staff to perform the following functions:

(i) To issue licences for exploration and exploitation and approve deep-drilling and dredging programmes;

(ii) To supervise and inspect sea-bed operations and enforce the regulations;

(iii) To halt all work in the event of violation of the rules or safety standards and to initiate proceedings before the tribunal;

(iv) To control the methods and volume of production in order to prevent wastage;

(v) To collect fees and royalties;

(vi) To recommend amendments to the regulations and safety standards.

(e) Further administrative and regulatory bodies as required, for example, a commission to deal with the marketing and distribution of raw materials and a commission to review the precise demarcation of boundaries.

(f) An administrative tribunal, composed of a small body of legal experts, and possibly technical experts, representing the various legal systems of the world, elected by the council or assembly, to settle disputes between contracting parties or between contracting parties and the international machinery. In accordance with Article 33 of the United Nations Charter, provision should also be made for the settlement of disputes by negotiation, conciliation or arbitration. The tribunal could be empowered to seek advisory opinions from the International Court of Justice. It should be able to appeal to the Court on questions of international law.

The Canadian delegation considered that the international authority should be provided with some latitude for organic development, that it should be authorized, for example, to create regional institutions which would make it possible for the developing countries to co-operate so as to offset gaps in their technology. It would be desirable to provide optional provisions to that fect in the treaty, so that the authority could expand in response to practical needs.

His delegation thought that a transitional authority should be established for the exploration and exploitation of mineral resources in the minimum non-contentious area of the sea-bed beyond national jurisdiction, in keeping with the three-part proposal submitted by Canada at the fifty-eighth meeting. That authority would control the activities which might be undertaken in that area in the near future and would endeavour to create a favourable climate. A number of enterprises would be prepared to begin fruitful operations in the deep sea area, but they were unwilling to undertake the venture without certain assurances. They could not wait for the conclusion of the treaty on the sea-bed and ocean floor, which might not come into force before 1973, the year of the conference on the law of the sea. In any case, it would be better to set up an immediate administrative and regulatory system which would prevent a free-for-all among the giant corporations, leading

to a waste of resources, degradation of the environment and a disruption of traditional world markets by an unprogrammed distribution of raw materials. The transitional machinery would incorporate in skeletal form the essential elements of the final machinery to be created by the future sea-bed treaty.

The key units of the transitional machinery would be as follows:

(a) An ad hoc executive council appointed by the United Nations General Assembly;

(b) A transitional resource management commission, whose members would be appointed by the executive council on the basis of their competence and experience. That machinery would operate on the basis of the Declaration of Principles, which would serve as a sort of statute.

The interim resource-management commission would exercise the following functions:

(a) Register the territorial claims of coastal States to the continental shelf, without prejudging the ultimate decision on the limits of national jurisdiction;

(b) Maintain a registry of exploration and exploitation activities authorized by coastal States within the areas which they regarded as their continental shelf;

(c) Issue licences for exploration in particular regions of the non-contentious international area, following the approval of the executive council;

(d) Grant exploitation permits to States or their nationals, subject to their obligation to observe certain production time-limits;

(e) Collect fees and rentals in respect of such licences for the purpose of covering administrative costs;

(f) Approve applications for permits for deep drilling or sea-bed mining operations, on the basis of compliance with anti-pollution measures;

(g) Ensure, by inspections, that all operators or prospectors complied with the rules laid down by the council, or to delegate that power of inspection to officials of the sponsoring State;

(h) Collect royalties on the minerals extracted;

(i) Monitor the marketing of raw materials recovered, so as to suspend mining operations or the issuance of permits if production should exceed demand by a significant amount;

(j) Collect voluntary contributions from coastal States based on a fixed percentage of the revenues derived from the exploitation of sea-bed resources within the limits of national jurisdiction or beyond those limits.

Upon the entry into force of the treaty, the transitional machinery could be transformed into a permanent machinery. During the transitional period, any disputes which were not settled by negotiation, conciliation or arbitration could be submitted to the International Court of Justice.

To all those who might object that Canada's three-part proposal was impractical or unworkable, he would like to point out the existence of the following factors: General Assembly resolution 2574 D (XXIV) which imposed a moratorium, albeit hitherto ineffective, on national sea-bed claims; a general agreement that the future sea-bed treaty should require coastal States to notify the international machinery of their limits of national jurisdiction; a survey already under way by the Secretary-General to determine, inter alia, national claims to the sea-bed[4/], the generally accepted idea that coastal States should report to the future international machinery the activities carried out within their respective areas of jurisdiction; the real need for the immediate establishment of an administrative and regulatory authority in areas which were indisputably beyond the limits of national jurisdiction; the nucleus of a sea-bed resource treaty in the General Assembly's Declaration of Principles, which could serve as the starting point for the transitional régime and machinery; a scale of contributions by States to the United Nations on the basis of the revenues accruing to them from the territory on which they exercised their national jurisdiction. All that his delegation asked was that immediate and effective action should be taken on the basis of those factors, which already existed, by implementing the resolution and the generally recognized principles, by replying to the Secretary-General's enquiry, by making voluntary contributions from the revenue derived from sea-bed resources within the limits of national jurisdiction and, in general, by making full use of existing achievement without having to resort to innovation.

It was perhaps the idea of voluntary contributions which aroused the most objections. In answer to those objections, he suggested that contributions might

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4/ A/AC.135/11 and Corr.1 and Add.1.

be levied, to begin with, from the outer limit of a 12 mile coastal belt in accordance with the formula used in the treaty prohibiting the emplacement of nuclear and other weapons of mass destruction on the sea-bed and the ocean floor calculating the contributions on the basis of ability to pay and distributing the benefits of exploitation on the basis of need as was done in the specialized agencies of the United Nations. Moreover, the principle of voluntary contributions was in no way novel or surprising, being much like the scale of assessments of the United Nations and its specialized agencies.

His delegation was waiting with keen interest to learn the views of other delegations on the questions to which it had just referred, and it hoped that a start could be made as soon as possible with the drafting of concrete proposals.

Mr. MYRSTEN (Sweden) said that he had a few comments to make on the limits of national jurisdiction.

He wished first to draw attention to the Declaration of Principles, which related inter alia to submarine resources situated beyond the limits of national jurisdiction, which were the common heritage of mankind. No State could contravene that Declaration by claiming jurisdiction over a larger part of the sea-bed than it had had according to international law on the day on which the Declaration was proclaimed; otherwise, successive unilateral actions could make the Declaration entirely meaningless. The Sub-Committee should make a clear distinction between the present rights of coastal States and the new limits that various States might wish to have accepted by the world community, in order to avoid any confusion between the actual rights of coastal States and their claims.

The 1958 Convention on the Continental Shelf was the basic instrument which conferred upon coastal States jurisdiction over the sea-bed outside their territorial waters, and especially over the subsoil of areas adjacent to the coast. The concept of "adjacency" had been interpreted by the International Court of Justice in 1969 in the North Sea Continental Shelf cases.[5/] The Sub-Committee might well be guided by that interpretation in delimiting the submarine areas under national jurisdiction. In any event, there was little doubt that the limit of 200 nautical miles suggested

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5/ ICJ Reports 1969, p.3.

by some delegations would constitute an extension of present jurisdiction to the benefit of the coastal States and the detriment of land-locked or shelf-locked States and the world community as a whole. What would the effects of such an extension be? If it was assumed that those parts of the sea-bed which could be of economic interest to mankind in a foreseeable future were situated at a depth of less than 2,500 metres, then by drawing on a map of the world the 2,500-metre isobath and a line 200 nautical miles from the coast of the continents, it could be seen that, except in certain regions, the isobath lay within the 200-mile limit. Consequently, the adoption of the 200-mile limit as the criterion for the jurisdiction of coastal States would leave only a small percentage of the economically interesting parts of the sea-bed for the world community. The Swedish delegation was therefore not in agreement with the delegation of Kenya concerning the advisability of setting the limits of national jurisdiction at 200 miles. It recommended that an expert study of the economic effects of that limit should be made.

At the fifty-eighth meeting, the Canadian delegation had proposed that all coastal States should define their claims on the continental shelf. It was obvious that each State would then hasten to claim the maximum, leaving only a very small area for the international zone. In those circumstances, it would even be superfluous to think of establishing an international régime.

He wished to turn to another fundamental question, connected to some extent with delimitation, namely, the possible establishment of an intermediate zone situated outside the area under national jurisdiction. According to a study on scientific aspects of peaceful uses of the ocean floor (A/AC.135/17) made in 1968 by the Intergovernmental Oceanographic Committee for the Ad Hoc Committee to study the Peaceful Uses of the Sea-Bed and the Ocean Floor, the continental shelf, as defined in accepted oceanographic classification, covered 7 per cent of the ocean floor, while the continental slope covered 11 per cent. Consequently, an intermediate zone comprising the continental slope would be much greater in area than the continental shelf. But that slope contained vast resources. If the continental rise was also included, the zone within national jurisdiction would be considerably extended. Thus, an intermediate zone embracing the whole area that would be exploitable in the foreseeable future would necessarily be against the interests of the international community. Moreover, the establishment of such a zone would greatly limit the activities of the international authority, since

only the abyssal plain, which in all probability would not be exploitable for a long time, would be left to the authority. If operations were to be properly regulated, the exploitation of the resources of the entire international zone should be entrusted to the international authority, in order to avoid a great number of "trustees", each of which would decide on the exploitation of part of the area according to its own criteria. Furthermore, it would be in the interest of the developing countries to set aside for the international community as large an area as possible of the sea-bed containing resources. Those countries would have practically no way of influencing exploitation if it was in the hands of the various coastal States, as would be the case if an intermediate zone was established or if the distance of 200 nautical miles was accepted as the limit of national jurisdiction. The risk of conflicts between the international authority and the various "trustees" must also be taken into account. The establishment of a new limit on the sea-bed, even with detailed rules for the precise definition of the outer limit of the intermediate area, would create new difficulties and risks of conflict.

In any event, due allowance should also be made for the interests of coastal States in the activities carried out in the areas adjacent to their coasts, particularly in the granting by the international authority of exploitation licences. The Swedish delegation favoured the inclusion of provisions to that end in the draft articles.

Mr. SMOQUINA (Italy) observed that at the fifty-sixth meeting of the Committee he had made some general comments in plenary on the state of the Committee's work. He would now confine himself to the basic features of the international régime for the sea-bed, the principle of which was established, and the nature of its organs. With regard to the purposes of the régime, the Italian delegation supported the views expressed by other delegations concerning, inter alia, four major principles: (a) submarine resources should be used and conserved in the interests of the international community, whence the need for all States to participate, on an equal footing, in a system of equitable distribution of those resources; (b) the conservation and utilization of submarine resources should not entail the acquisition by any State of sovereign rights beyond the limits of national jurisdiction; (c) provision should be made for the establishment of an international authority for the control, utilization and protection of submarine resources; (d) no activity carried out on the sea-bed or its subsoil should impair the absolute freedom of the high seas.

The establishment of the future international authority should be based on existing organizations, particularly those which were essentially operational in nature. There might, therefore, be three main bodies, the interests of the various categories of countries being reconciled in the membership of the organs other than the assembly, without, however, jeopardizing the authority's efficiency.

The establishment of a genuinely international régime for the sea-bed raised two major problems. The first related to the advisability of establishing an intermediate zone between the external limits of national jurisdiction and the zone subject to an international régime, to be administered by the coastal State but under international control, perhaps in the form of trusteeship. Whatever formula was adopted, it was important to ensure that the coastal State did not acquire sovereign rights over the intermediate zone and that international control was effective.

The second problem concerned the determination of the external limit of national jurisdiction. That problem itself raised two very thorny questions: the limits of territorial waters and the size of the continental shelf. The Italian delegation recommended that the zone or zones under international control should be as extensive as possible and that national jurisdiction should be limited.

The international régime for the sea-bed should include procedures for the settlement of disputes. Such procedures would depend to a large extent on the nature of the disputes, technical or legal, which might arise. In any case, provision should be made for a two-stage solution: conciliation, followed, if necessary, by a legal process proper. In the second stage, his delegation recommended application to the International Court of Justice. Even if disputes might sometimes be technical, it would be preferable to bring matters as often as possible before the same court rather than to establish several courts with special jurisdiction. Moreover, the International Court could, under its Statute, appoint technical assessors, so that it could deal knowledgeably with technical matters in any particular case. If necessary, the international sea-bed authority should be able to ask the Court for an advisory opinion.

Following that survey of the general problems before the Sub-Committee, he wished to make some additional comments.

His delegation was convinced that the common endeavour to establish an international régime for the sea-bed was bound to affect the law of the sea as codified

in the 1958 Geneva Conventions. The General Assembly had itself stressed that problem by expanding the Committee's terms of reference. It was necessary to consider, however, in what directions the Committee's work could most usefully be continued.

It might perhaps be advisable to distinguish three very different aspects. The first concerned questions which were still not resolved even after the entry into force of the 1958 Conventions. They included, for example, the external limit of territorial waters. The second related to the amendments to be made to one or other of the 1958 Conventions as a result of the régime to be established. For example, the criteria to be adopted for the determination and/or external delimitation of the continental shelf would have to be reviewed in the light of the régime for the sea-bed. Lastly, there was a third aspect: the Committee's work should be taken as an opportunity of examining other questions which had been resolved at the 1958 Conference on the Law of the Sea but which, on reflection, might perhaps require partly or completely new solutions. International law must advance and develop as required by the interests of the community of States. However, in changing legislation which had been codified so recently, it would be necessary to display all due caution and flexibility, in order to preserve respect for the law. A general revision of the principles and solutions adopted in multilateral treaties might undermine the stability of legal relations between States.

The aim must be, after all, to establish a régime for the sea-bed which could make the most effective contribution to the welfare of mankind. Considerable sacrifices were needed to achieve that vital goal. It was essential that the results of the Committee's work should not be prejudiced or even endangered solely because of a desire to discuss at the same time questions which though important could, if necessary, be considered and resolved on another occasion, and perhaps in other ways which had already proved effective.

Mr. JERBI (Libya) said he was happy to see that the world community recognized that the sea-bed and ocean floor and the sub-soil thereof was a common heritage of mankind. The creation of an international agency for the sea-bed would spare the world a new form of colonial competition and should help to bridge the gap between world income levels. The Committee had now to establish the legal basis for the international régime which would govern the peaceful uses of the sea-bed

and the ocean floor. Various draft statutes had already been submitted. In drawing up the final statute, past errors should not be repeated and the needs of the developing countries, which had been and sometimes still were exploited, should be recognized.

His delegation would like the international agency to be entrusted with the following powers: to authorize exploration and exploitation activities in the international sea-bed area; to register and inspect the activities; to carry out exploration and exploitation through its own resources or through contractors; to collect, exchange and disseminate information relating to sea-bed activities; to establish a marine institute for the training of scientists of the developing countries and promote research activities; to preserve marine life in the international area; to collect fees and royalties from operators in the area; to distribute the benefits accruing from the sea-bed activities among the participant countries on an equitable basis, taking into account the special interests and needs of the developing countries; to co-ordinate activities of the international organizations in the field of sea-bed operations; to protect the special interests of coastal States; to take any other action necessary to give effect to the provisions of the statute.

The international sea-bed agency should be an autonomous universal agency, with full independent legal personality within the United Nations system, and enjoying the privileges and immunities of that status. It should have three main organs, the assembly, the governing council, and the secretariat. The assembly should consist of all States members, with one vote each; decisions would be taken by a majority of States present and voting. The assembly should meet in a regular session every year; special sessions might be convened by the council or the secretary-general of the agency, or at the request of two-thirds of the States members of the agency.

The council should consist of 25 to 35 members elected by the assembly according to the principle of equitable geographical distribution and the special interests and needs of the developing countries. The council should meet at least twice a year. It should submit a comprehensive report every year to the assembly. It should establish various technical committees to assist it in the exercise of its functions.

The secretariat should be headed by a secretary-general elected by the assembly for a term of four years and should have whatever staff was required. The secretary-general should report annually to the assembly and assist the council to discharge its functions.

The international sea-bed agency would have an important role, namely, to minimize any adverse economic effects caused by fluctuations in the prices of raw materials resulting from activities undertaken in the area of the sea-bed and the ocean floor and the sub-soil thereof, beyond the limits of national jurisdiction. That was a vital question for many developing countries which depended largely on the production of one particular raw material. The report of the Secretary-General (A/AC.138/36) on the possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment showed how large a proportion of the total exports of some developing countries was accounted for by petroleum. The growing demand for petroleum, combined with technological progress, would inevitably hasten the extraction of oil at a great depth, and that in turn would considerably affect the economies of the developing countries. The draft statute submitted by Tanzania provided for the creation of a stabilization board (article 35) to investigate the current conditions of supply and demand and the rates paid for raw materials obtained from the international sea-bed and those obtained on land. When fixing the prices and determining the quantities to be sold or made available at any time, the board should take into account the needs of the world community and the need for stability in the economies of the producers of minerals obtained on land, particularly when such producers were among the developing countries. His delegation thought that the Tanzanian proposal deserved the Committee's close attention.

Mr. TUKURU (Nigeria) said that the question of the sea-bed was very important to Nigeria. It had to be determined how much of the resources of the sea Nigeria, as a coastal State, should control and how much it would have to surrender to the international community. The major part of Nigeria's petroleum was off-shore in the continental shelf and Nigeria had issued prospecting licences to a number of companies.

One of the most important issues with regard to the exploration and exploitation of the sea-bed and the ocean floor beyond the limits of national

jurisdiction was the revenue which could be derived therefrom. Since that revenue would be derived from an area which had been recognized as the common heritage of mankind, it would be available to all countries irrespective of their geographical location. The size of the revenue would of course depend on a number of factors. Given the current state of technology, it was quite clear that, in the foreseeable future, only a limited number of countries (perhaps the developed countries alone) would be in a position to participate effectively in the exploitation of the sea-bed and the ocean floor. To derive maximum benefit from such a state of affairs, developing countries would have to insist on a system of co-operation with the developed countries which would ensure maximum participation in the various stages of the exploitation of the sea-bed resources.

Those activities would demand scientific, technical and economic expertise. The developing countries should aim at taking an active part in them, and not merely at receiving payment of royalties. A special fund should therefore be established for the training of experts from developing countries in the various aspects of petroleum technology.

The various proposals submitted in respect of the proposed international régime and machinery did not contain adequate safeguards for the developing nations. His delegation envisaged a régime which would be able to regulate the exploitation of sea-bed resources. Nigeria's fishing industry was still in its infancy and there were many foreign fishing fleets in Nigerian waters. It therefore had to protect its national interests in that respect.

Like some other delegations, his delegation felt that there was an urgent need for the establishment of a conservation zone for the living resources of the sea. So as not to repeat the mistakes of 1958, the proposed international régime and machinery should be considered in all their ramifications.

His delegation hoped to submit suitable proposals and recommendations in that connexion which would help to expedite the work of the Committee and at the same time ensure a just and equitable distribution of the wealth in the sea-bed and its sub-soil beyond national jurisdiction. His delegation was meanwhile studying the implications of the various proposals concerning the question of distribution. Great care should be taken to ensure that the proposed area to be surrendered to international jurisdiction would not be exploited only by the technocrats of the developed and powerful maritime countries.

Mr. BEESLEY (Canada), speaking in exercise of his right of reply, said in answer to the Swedish representative that far from wanting to give States a free hand, Canada was trying on the contrary to save what could still be saved.

On the question of the claims that might be made by 1973, there was already a Declaration of Principles which gave an idea of the type of international régime envisaged. States were thus in possession of the information necessary for taking decisions. It was time those decisions were taken.

Renunciation was hard, of course, but if it was so very hard, the 1973 conference would have no chance of succeeding, since many States had based their legislation on the 1958 Continental Shelf Convention. If the same reasoning was applied to the territorial sea, one might as well give up hope in that case too.

Although it was difficult to renounce claims, however, it was possible for States to come to an accommodation. How else could one explain the proposal put forward by a great Power based on the very principle of renouncing sovereign rights beyond an isobath of 200 metres?

He asked whether any country had so far renounced its right to make a claim to the continental shelf pending the decisions to be taken in 1973. Perhaps that was what all countries ought to do; a resolution proposing a moratorium had after all been adopted. But it was as elastic as the 1958 Convention. Could the Swedish representative suggest any way other than the method proposed by the Canadian delegation to prevent States from continuing to lay claim to parts of the sea-bed and the ocean floor? His delegation's proposal was not intended to encourage claims; on the contrary, it was trying to put a stop to them pending the decisions to be taken in 1973.

By asking the various States to inform him of their most recent legislation regarding the law of the sea, the Secretary-General would end up with a sort of register of national claims similar to that given in the United Nations Legislative Series of 1970.[6/] That was precisely the kind of information that the Sub-Committee needed to support its work. Did the Swedish representative disapprove of the Secretary-General's approach to States? It seemed unlikely.

6/ See United Nations Legislative Series (ST/LEG/SER.B/15).

The Swedish representative surely did not intend that States which had already made claims should be in a better position than those which had not. From his statement it might be inferred that the situation would be "frozen" once claims had been made. It emerged from the FAO fisheries paper SID/T79-FR-Law of the Sea, published in 1968, that Sweden itself had in 1966 claimed national jurisdiction up to the 200-metre isobath or up to the limit of the exploitable depth. The Swedish representative surely did not mean to stop other countries from making similar claims.

Sweden was in some respects a shelf-locked country so that it had no limits to define. But it was not possible to impose on any State whatsoever, before a final decision had been taken, any other interpretation of the law than that currently based on the 1958 Convention. The process of creeping jurisdiction must be stopped, not encouraged. It would have to be halted sooner or later, at least by 1973. Therefore why not put an end to it immediately by applying the Canadian proposal?

If the Swedish representative had objections to make in respect of the first part of that proposal, he could not in all fairness dissociate it from the second and third parts, with which it was closely linked.

No delegation could say that the resolution establishing a moratorium was effective. Given the way it was worded, there was nothing to prevent a State from extending its jurisdiction if it wanted to.

Mr. MYRSTEN (Sweden) said that he would reply to the questions raised by the Canadian representative at a later meeting.

ORGANIZATION OF WORK

The CHAIRMAN said that it emerged from discussions he had had that delegations seemed to be agreed that the list of speakers be closed at the beginning of the following week, for example, on Tuesday, 3 August.

Mr. BALLAH (Trinidad and Tobago), speaking on behalf of the Latin American group, said he did not see any need to take a decision immediately on closing the list of speakers or closing the general debate. The question of the sea-bed was vital for most countries and all delegations should be given the possibility of expressing their views. The Latin American group in particular intended to submit a draft statute as soon as possible which would be radically different from the other texts submitted.

After an exchange of views in which Mr. JOHNSON (Jamaica), Mr. POLLARD (Guyana), Mr. WARIOBA (Tanzania), Mr. de SOTO (Peru), Mr. HARRY (Australia) and Mr. JEANNEL (France) took part, Mr. AL SABAH (Kuwait) proposed adjourning the discussion on the question of whether the list of speakers or the general debate should be closed.

It was so decided.

The meeting rose at 6.20 p.m.

SUMMARY RECORD OF THE ELEVENTH MEETING

held on Monday, 2 August 1971, at 10.45 a.m.

Chairman: Mr. RAHGANATHAN India
later, Mr. THOMPSON-FLORES Brazil
later, Mr. SEATON United Republic of Tanzania

In the absence of the Chairman, Mr. Rahganathan (India), Vice-Chairman, took the Chair.

GENERAL DEBATE (continued)

Mr. MYRSTEN (Sweden) said that at the tenth meeting he had made some critical comments on a proposal by the representative of Canada, which - if he had understood it correctly - was that all coastal States should be called upon to define their continental shelf claims. As some delegations had not been present at that time, he would summarize what he had said for their benefit.

Such a procedure would result in all coastal States' claiming all those areas which theoretically might ultimately be allotted to them; and once a State had made a specific claim, experience had shown that it was most unlikely that it would ever renounce it. Hence that procedure might well have the effect of reducing the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction to such an extent that it would be pointless to set up any international machinery in connexion with it.

In response to that comment, the representative of Canada had put a number of questions to the Swedish delegation, to which he would now reply, starting, in the interests of clarity, with his delegation's understanding of the concepts "claims" and "renounce". In his statement at the tenth meeting, he had emphasized the distinction between what constituted the present rights of coastal States to the sea-bed adjacent to their coasts, on the one hand, and the extended limits which they might claim, on the other. Their rights under international law were defined in the 1958 Convention on the Continental Shelf.[1/] If a coastal State claimed areas of the sea-bed outside those to which it was entitled under that Convention, that constituted a unilateral claim that should not be confused with any rights of that State to the areas in question.

1/ United Nations, Treaty Series, vol.499, p. 311.

Admittedly, the exploitability criterion laid down in that Convention made it difficult to establish in a non-controversial manner the outer limits of national jurisdiction. The interpretation of the International Court of Justice of the concept of "adjacency"[2/] had, however, made it somewhat easier to do so. While it was certainly difficult to establish the exact outer limits of the jurisdiction of a coastal State over the sea-bed, he would submit however that outside a contested, rather narrow "grey zone", it could definitely be stated that the sea-bed was outside national jurisdiction under present international law. He did not intend to attempt to define that outer limit. In his statement at the previous meeting he had confined himself to disagreeing with those who expressed the opinion that excessive distances, say up to 200 miles from the coast, were in accordance with international law.

If in accordance with the Canadian proposal, coastal States were invited to submit their national claims to the sea-bed and the ocean floor, it was very likely that only the deepest parts of the oceans would be left unclaimed. An invitation of that kind would, in his view, serve a useful purpose only if all States Members of the United Nations were invited to express their views on where the limits of national jurisdiction over the sea-bed lay according to international law. To confine the invitation to coastal States would constitute a form of pressure on the many coastal States which were inclined to subordinate national interests to the long-term interests of the world community. Moreover, once the claims had been made public, it would be very difficult for the countries concerned to go back on them. It was in that context that he had used the term "renounce". It had nothing to do with renouncing rights legally acquired under international law, as the Canadian representative seemed to believe. His delegation had never made any suggestion that the clock should now be turned backwards. It wished rather to put a final stop to the constantly escalating national claims of jurisdiction over the sea-bed, a tendency that in the long run would make the Declaration of Principles Governing the Sea-Bed and the Ocean Floor (General Assembly resolution 2749(XXV)) meaningless.

With regard to the question whether defined claims were in a stronger position than undefined claims, experience had shown that in a negotiating phase such as the Sub-Committee found itself in at the present time it was much better if claims were not too well defined.

2/ ICJ Report, 1969, p. 30.

The representative of Canada had also asked whether the so-called "moratorium" resolution adopted by the General Assembly at its twenty-fourth session (resolution 2574 D(XXIV)) had, in the opinion of the Swedish delegations, been effective. While he would be inclined to say it had not, it seemed pointless to discuss the question at any length since that resolution had been superseded by the Declaration of Principles. Paragraph 1 of the Declaration must be construed as meaning that all that part of the sea-bed and the ocean floor that at the time of the adoption of the Declaration was beyond the limits of national jurisdiction as recognized by international law constituted the common heritage of mankind, unless, of course, the world community agreed to reduce the common part of the sea-bed for the benefit of coastal States or on the basis of any other kind of delimitation between national and international jurisdiction. That seemed to his delegation to be the only logical interpretation of the Declaration of Principles. If the Sub-Committee did not interpret the Declaration in that way there was a risk that, if no agreement were reached on a fixed delimitation, technological progress and a parallel extension of the claims of coastal States would successively reduce the common heritage of mankind to meaningless words.

He would inform the Canadian delegation of his delegation's attitude towards the third part of the Canadian proposal when he had studied it.

Mr. ZEGERS (Chile) said that, in accordance with its terms of reference, Sub-Committee I was responsible for preparing a treaty which would give expression to the international régime for the sea-bed and ocean floor beyond the limits of national jurisdiction. The draft treaty was to be based on the Declaration of Principles contained in General Assembly resolution 2749 (XXV) and the régime was to include an international agency or machinery, regulate the economic consequence of its entry into force, make arrangements to settle the special problems of the land-locked countries arising therefrom and lay down guidelines for an adequate distribution of the benefits from the international area.

In carrying out such an important task, the Sub-Committee had at its disposal the terms of reference laid down by the General Assembly in the resolution he had mentioned, the report of the former Ad Hoc Committee to study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction[3/]

3/ Official Records of the General Assembly. Twenty-third Session, agenda item 26, document A/7230.

approved by the General Assembly, and three important reports of the Secretary-General, one on the possible impact of sea-bed mineral production (A/AC.138/36), one on the special problems of land-locked countries (A/AC.138/37 and Corr.1 and 2) and one on methods and criteria for the sharing of benefits (A/AC.138/38 and Corr.1). In addition, it already had, or would have, about ten working papers and sets of draft articles. The task was a complex and difficult one, with political, legal and economic implications which justified the priority it was being given, and would require an ordered and rational approach.

Discussion on the topic of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of present national jurisdiction had culminated in two basic results: the proclamation of the revolutionary concept of the common heritage of mankind and the preparation of a conference on the law of the sea.

In the opinion of his delegation, the solemn declaration by the General Assembly that the sea-bed and ocean floor constituted the common heritage of mankind was one of the most transcendental decisions adopted by the United Nations. The common heritage concept presupposed a legal definition of a kind of joint and indivisible property, belonging to all States, whether coastal or not. In the language of political and economic facts, it meant that all States would or could participate both in the administration of the area and its resources and in the benefits therefrom. That was a new and revolutionary concept. The concept of res communis, as generally applied to the high seas, had constituted a legalization of international selfishness and the rule of the strong, equivalent to the former indiscriminate hegemony of the so-called economic freedoms at the domestic level. The new concept had replaced that situation and had, for the first time, legally sanctioned a co-operative undertaking involving an immense area.

The basic question before the Committee, now that the concept had been adopted, was how to embody the common heritage principle in the international régime and machinery which it was intended to establish. In his delegation's view, the régime and machinery should have jurisdiction over the international area and its resources - i.e., it should have control of activities within that area and should regulate the process of exploration and exploitation for the benefit of mankind. Jurisdiction over the area would, of course, signify that the authority should ensure its peaceful use and should, inter alia, watch over

the ecological balance and the conservation of its living resources and prevent pollution. Basically, however, it should control the whole economic process: the exploration, exploitation and marketing of resources. All other functions should be exercised in connexion with that essential economic function.

To enable the international authority to exercise adequate control over the processing of resources, the most logical method would seem to be to give it the powers to carry out exploration and exploitation. It had been said that such a method would not be a realistic one, since States and undertakings would not be prepared to make their techniques and capital, know-how and economic power available to the international organization. The solution might be to empower the authority to seek forms of association with third parties by means of service contracts or the establishment of mixed undertakings or companies. The latter had many precedents in the laws of a number of States, which had often succeeded in attracting foreign capital while maintaining national control. It would enable a State or private undertaking to make a profit, in association with an enterprise subordinate to the international authority or agency. That method, which had been suggested in the report by the Secretary-General on an international machinery[4/] and had been taken up in part in the Tanzanian draft statute (A/AC.138/33), was also incorporated in the draft articles which the Latin American group was preparing.

The exclusion of the licensing system and its replacement by those two methods of third-party participation was based on political and economic realities. It was a question of ensuring that the States, or a majority of them, controlled the process to ensure that the area and its resources were effectively the common heritage. The situation described by the French writer Servan Schreiber in Western Europe could easily occur in the case of the sea-bed régime. There were consortia, and even simple national undertakings, with budgets larger than those of most developing countries. If such undertakings or consortia should succeed in controlling the processing of the principal resources - oil and manganese nodules - they would obviously do so not for the benefit of mankind but for their own particular interests. There should be no question of giving private undertakings operating in an international area, through a licensing system, the security and guarantees they would require in every case for their investments.

4/ Ibid., Twenty-fifth Session, Supplement No. 21 (A/8021), annex III, paras. 87 and 88.

The machinery should be of another kind which, without depriving undertakings of a legitimate profit, would ensure that the process and a substantial part of the benefits would be controlled by the international community, as represented by the authority. The proposed method was the only one which, in the long term, was compatible with the notion of the common heritage of mankind, which implied that the authority would have jurisdiction over the area and its resources and would control the production, marketing and distribution processes.

A basic reason for the criterion he had outlined was the need to prevent the economic effects which the introduction of new producers could have on the commodity markets and prices on which the economies of many developing countries depended. As recommended in the report of the Sea-bed Committee approved by the General Assembly,[5/] it was vital to regulate future production so as to avoid or, at least minimize such negative effects. Such was the recommendation contained in a report by the former Economic and Technical Sub-Committee in March 1970, in an Afro-Asian working paper incorporated in that report, in a paper by the Under-Secretary-General for Economic and Social Affairs, which was one of the Committee's documents,[6/] and in the report of the Secretary-General on the possible impact of sea-bed mineral production (A/AC.138/36) to which he had referred previously. Only by control and regulation was it possible to avoid or minimize the unfortunate effects of new production on commodities, markets and prices. For a substantial group of developing countries including Chile, such a distortion could mean a negative effect much greater than the benefits it would receive from the distribution of profits. That was particularly true in the case of manganese nodules - they also contained copper, nickel and cobalt - which were concentrated in great quantities in small areas such as the South-East Pacific. An area licence could make a single undertaking into a decisive factor in the market for the minerals concerned. To achieve such regulation, the authority would have to control the whole economic process. If, through the granting of licences, the ipso facto ownership of an area had been ceded, such regulation would be impossible.

5/ Ibid., Supplement No.21 (A/8021), para. 570.

6/ A/AC.138/SC.2/L.9.

By definition, the authority should be universal - in other words, open, like the treaty itself, to all States whether or not they were members of the United Nations. That was obviously the only way of giving practical effect to the system, since it was to apply to all the seas and oceans. Consequently, all States acceding to the treaty would become members of the authority.

Under the authority, there should be a council, made up of a reasonable number of States, which would serve as its executive organ. The main criterion for the election of its members should be equitable geographical distribution; and the existence of permanent members or overt or covert vetoes - as had been suggested and was, in fact, contemplated in one set of draft articles - would of course be unacceptable.

On the assumption that the authority was to carry out exploitation on its own behalf or in association, an enterprise should be set up in addition to the authority and the council. The enterprise would be responsible for exploitation and for the establishment of mixed companies.

Lastly, consideration should be given to the establishment of a planning organ which would study the regulation of production, markets and prices and would also devise political formulas for the transfer of technology to the developing countries and the training of their technicians in the exploitation of the seas.

General Assembly resolution 2750 A (XXV), of which Chile was co-sponsor, was the basis for the report by the Secretary-General (A/AC.138/36). That was an important document which had been of considerable assistance in the Sub-Committee's work. The conclusion reached in the report was that the foreseeable effects of oil and manganese-nodule production in the area beyond national jurisdiction - the two subjects it had analysed - were not expected to produce any great impact on the economy of the developing countries. The report excepted from that assessment manganese, in respect of which some harmful effects might be caused in the short term, and nickel where harmful effects might arise in a period of ten or twenty years. In respect of copper, it had come to the conclusion that the market and price of copper would not be affected in the immediate future since in current circumstances, the production of nodules would be determined by the demand for nickel, which was much lower than that for copper. In other words, the Secretary-General estimated that it would not be economical to exploit the nodules for the value of one of the minerals alone.

Although his delegation thought that that was an opinion worthy of respect, there were precedents for assuming that new technological development in conjunction with massive investments could render it economic to exploit the copper, for instance. The abundance of that metal in the sea-bed - more than 8,000 million tons - its high quality (1.6 per cent), the concentration of deposits and the absence of labour and other conflicts, had led major companies to explore the area and to consider the formation of international consortia. Their interest was reflected not only in specialized studies, such as those prepared by the Secretariat for the Economic and Social Council and those carried out by the United States Department of the Interior, but also in trade reviews such as "Iron Age". In addition to possible consortia, such as Deep Sea Ventures, major companies such as the Kennecott Copper Mining Company were investing large sums in exploration and processing methods, including the possibility of completing the processing in the same boats which "fished up" the nodules. It was obvious that improved technology and the formation of major capital resources could bring about a situation in which the nodules would be of economic interest for the separate value of one or more of their components. Such a possibility would obviously require a study in depth by the Secretariat. The report itself - which was described as provisional - envisaged the topic among the "suggestions for further study" (para. 27).

It would also be useful if the Committee could hear any opinions that UNCTAD experts might have on the subject, as the Peruvian delegation had suggested at the seventh meeting. His delegation was well aware that the Secretariat had worked in co-operation with UNCTAD but, in view of the preliminary nature of the report and as the UNCTAD experts were in Geneva while the Secretariat was working in New York, the suggestion was a valuable one. To hear the views of UNCTAD would in no way detract from the value of the Secretariat's work.

He had previously expressed the categorical preference of his delegation for the method of "national management" - as suggested in paragraph 21 of the Secretary-General's report - rather than the possible alternatives of compensation to the countries affected or levies on the tonnage produced, the latter solution being rather difficult to apply in the case of direct or associated exploitation. Regulation of production was an integral part of the implementation of the principle of the common heritage of mankind.

The Secretary-General had submitted a further study on the special problems of the land-locked countries (A/AC.138/37 and Corr.1 and 2), which was in part an updating of a memorandum on the question of free access to the sea of land-locked countries[7/] prepared for the 1958 United Nations Conference on the Law of the Sea, and partly an original study on the special problems the land-locked countries might encounter in participating in the area beyond national jurisdiction and its resources which were the common heritage of all. The latter aspect, which was well expressed in the Secretary-General's report, would be much influenced by the type of organization established. The problem of free access to the area beyond national jurisdiction, which should in any case be guaranteed to the land-locked countries, would be of less importance if the authority were to engage in exploitation directly or in association. On that hypothesis, the participation of the land-locked countries in the authority would be of greater interest. In any case, his delegation was determined that the land-locked countries should play a genuinely equal role in the administration of the common heritage and should be given special consideration in the distribution of the benefits derived therefrom. He had noted with interest the alternative suggestion by Kenya at the eighth meeting that regional solutions might be found to the special problems the régime would present for the land-locked countries in each continent.

The final decision concerning the method of distributing the benefits should be taken at a later stage, when the form of participation of all States in the administration had been decided, and the reasons for and against the various methods had been weighed. In any case it was clear, and had been decided, that the benefits were not to be a substitute for the contributions by the developed countries to other organs such as, for instance, (UNDP) and that they should not be regarded as forming part of so-called international aid. In the case in point, the co-owners, i.e. the States, would decide how the fruits of their common property or heritage should be disposed of. The Secretary-General's report contained another important element, in that it listed possible alternative criteria which could be duly considered in the debate and in the negotiations to follow it.

7/ See United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.:58.V.4, vol.I), document A/CONF.13/29 and Add.1.

Various speakers, particularly the representative of Canada had spoken of the possibility of exploitation in the area beyond national jurisdiction in the interim, i.e. before the entry into force of the régime, which would undoubtedly not take place until the treaty had been ratified by a certain number of States. It was a well-known fact that a major company had applied to the Government of the United States of America for a licence to explore in the area beyon. the national jurisdiction. It was also a fact, known to him personally, that the direct representatives of two large companies interested in manganese nodules had said that, if they formed an international consortium with one or two developed countries, no international régime would be needed. In such a case, a distinction should be made between two aspects: the politico-legal situation, as determined by the resolutions of the General Assembly, and the results of a practical alternative. The politico-legal situation was clear: there was a moratorium on exploitation, approved by two-thirds of the General Assembly in resolution 2574 D (XXIV), and there was the Declaration of Principles which excluded the acquisition of rights incompatible with the international régime, stating that exploration and exploitation activities would be subject to the régime and making States responsible for the activities of their nationals. Consequently, exploitation was not permitted and, if it should occur, it could not give rise to any acquisition of rights and the State in which the undertaking which carried it out was registered would be held responsible. The responsibility of the State in question was even more clear if it had voted in favour of the Declaration of Principles embodied in resolution 2749 (XXV).

As for the practical situation, his delegation did not think that any interim régime two-stage machinery was justified, since it would necessarily prejudice the final machinery. If it should be regarded as necessary, it should be identical with the definitive régime and operate in the same way.

It was necessary that the draft treaty should expressly refer to the rights of coastal States to prevent acts producing pollution near their coasts; to their right to intervene in all cases in which their ecological wealth might be affected and to the necessity of consulting them whenever a threat of damage occurred. In that connexion, his delegation wholeheartedly concurred with the comments of the Canadian representative.

Various delegations had spoken on a topic which was not contained in the Sub-Committee's terms of reference: the precise determination of the area beyond national jurisdiction, which was being considered in Sub-Committee II. He had

listened with interest to the suggestion by the Asian-African Legal Consultative Committee (see A/AC.138/34) that coastal States should be granted an economic area beyond territorial sea although he had not read the proposal in question. He had also heard the Australian representative maintain that determination of the limits should respect established rights and that the criterion of exploitability had established a legal platform which every State had to define. The delegations of the USSR, Bulgaria, Poland, Tunisia and Kenya had advocated an alternative criterion of distance and the representative of Kenya had endorsed the suggestion by the representatives of Malta, Norway and Iceland that the area under national jurisdiction should be not less than 200 miles. Those statements showed how absurd it was to propose, as one delegation had inexplicably done, that a depth criterion only should be adopted. To do so would ignore geographical and political realities as well as principles of international law which had been in force for 20 years. The discussion had made it clear that, on that subject, acquired rights would have to be respected; that alternative criteria of depth and distance should be proposed and that the distance in question should be not less than 200 miles. That would leave about 80 per cent of the sea-bed and ocean floor for the international régime and would appear to be only the adequate and realistic complement to a significant international régime, as pre-supposed by the concept of the common heritage of mankind.

With reference to the establishment of a sea-bed régime and machinery, his delegation did not exclude the criterion proposed by the Maltese delegation. It was extremely interested in the basic idea suggested by the Maltese representative and expressed in a draft treaty submitted to the "Pacem in Maribus" Conference, which would certainly be brought to the official attention of the Committee in due course.[8/] A unitary approach to the problems of the sea, together with the possibility of a single international régime for the oceans, based on the concept of the common heritage of mankind and a single 200-mile limit, would be given careful and favourable consideration by his Government.

Lastly, with regard to procedure, his delegation thought that the Sub-Committee should work intensively but without overlooking any vital stages. Before the exchange of ideas on all the subjects to be included in the draft

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8/ Subsequently circulated as document A/AC.138/53.

treaty was ended it was essential that agreement should be reached on fundamental ideas. His delegation thought that the general debate should be followed by a discussion of the draft articles submitted which, together with those suggested during the debate, would amount to not less than 10 sets. After the discussion, there could be specific discussions on the more basic points, starting perhaps with the functions of the international authority and the manner in which it was to exploit the resources of the area. It appeared premature, for the moment, to set up working parties or to attempt to discuss very specific points before agreement had been reached on the basic outlines.

Mr. N'DONG (Gabon) said that there was an extremely important link between the nature of the international machinery to be set up and the question f the limits of the continental shelf. As the representative of the United Republic of Tanzania had emphasized, to delimit the area of the sea-bed and ocean floor beyond national jurisdiction was tantamount to defining the continental shelf.

Although the continental shelf had been defined in geographical terms at the beginning of the eighteenth century, that definition had been of little interest to anyone except the scientists until the Second World War, when the continental shelf had aroused political interest because it had then been realized that its biological and mineral resources could be exploited. Then, after more than a decade of political, economic and legal debates the 1958 Convention on the Continental Shelf had been adopted. It represented a compromise between innovatory tendencies to recognize complete sovereignty of coastal States over the adjacent continental shelf by making the limits of the territorial sea extend to the far edge of the continental shelf, and the conservative tendencies to refuse any exclusive rights to coastal States on the adjacent continental shelf. Article 2, paragraph 1 of the Convention reflected that compromise.

A study of the Convention showed that the criteria for limiting the continental shelf were depth - 200 metres - and exploitability. Gabon had not acceded to that Convention and would find it difficult to adopt those two criteria. The adoption of the depth criterion would result in inequalities with respect to the breadth of the continental shelf. States whose coasts were low and sloped gently would have broad continental shelves. That was the case with certain Middle Eastern States and some States on the American continent. Other States

whose coasts descended abruptly would have no continental shelf at all or only a very narrow one. That was the position as far as most African States were concerned. That situation had to be rectified.

Nor could Gabon accept the criterion of exploitability, because technological progress was so rapid. If it continued, the time would come when the coastal States would be dividing up the oceans and sea-beds among themselves, with serious repercussions for land-locked countries and the risk that the whole of the common heritage would disappear.

His delegation accordingly felt that the criterion of distance should be adopted. Once there was general agreement on the desirability of that criterion and on what the distance should be, the natural inequalities to which he had referred would no longer apply. Gabon considered that a distance of 200 miles would be neither too narrow nor too wide. It would correspond with the interests of developing coastal States and safeguard the interests of land-locked States. The large industrial Powers which had already explored and exploited their continental shelves wished to restrict the continental shelf so that they could exploit the remaining area. Countries with broad continental shelves might lose the rights they had over part of those shelves if the distance proposed did not cover the whole extent of their continental shelves. It would perhaps be desirable in that case to combine the criteria of distance with depth. However, his delegation considered that the criterion of distance was more objective and balanced, provided the right distance was selected.

As regards the régime to be set up, the fundamental principles were set out in the Declaration of Principles. They should be defined and incorporated in the convention on the international régime which was to be drawn up. International machinery should operate within the framework of that régime. In that way the interests of all States could be safeguarded. States which did not have the technological knowledge or the financial resources to exploit the sea-bed beyond the limits of national jurisdiction themselves would be on the same footing as the more advanced States. In the absence of such a régime, and if there were no international control of activities, the developing countries would be at a disadvantage and there would inevitably be conflicts between different interests. It was necessary to set up the international machinery and the régime governing it as soon as possible to ensure orderly development and to avoid the conflicts and errors of the past. Moreover, that régime and machinery would promote the

technical development of developing countries. Care must be taken to ensure that the international machinery set up was not reduced to the level of large international monopolies, a possibility of which the developing countries were afraid. However, Gabon was not in favour of one supra-national authority. Like France it was not prepared to give up its sovereignty (see A/AC.138/SC.I/SR.9). Furthermore, the establishment of such an authority would call for enormous financial sacrifices and it was not even certain that a submarine El Dorado existed. His delegation was in favour of flexible, impartial machinery. The body created should be a legal entity, its institutional nature depending on its functions. It could issue licences, collect taxes, draw up programmes, undertake studies and encourage scientific research. He considered that the organic structure of the international authority as envisaged in the Tanzanian draft statute was good, but the principle of universality referred to in it was not in accordance with the Vienna Convention on the Law of Treaties.9/

The membership of the council should be such that there were always at least two members with long experience in the exploration and exploitation of the sea-bed.

With regard to article 30 of the Tanzanian draft statute, his delegation considered it totally unacceptable that individual States or groups of States receiving licences should not be allowed to transfer their rights to other States without the consent of the authority. Gabon was not prepared to agree to any restrictions on its rights in that respect. Licences should be given only to individual States or a group of States participating in a joint enterprise. Their activities should be in conformity with the Declaration of Principles. He agreed with the views of the representative of France concerning the naturalization of private enterprises to which a State had ceded its rights. It was very important that when States signed agreements with private enterprises for that purpose they should contain provisions for the training of experts in exploration and exploitation. It was equally important, when exploration or exploitation was taking place in the vicinity of a coastal State, that the State should be informed.

Disputes should be settled by reference to Article 33 of the Charter. He could not agree with any suggestion that a special court or tribunal should be set up, since that solution would have financial implications.

9/ United Nations publication, Sales No. 70. V. 5.

Exploitation of the sea-bed and its resources would, unless appropriate action was taken, have a harmful effect on countries producing minerals in which the sea-bed was rich. The price of such products might fall and the developing countries which produced them would suffer. He hoped that the position in that respect would be clarified. He would also like to know UNCTAD's views on the subject. Like the representative of Peru, he was not fully in agreement with the opinion expressed in the Secretary-General's report (A/AC.138/36).

He would comment on the other drafts which had been submitted when he had studied them thoroughly.

Mr. Thompson-Flores (Brazil), Vice-Chairman of the Sub-Commission, took the Chair.

Mr. PINTO (Ceylon) said that his delegation had already outlined its views at the third meeting of the Sub-Committee on a number of aspects of the international régime for the sea-bed and the ocean floor beyond the limits of national jurisdiction, and of the machinery that might be appropriate to give effect to the régime. He was gratified to note that the range of powers and functions for the machinery subsequently listed by his delegation had been incorporated in one of the draft texts now before the Sub-Committee. He proposed to discuss certain aspects of the régime and the machinery, which his delegation had carefully studied.

The first aspect was scientific research and the transfer of technology relating to the sea-bed. Ceylon considered that the promotion of scientific research in all matters relating to the sea-bed and its resources, effective publication and dissemination of the results for the benefit of mankind and rapid and effective transfer of sea-bed technology were matters of the first importance to the developing countries. Without them, the developing countries would occupy a permanently inferior position in the use and enjoyment of mankind's common heritage. As long as those countries had to purchase technological services in order to exploit the sea-bed, the technologically advanced countries would have undisputed mastery over the common heritage.

The Declaration of Principles obliged States to promote international co-operation in scientific research exclusively for peaceful purposes by participating in international programmes and by encouraging co-operation in scientific research by personnel from different countries; through effective

publication of research programmes and dissemination of the results of research through international channels; and by co-operation in measures to strengthen the research capabilities of the developing countries, including participation by their nationals in research programmes.

While his country regarded the Declaration of Principles as a major event in the progressive development and codification of international law, it was aware of its shortcomings, such as the provisions on research, information and training. It believed that the General Assembly would have been justified in including more specific provisions on scientific research; in not confining itself to publication and dissemination of the results of research but including the publication and dissemination of all scientific and technical information relating to the sea-bed; and in mentioning specifically the transfer of sea-bed technology. He hoped that such errors as the weakness of principle 10 would be avoided in the future by the inclusion of appropriate provisions in the international instrument establishing the new sea-bed régime.

The proposed international machinery would have a vital role to play in the collection, early publication and dissemination of information and in serving as an intermediary for effecting the transfer of technology. Four of the functions for the international sea-bed authority tentatively listed by his delegation at the Sub-Committee's third meeting and at the twelfth session of the Asian-African Legal Consultative Committee held in Colombo in January 1971 dealt with scientific research, information and technology. It was in the developing countries' long-term interests to secure, through the régime, the effective dissemination of scientific information relating to the sea-bed and the rapid transfer of technology, even more than it was to obtain the more obvious dividends in the form of shared revenues.

In performing those functions, the authority should enter into arrangements with or ensure the co-operation of existing and future bodies with responsibilities in science and technology, such as UNCTAD and its Inter-governmental Group on Transfer of Technology, UNITAR and the Economic and Social Council and its Advisory Committee on the Application of Science and Technology to Development. The Advisory Committee in its World Plan of Action and in its report of March 1971[10/] noted the need to work out specific programmes and projects. He hoped that the need to transfer sea-bed technology would be taken into account.

10/ Official Records of the Economic and Social Council, Fifty-first Session, Supplement No. 10 (E/4970).

It would also be necessary to ensure co-operation with scientific bodies at the national level. The authority would be expected to sponsor or assist joint research programmes; to ensure the placement of personnel from developing countries in national and international exploration and exploitation operations; to sponsor the placement of scientists from developed countries in developing countries with a view to training the latter's personnel; and in every other way possible to reduce and ultimately eliminate the developing countries' dependence on the developed countries for sea-bed technology.

Everything possible should be done to ensure that nationals of the developing countries, once trained, did not leave their homeland for the more affluent societies - at least until they had passed on their hard-won knowledge and experience to as many of their fellow countrymen as possible.

It had been stated that scientific research should be untrammelled. If that meant that States had the right to start scientific research operations anywhere on the sea-bed without control or regulation, he did not think that the Committee would easily accept such a principle. If the research was carried out within the national jurisdiction of a coastal State it should be subject to such reasonable conditions as the coastal State saw fit to impose regarding, for example, prior consent, the right of participation and the right of interruption or termination for good cause. The international authority might have a role in that operation - possibly as an intermediary for making arrangements, if the parties so wished, and acting as referee. The coastal State would be under the obligation not to subject the project to needless interference and disruption. It was possible to conceive of a zone adjacent to a State's national jurisdiction in which the coastal State was less involved; but in that case certain basic rules of the international authority should apply and the coastal State's rights regarding health, safety and security should be adequately protected. However, scientific research should be free in the sense that it still remained within the discretion of the State concerned, provided it had no warlike, destructive or dangerous purpose and that the operations were not subject to unjustified interference by any State, whether coastal or not.

Some delegations had distinguished between scientific research, which should be free, and industrial research which should be subject to some kind of control. Such a distinction would be difficult, if not impossible, in practice and he did not see how the international authority could ascertain whether a particular

research activity should be subject to its control or not. He was unable at present to suggest any satisfactory criterion and therefore concluded that although such a distinction might exist, the absence of objective criteria on which to base the distinction made it necessary to apply some form of uniform control - at least to the extent that sea-bed research of all types taking place outside national jurisdiction should in the first instance be notified to the international authority.

The second aspect which he wished to discuss was the sharing of profits. His delegation had spoken at length on that subject at the third meeting and had suggested ways of dealing with the problem which had not at the time received detailed consideration. Benefits could be of three main types: information on the scientific and technological aspects of sea-bed exploration and exploitation; raw materials; and revenues. His delegation had also suggested that while scientific and technological information - including information regarding sea-bed mineral deposits - should be freely and actively made available to everyone through the international authority, revenues should be apportioned among participating States by the authority in accordance with a scale or index which would reflect the development needs of the State concerned. Work being done by UNCTAD and the Economic and Social Council on the classification of States according to their stage of development might be a useful guide in the apportionment of sea-bed revenue.

His delegation was pleased to note from the Secretary-General's report (A/AC.138/38 and Corr.1) that the anticipated benefits would include a wide range of non-pecuniary benefits including scientific information, technology and raw materials. It hoped that further thought would be given to the items listed in paragraphs 18 to 25 and in particular to methods whereby material mined or acquired by the international authority could be used to the maximum benefit of the greatest number of States. His Government has not yet studied the implications of apportionment criteria A to E in paragraphs 56 to 69 of the report but he recalled his delegation's suggestion at the third meeting that studies on the lines of those already undertaken by UNCTAD and the Economic and Social Council might result in the establishment of an apportionment index which would be useful for the present purpose. Both had used a combination of domestic product <u>per capita</u> at factor cost and percentage of literate population in the age group 15 and over,

to arrive at a classification of countries according to their level of development. His delegation had also suggested that if that method proved practicable, additional criteria might be considered and the index might be subject to regular review by a competent organ of the authority, to take account of upward or downward trends in the economies of individual countries and to incorporate new indicators that experience had shown to be capable of refining the accuracy of the index. The report, however, treated per capita gross domestic product figures as alternatives to the other types of indicator, in all of which it found disadvantages, and reverted to a formula based on per capita gross domestic product and population. There was no indication that UNCTAD or the Economic and Social Council had tried to combine the indicators that had been evaluated and it would have been helpful to know why they had been rejected. He believed that further thought should be given to introducing other factors to refine the index, such as percentage of manufacturing and literacy, and to other elements relevant to the present subject, such as the position of land-locked and shelf-locked countries and lost opportunities for developing mineral producing countries resulting from alternative resources discovered in the sea-bed. If an apportionment index were established, consideration should be given to fixing a ceiling for the maximum share of proceeds apportioned by the international authority to any one country.

The third aspect on which he wished to comment was the power of the international authority to carry out exploration and exploitation activities on its own. At the twelfth session of the Asian-African Legal Consultative Committe his delegation had suggested some twelve powers and functions with which the authority might be invested and had been supported by an overwhelming majority. The first suggestion had been exploration of the international sea-bed area and exploitation of its resources for peaceful purposes by means of its own facilities, equipment and services. His delegation had in mind that the international machinery should be empowered to conduct exploration and exploitation, to market raw materials and to carry out related activities in competition with other entities. The suggestion had given rise to controversy and a number of countries had indicated that they would find it difficult to accept such a provision, the reasons given being the inability of international organizations to secure the necessary technical personnel or achieve the necessary high degree of operating efficiency required for success; that sea-bed exploitation was a high-risk, high-cost operation which the international

machinery could not afford; that there might be conflict of interest if the international machinery as the licensing authority competed with private enterprise; that the international machinery would be competing with a number of developing countries which were also producers of raw materials; and that it was not clear what law would apply to persons and activities on installations used or operated by the authority.

While those objections were valid, his delegation considered that they could be overcome and that on balance it would be beneficial and would serve the long-term interests of the developing countries and the international community as a whole to vest the machinery with the powers indicated.

While the first objection might be true for the past, it was also true that no attempt had yet been made to establish an organization of the kind now envisaged: the effort should be made if the long-term objectives were considered worthwhile. The initial difficulty of offering technologists sufficiently attractive terms should not continue indefinitely, and in any case, the machinery would not be starting sea-bed exploitation immediately. Moreover, financial considerations might not always be decisive with the best technicians if they believed in the social purposes involved.

With regard to the second objection, none of the supporters of the idea of sea-bed exploitation by the machinery thought that it would be undertaken unless and until it was considered feasible after reviewing all the factors involved, such as available finance, personnel and equipment, the usefulness of the project and its economic appropriateness and viability. The review could be made by a subsidiary body composed of qualified independent persons acting under broad policy lines defined by the principal organs of the authority. It was unlikely that the machinery would go into production in the near future.

The third objection might best be overcome by giving a high degree of autonomy to the organ of the authority responsible for preparing and executing projects. The subsidiary organization would not be immune from suit or execution, and would not receive favourable treatment regarding the terms and conditions for exploitation: those and other necessary safeguards could be built into the machinery to be established.

The answer to the fourth objection lay in the positive benefits that might accrue to the international community through permitting the machinery to build up its credit and influence as a sound enterprise. The controlling policy organ

of the machinery was unlikely to allow competition which could adversely effect the developing countries' economies. It might use its influence and prestige to secure a variety of measures aimed at establishing markets and preventing price fluctuations in commodities exported by the developing countries.

Once launched in the field of exploitation and marketing, the authority would have the opportunity and the duty to conduct its own training programmes for nationals of developing countries and to make its experience and technical expertise as widely available as possible. The authority might at that stage provide the nucleus around which groups of countries would set up their own exploitation projects and its participation, guidance and leadership could be among its most important contributions.

The fifth objection was more of a practical issue than an objection to conferring the power of exploitation on the authority. The question of the system of law to govern persons and activities on an installation owned and operated by the authority or the law to govern, for example, persons accused of criminal acts, or questions of compensation for damage or injury to the property or person of employees on such installations would need much more study. As far as the applicable substantive law was concerned, it would not be necessary to start from scratch. There was a recognized body of rules referred to as general principles of law; the law concerning relations between employer and employee had been developed by the United Nations Administrative Tribunal and the Tribunal of the International Labour Organisation; and the Reparation for Injuries suffered in the Service of the United Nations case decided by the International Court of Justice might also provide useful guidance.[11/]

Although rules of law would have to govern the entire range of activities on an installation owned or operated by the authority, it did not follow that the authority should itself draw up rules comparable to national legislation. In many cases a reference to the State of nationality of the party committing a criminal offence, would be sufficient. In other cases the law of the State of nationality of a plaintiff might be considered.

11/ ICJ Reports 1949, p. 174.

A similar approach might be considered regarding the forum to which such cases would be submitted. In criminal cases deportation for trial by the courts of the State of nationality of the accused might be appropriate. The tribunal suggested by his delegation at previous sessions as part of the machinery to be established might be given jurisdiction in certain cases.

It might be questioned why the matter should be pressed at the present stage, even assuming the usefulness of the power to conduct exploitation activities, when even the supporters of the idea saw no prospect of exploitation by the authority in the near future. The answer was in a sense political. Many countries thought that if the power in question were not included in the authority's statute, the authority might never be invested with it in view of the dilatoriness of most institutions in changing their basic instruments and the likelihood of economic and political resistance, which was already apparent in the Sub-Committee's discussions and was likely to intensify as the feasibility and profitability of sea-bed exploitation increased.

Mr. Seaton (United Republic of Tanzania), Chairman, took the chair.

Mr. PINTO (Ceylon), continuing his statement, said that the fourth point he wished to comment on was the possible impact of sea-bed mineral production in the area beyond national jurisdiction. Ceylon had always supported the efforts of developing countries producers of land minerals to ensure that early consideration was given to methods of counteracting the adverse impact on their economies of the introduction on to the market of the same minerals derived from sea-bed exploitation. Hitherto the highly industrialized developed countries had been supplied with raw materials first from their own resources and, when those proved insufficient, from the developing countries, to augment supplies. That sale of raw materials was often the mainstay of a developing country's economy and a vital source of foreign exchange. Now the sea-bed beyond national jurisdiction offered a new, third source of supply of minerals for industry, and the developed industrialized countries with their advanced technology were the ones that would exploit the sea-bed for those minerals while the developing producer countries would be relegated to third place as residual suppliers. Sea-bed production of minerals could therefore exert a downward pressure on market prices for the minerals concerned. The fact that there were few alternative investment and employment opportunities in developing countries would impose very heavy economic and social costs on them if they tried to reallocate resources under pressure of competition from sea-bed production. The extent of

the adverse impact would vary with the raw material and according to whether sea-bed mineral was technically as satisfactory as land mineral and also with the relative costs of sea-bed production and land production, existing market trends, the scale of sea-bed production in relation to existing supplies and the characteristics of demand. It was inevitable that there would be some adverse consequences and it would be necessary to plan policies to minimize or eliminate them.

The Secretary-General in his report (A/AC.138/36) had considered measures for achieving those ends, including regulation of production, a levy per ton of metal produced on the sea-bed, compensatory financing by the international machinery to minimize the effect of possible declines in export revenues on the economies of the developing producer countries, and a tax on major consumer countries equal to the decrease in price from an initial equilibrium level, in the event of a fall in the price of raw materials. The tax would be collected by importing governments and used to supplement the fund allocated by the machinery for compensatory financing of developing countries. Presumably, where the tax was imposed in consumer countries which were also producers of the raw materials concerned, it would be accompanied by a production quota arrangement for domestic supplies - otherwise the tax would merely protect the domestic producer.

Those measures would all need careful consideration. In the case of the second one, however, the proposed levy might have the effect of limiting output by increasing the cost per unit produced, which would in turn prevent the industry from maximizing the economies of scale that were so vital to its profitability. Lower profits would mean less revenue for the sea-bed authority which would in turn reduce the capacity of the machinery to undertake the compensatory financing measures envisaged in the report. It was doubtful whether in the early stages of its existence the machinery would have sufficient financial means to operate such compensatory financial mechanism by itself; it might have to do so in association with one or more organizations experienced in similar fields and possessing the necessary resources.

Although his delegation would carefully examine the various approaches outlined in the Secretary-General's report, he re-emphasized the need to ensure that the developing supplier countries were not allowed to suffer as a result of production of minerals from the sea-bed. Despite optimistic forecasts, he believed

that adverse price trends were inevitable in the case of many raw materials and that it would be in the long-term interest of everyone if developing producer countries were spared the more severe burden of adjustment to that situation.

The international machinery would have a vital role in any arrangement for arresting adverse price trends and introducing measures to eliminate their harmful consequences and in general maintaining the stability of raw material markets. One method worth studying would be for the machinery, which was empowered under most - if not all - of the draft texts before the Sub-Committee to authorize sea-bed exploration and exploitation, to enter into contractual arrangements regarding selling prices and marketing conditions at the time of authorizing exploitation. Thus, where prospecting under an exploration licence had produced results and the exploitation stage had been reached, the machinery should secure from the prospective operator, as part of the conditions for granting authority to exploit, undertakings on selling prices and marketing policies. The undertakings should be negotiated in each individual case taking account of all relevant factors, including profitability and other commerical factors important to the operator, and also those relevant to the maintenance of market stability. The decisive factors in determining prices of sea-bed raw materials should not only be profitability and the laws on supply and demand, but also the long-term goals of the Declaration of Principles - namely, the healthy development of the world economy and balanced growth of international trade. The guidelines for determining prices and marketing policies, althoughnegotiated with individual prospective operators in each case, would have been adopted by the plenary organ of the machinery on the recommendation of its executive organ. They should be the subject of constant review and where necessary revision.

The international machinery should also be empowered to require prospective sea-bed producers to participate in existing commodity arrangements and to abide by the relevant marketing policies and arrangements. Where no appropriate commodity agreements existed, the machinery might use its prestige and influence to initiate new commodity régimes tailored to the special circumstances and problems of sea-bed exploitation and its impact on traditional land mineral producers, particularly developing producer countries.

With regard to the fifth subject, the limits of national jurisdiction, he endorsed the views of certain other representatives and recalled his delegation's view that the limits of national jurisdiction should be determined by economic

and political factors and should be equitable to all concerned by balancing the legitimate needs and aspirations of individual States with the community purposes which would be given force and effect through the creation of an international sea-bed authority. In view of the persuasive arguments of the representative of Kenya against acceptance of a depth test to determine jurisdiction, his delegation, which had formerly favoured the view, both in the Committee and in the Asian-African Legal Consultative Committee, that national jurisdiction should end at a specified distance from the base lines from which the breadth of a State's territorial sea was measured, and that that distance should be uniform for all States, now realized that the breadth of national jurisdiction should not be defined so as to leave present and future generations of the international community with little or nothing of their common heritage. By far the greater area of the sea-bed should come under the jurisdiction of the new international sea-bed authority for exploitation for the benefit of mankind. Although his delegation would make no definite proposal at the present stage regarding the actual breadth of national jurisdiction - which depended on a number of other issues not yet settled - it considered that the figure of 200 miles suggested by the representative of Kenya might in the circumstances prove equitable and feasible.

His delegation had at first kept an open mind on the United States proposal for a trusteeship zone.[12/] After careful consideration, and in the light of the views expressed by the representative of Kenya, his delegation now considered that the idea was not a satisfactory one in so far as the trusteeship zone was intended to compensate coastal States which had little sea-bed jurisdiction under the depth test specified. Its function as a "bridge" concept between the exploitability test of the 1958 Continental Shelf Convention and the current understanding of a finite national jurisdiction might be more successful, but might not be acceptable to those who wished to make a radical break with the depth-exploitability test embodied in that Convention. The idea of a trusteeship zone might prove unnecessary if a uniform distance test could be satisfactorily negotiated.

12/ See Official Records of the General Assembly, Twenty-fifth Session. Supplement No. 21 (A/8021), annex V.

In connexion with the status of the insular margins of small - often uninhabited - islands situated at a great distance from an administering metropolitan power, the question arose whether those insular margins and any mineral wealth they contained should be at the disposal of the administering Power and whether the new international instrument to be drawn up would paradoxically endorse the outworn concepts of an earlier time. It might be answered that that was only part of a much wider political issue which the Fourth Committee of the General Assembly would eventually determine; but the Sub-Committee would have to reach some conclusion on the matter, in the context of the question of the limits of national jurisdiction.

Regarding the status of the margins of continents over which few or no claims to national jurisdiction had been made - such as Antarctica, where for a period of time all national claims had been suspended and any State might engage in scientific investigation - he wondered whether the continental margins were beyond the limits of national jurisdiction and, if so, whether they would be subject to the new régime.

His sixth subject was financial considerations regarding the establishment and maintenance of the international machinery. Many delegations, including his own, had spoken in favour of the creation of international machinery with comprehensive powers, and his delegation had submitted a list of powers in its statement at the third meeting.

He envisaged at the present time that the expenses of the international sea-bed authority would fall into two broad categories: administrative costs of the organization, such as staff, meetings, expenditure on subsidiary organs, handling and storage of raw materials and possibly the cost of ensuring that materials, services, equipment and facilities provided to a member State or a group of member States by or through the authority were not used for military purposes; and expenses connected with facilities, plant and equipment, acquired or established by the authority in carrying out its authorized functions, including execution of the projects and the cost of services, equipment and facilities provided by the authority under agreement, by way of assistance to its member States.

The authority's administrative costs could be defrayed by subscription by member States, fixed in accordance with a scale adopted by the authority's plenary organ. The scale might be based on the United Nations scale of assessment or

the authority might apply an inverted form of the apportionment index used for benefit-sharing. The second category of costs might be met out of other receipts from members in the form of licences or levies on production - or if the joint venture scheme were adopted, as dividends from operations - by charges made by the authority for its services and from sale of raw materials when direct exploitation became feasible.

Any excess of revenue over those two categories of expenditure could be paid to a general fund, a portion of which would be shared regularly among the members in a manner approved by the appropriate organs of the authority in accordance with the apportionment index.

With a view to increasing the funds available to the authority, he supported the idea of a tax on a State's net income derived from sea-bed resources within national jurisdiction, as proposed by the representative of Canada at the tenth meeting. There might, however, be some difficulty in determining what was net income unless agreement could be reached on the amount of a State's costs. The tax might be payable only by States whose apportionment index was below a certain figure. It could be paid into a special fund - for example a sea-bed development fund - and could be used to defray expenses in both the above-mentioned categories, but would not be available for distribution to the members.

The suggestion that such an arrangement would infringe the sovereignty of States was not, in the opinion of his delegation, valid. The tax would be payable only by members of the authority and it would thus amount merely to the fulfilling of another treaty obligation freely undertaken.

The meeting rose at 1.00 p.m.

SUMMARY RECORD OF THE TWELFTH MEETING

held on Tuesday, 3 August 1971, at 10.55 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. MENDOUGA (Cameroon) said he intended first to make a number of general comments. In the course of the past 25 years the international community had shown a growing interest in its future. In its increasing awareness of the needs of the majority of the human race, and as a result of scientific and technological development, it had discovered a common heritage in the sea-bed and the ocean floor beyond the limits of national jurisdiction. It was possible that in the future, in its continuing search for resources to satisfy its needs, it might well discover another common heritage. In creating a régime and international machinery for joint administration and exploitation of the resources of the sea-bed, it was engaged in pioneer work which might in future be of service in other fields. Thus, despite the complexity and importance of the problem and the divergencies and conflicts in national ambitions, it was essential to show creative imagination and give practical expression to the will to co-operate and to remedy the injustices which continued to dominate international society as a result of anachronisms which had been reinforced by national egoism.

The exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction was a relatively new field which should be approached with a fresh spirit based on the application to the area of the concept that it was the common heritage of mankind. The concept in itself was not new. What was new was the Declaration of Principles governing the area which had been promulgated by the General Assembly in its resolution 2749 (XXV). Those principles had now to be given a concrete form in the interests of mankind as a whole. The General Assembly in its resolution 2750 (XXV) on the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor had also reaffirmed and extended the Committee's mandate. The implementation of that mandate raised numerous complex problems which were so closely interconnected that in general an integrated approach seemed to afford the greatest likelihood of reconciling differences.

One of the most important problems involved in carrying out the mandate was that of the limits of national jurisdiction over the sea-bed. There were in fact several degrees of national jurisdiction in respect of the sea-bed; and there was a fundamental difference in their nature. While jurisdiction over territorial waters was attributable to the national sovereignty of the coastal State concerned alone, the jurisdiction through which the coastal State enacted measures to maintain control over the living and mineral resources of the adjacent area had its origin mainly in international law. At all events, there was a very close link between the régime and more particularly the machinery to be set up and the limits of national jurisdiction. In fact, some countries which enjoyed geographical and geological advantages sought to extend their sovereignty or at least their national jurisdiction over as large an area as possible of the sea adjacent to their coasts, because of the uncertainties and unknown elements in an international machinery which might not have sufficiently extensive powers to ensure that all countries would participate effectively in exploitation and be adequately compensated. On the other hand, countries with the financial and technological resources to enable them to exploit all marine areas, even those most remote from their coasts - and they were generally the most developed countries - were in favour of the most restricted limits of national jurisdiction and an international machinery without sufficient authority to control individual interests in the general interest, or in any case a machinery without powers to engage in direct exploitation. It was clear that there was a confrontation of different national ambitions and interests; and the predominance of either category would not be in conformity with the Declaration of Principles, particularly with principle 7. Also, the land-locked countries and countries with a short coast-line, and particularly the developing countries in those two categories, would find their rights encroached upon.

Hence, it was necessary to find a generally acceptable compromise which, in his view, should be based to a greater extent and of necessity on international machinery with extensive powers and with the effective participation of all States. In that way it would be possible to agree on more reasonable limits of national jurisdiction. In that connexion, it had rightly been pointed out that States did not willingly renounce what they deemed to be acquired rights. Therefore, the

Geneva Conventions,[1] although it was generally recognized that they had defects, had been described as forming part of the body of international law, the rules of which should not be questioned lightly, the more so as they were relatively recent. That point of view had gained a certain amount of force in the light of experience. However, it seemed to him that international law should not disregard factual situations which made changes in it necessary. The criterion of exploitability, which had still been valid in 1958 for the definition of the continental shelf, was obsolete as a result of technological progress. Moreover, the decade of the sixties in which African States had attained independence could not be disregarded in international law. The way in which States acted was determined by their circumstances and characteristics. In the international problem of defining the limits of national jurisdiction, the special circumstances of African States should be taken into consideration.

At all events, his delegation considered that any combination of criteria to be used to define the limits of national jurisdiction must result in the establishment of a distance from the coastal base line which would be the same for all States, while leaving the international community a common heritage appropriate to its needs. Of course, as far as the continental shelf was concerned, it might be possible to use the 1958 Convention on the Continental Shelf[2] if the criterion of exploitability was excluded. Cameroonian legislation on the subject, which fixed a limit of 18 miles for the territorial sea, did not indicate that its national ambitions were such as to cut into the common heritage. His delegation considered that all kinds of national egoism should give way to the general interest.

The last point which he wished to make in connexion with the limits of national jurisdiction was that it was certain - particularly in the case of coastal States on gulfs, bays or straits - that beyond the territorial sea whose limits

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1/ See United Nations Conference on the Law of the Sea, Official Records, (United Nations publication, Sales No.: 58.V.4, vol.II), p.132 et seq.

2/ United Nations, Treaty Series, vol.499, p.311.

would be governed by the principle of equidistance, there would be areas where national jurisdictions would overlap or merge. In that connexion, it would be necessary to make provision for the application of appropriate rules of law. His delegation considered regional co-operation was a very suitable method.

The next question to which he wished to refer was the proposal that a trusteeship zone should be established.3/ As the fate of that proposal would depend on the decisions taken with regard to the limits of national jurisdiction, it was difficult to take a definite position on it at the present juncture. Objections could be raised against it from the point of view of relations between the trustee and those under its jurisdiction, and as regards tne conformity of the form and essential characteristics of the trusteeship with the Declaration of Principles. However, it seemed to him that the idea should not be rejected until more was learnt about it, and particularly until it was possible to see it in a more clearly defined context.

With regard to the classification which was gradually being established between States in respect of the exploration and exploitation of the sea-bed, it seemed to him that such a classification would be necessary both in considering representation and in deciding on the allocation of benefits. States could be classified as developed or under-developed, as coastal or land-locked, but no attention had been paid to the position of States with a very small coast line whose land configuration was such that the small coast line could serve only a very limited hinterland. Their case should receive careful attention in the studies carried out by the Secretariat and in the Sub-Committee's deliberations. His delegation was convinced that special measures would be needed to assist them, as well as the land-locked countries.

Referring to the international régime and machinery which it had been decided to set up in accordance with principle 9 of the Declaration of Principles, he said that several distinctions had been made with regard to some of the elements involved. The question had been raised whether it was the sea-bed and the ocean floor or simply the resources contained in them which constituted the common

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3/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No.21, (A/8021), annex V, chap.III.

heritage of mankind. An attempt had also been made to draw a distinction between different sea-bed resources, and to stipulate that it was only the non-living resources which should be covered by the international régime and machinery. He did not consider that there could be any possible misunderstanding on those two questions. Principle 1 of the Declaration stated categorically that "the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind". Further, it was quite clear that despite the specificity of the rules for exploitation which would have to be taken into account for each type of resource, all the resources - living and non-living - were involved. Nowhere in the Declaration was there any exclusion of any type of resource from the competence of the international régime and machinery. The Committee was not empowered to go back on the principles or to limit their scope; its mandate was to translate them into specific provisions with all the implications which had already been accepted.

In that spirit his delegation envisaged a type of international machinery which had the means to attain the objectives assigned to it by the Declaration, and in particular its principle 9. The powers of the machinery set up to give effect to the provisions of the régime should be commensurate with the task. In fact, the régime and machinery should be given full powers with regard to the exploration, exploitation and management of the area and its resources. The machinery should be able to delegate certain of those powers, in order to ensure that exploitation was rational and in order to comply with the objectives of equity set out in the Declaration. It seemed to him that the international machinery's right to engage in direct exploitation, as a principle, was unquestionable, even if it had certain disadvantages. Given the necessary will, the disadvantages could certainly be overcome.

The principle of universality should be observed in the establishment of the machinery and, to ensure efficiency and harmony, all States should participate effectively in its administration.

As for the structure of the machinery, his delegation considered that the formulae already existing in many international organizations provided useful guidelines. What was essential was that the machinery should not include any form of veto either in law or in fact. It should not be able to subordinate the general interest to that of individual States and powers should not be concentrated in an

organ other than that in which all States were represented. The Canadian suggestion concerning the Board (A/AC.138/SC.II/SR.10) would give that body excessive discretionary powers and a concentration of authority which might mean that nearly three-quarters of the members would have no influence on the decision-making process.

Furthermore, in view of the specific nature of the interests at stake and their importance, he considered that the appointment of the head of the secretariat and certain other high-ranking officers should be made by the principal organ of the machinery, because of the power which a secretariat inevitably acquired.

With regard to the establishment of a system for the peaceful settlement of disputes, it might be useful to explore the possibility of following the example of IBRD which had set up a centre for the settlement of disputes relating to investments. That centre had proved very satisfactory.

As regards the sharing of the benefits to be derived from the exploration and exploitation of the resources of the sea-bed and the ocean floor, it seemed useful to lay particular emphasis on the non-financial benefits. The Secretary-General's report on the sharing of proceeds and other benefits derived from the exploitation of the resources of the area beyond the limits of national jurisdiction (A/AC.138/38 and Corr.1) mentioned a number of alternatives which should be carefully considered. It was also necessary to go more thoroughly into the possibility of giving the international machinery the necessary powers to ensure mandatory participation of exploiting enterprises in the investment fund which the machinery could set up with its own income to assist developing countries, or to which States might contribute. That formula would permit more active participation by all States in the common task.

The most important of the non-financial benefits related to industrial development, which was the natural result of activities in the exploration and exploitation of the sea-bed and ocean floors. Participation in those activities would provide a stimulus to the industrial sectors of the economies of developing countries.

It would certainly be difficult to work out in specific terms how that kind of benefit should be shared, but he would suggest two possible methods. First, ways and means should be found to ensure that each country which wished to have the necessary human and financial resources to participate more effectively in the exploitation of the sea-bed should be provided with them. Suggestions had already

been made to that end, particularly with regard to the training of nationals of developing countries. He referred in that connexion to the report of the Committee submitted to the General Assembly at its Twenty-fourth Session[4] and General Assembly resolution 2574 B (XXIV). It had been suggested that international agencies competent in the field should extend and accelerate their training programmes in the various aspects of marine science and technology. In addition, results of research and exploration should be made known not only to Governments but also to educational and scientific bodies. In his view, the existing institutions should be strengthened and new ones set up.

He had already referred to the possibility of setting up a fund to encourage the exploration and exploitation of the sea-bed, which would promote the active participation of all countries and particularly the developing countries. In the same context he supported the French proposal[5] which, as he understood it, was designed to guarantee, in fact and in law, government backing for undertakings carrying out activities on behalf of governments in the area comprising the common heritage of mankind. It was moreover a way of recognizing the responsibility of States.

The possibility should also be explored of limiting the exploitable area of the sea-bed to be occupied by ships flying the same national flag. The principle of "first come, first served", if it were allowed to prevail, would mean that the developing countries would inevitably be the last on the scene and there would be nothing left for them to occupy. While it was of course true that no restrictions should be imposed on research and exploration, he was convinced that restrictions were necessary in the case of exploitation, if the Declaration of Principles was to be complied with.

Mr. SHAH (Nepal) said that he intended to direct his statement towards the specific issue of the special needs and problems of land-locked countries. In the process, he would touch upon some other important questions in as much as they had a bearing on the problems of land-locked countries.

4/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No.22 (A/7622 and Add.1).

5/ Ibid., Twenty-fifth Session, Supplement No.21 (A/8021), annex VII.

His delegation welcomed the draft treaties, working papers and so forth, which had been submitted by a number of delegations. The draft treaty submitted by the United States of America,[6] though incomplete in many respects and not universally acceptable in its existing form, was nevertheless a pioneer project and a pace-setter in the Committee's endeavours to establish an international sea-bed régime. He did not, at that stage, intend to comment upon those draft treaties, except in so far as they were relevant to the topic of the land-locked countries, partly because they were all incomplete in many respects and partly because other draft treaties were soon to be submitted.

Pursuant to General Assembly resolution 2750 B (XXV), the Secretary-General had submitted a study of the question of free access to the sea of land-locked countries and of the special problems of land-locked countries relating to the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction (A/AC.138/37 and Corr.1 and 2). Together with an earlier study prepared by the Secretary-General in 1958,[7] that report constituted the most comprehensive United Nations documentation to date on the problems of the land-locked countries in general. The report traced the development of international law and current practice with regard to general transit rights and access to the sea of land-locked countries from 1957 - when the International Law Commission had neglected the problems of those countries entirely in drafting articles for the Conference on the Law of the Sea - through the 1958 Geneva Conventions and the 1965 Convention on the Transit Trade of Land-Locked Countries[8] to the present day when not only the rights of those countries regarding transit and access, but also their peculiar economic development problems arising from their geographical situation had, in theory at least, been universally recognized.

6/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No.21 (A/8021), annex V.

7/ See United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.: 58.V.4, vol.I), document A/CONF.13/29 and Add.1.

8/ United Nations, Treaty Series, vol.597, p.42.

Although the 1958 Conventions represented a distinct aggregate gain for the land-locked countries, they had also represented a loss in that those countries were virtually excluded from their share in international fishing and, more essentially, totally deprived of their share of the wealth of the continental shelf.

The 1965 Transit Trade Convention had constituted an improvement on the previous situation in one important respect: for the first time, the rights of land-locked countries had been developed and codified in a separate international convention. The Convention suffered from one organic defect, however, in that it did not provide for overland transit trade with a third country; while a number of coastal countries, including many developing ones, had not as yet seen fit to accede to it. In actual fact the majority of land-locked countries still found themselves in the unenviable position of being absolutely dependent for transit and access on bilateral arrangements with coastal countries.

Part two, section II, of the Secretary-General's report contained some examples of bilateral treaties and agreements concluded between land-locked countries and their coastal neighbours subsequent to the publication of the 1958 study. There was no escaping the conclusion that, generally speaking, those arrangements were far from satisfactory. As far as his own country was concerned, the treaty referred to in the report (ibid., paras. 102-108) had expired at the beginning of 1971 and had not been replaced, with the result that Nepal's transit trade was governed neither by an international convention nor by any bilateral agreement.

Consequently, his delegation thought it only reasonable for land-locked countries to feel that the projected conference on the law of the sea should reaffirm the importance of transit and access, as well as the obligation of coastal or transit countries to accord favourable treatment to the transit trade of land-locked countries in terms of the clearly established rules of international law. As part two, section III of the Secretary-General's report showed, that feeling was borne out by the history of consideration in the United Nations of the problems of transit and access faced by those countries. The most important conclusions to be drawn from that part of the report were, first, that the condition of economic under-development of land-locked countries was directly related to their distance from the sea and, secondly, that, by and large, land-locked countries belonged to the category of the least developed among the developing countries.

In that part of his report, the Secretary-General discussed, in a very general way, the special problems facing land-locked countries in the exploration and exploitation of sea-bed resources under an international régime. Again and again he stressed the importance of transit and access for the land-locked countries and also indicated some specific measures to alleviate those problems. He said that having regard to the general tenor of existing agreements, including multilateral instruments, coastal and transit States might be called upon not to impede transit. He also thought that provision would have to be made for supplementary facilities, such as the installation of a pipeline, and storage depots or processing plants. In response to suggestions that land-locked countries be afforded facilities for coastal installations as a particular instance of their general right of free access to the sea, the Secretary-General also indicated, in broad terms, the need for two types of such facilities: facilities to enable exploration and exploitation to be carried out and facilities to enable any mineral acquired to be stored and processed.

The report dealt with the various possible situations in connexion with the régime but, in the absence of any practical experience or of agreement on the nature of the future régime and the international machinery, etc., it was only natural that the Secretary-General should make it clear at the outset that his study could not go beyond a certain level of inquiry. Despite those obvious restrictions, however, the report had helped the land-locked countries to identify their problems in some depth and to define their attitude more intelligently.

The report had clearly shown that developing land-locked countries would, for the foreseeable future, be quite unable to engage in sea-bed exploitation in their own right. That meant that they would have to be compensated in various ways. His delegation could visualize the following provisions: separate representation on the executive organ of the machinery in proportion to their numbers, and preferential participation in activities and sharing in benefits. It was gratifying that all the draft treaties and proposals provided for representation of the land-locked countries on the executive organ. Depending on the system of licences to be granted, land-locked countries should be given preference in the choice of sea-bed areas and should be enabled to sell the minerals in the markets where the highest prices were to be obtained. They might also require coastal facilities for operations and refining as well as supplementary transit facilities. Essential

minerals such as oil and gas should be made available to land-locked countries at the cheapest price and in their own currency. Those were the minimum provisions which should be included in any agreement establishing the sea-bed régime.

Nevertheless, his delegation was painfully aware of the fact that a worthwhile sea-bed régime would be possible only if the international area approached the coast as closely as possible and included a substantial portion of the continental slope and margin.

The question of limits was the single most important question before the Committee and the concept of an international régime presupposed a precise and meaningful area to which the régime was to apply. It was generally agreed that, for the foreseeable future, the bulk of exploitable mineral wealth in the sea-bed would lie near the coast, and that fact should be borne in mind when determining where the precise limit was to be drawn.

Finally, certain States had made excessive unilateral national claims over ocean space - a claim which the great majority of States regarded as being in conflict with the accepted norms of international law and likely to hamper international understanding and deepen existing inequalities between nations. Moreover, certain difficulties had arisen from the definition of the limits of the continental shelf in the 1958 Convention on the Continental Shelf. His delegation took the view that, rather than the criteria of depth and exploitability, the key operative criterion was the term "adjacent" as defined in that Convention. That understanding of the Convention was compatible with the judgment of the International Court of Justice in the North Sea Continental Shelf cases.[9/] If the Committee proceeded on that basis, it would not be impossible for it to reach an acceptable, non-discriminatory and easily applicable solution.

Mr. KNIŽKA (Czechoslovakia) said that his delegation supported the view that the main task of the Committee at the present stage of its work was to concentrate on preparing a draft treaty which would cover all the interconnected fundamental questions relating to the future industrial exploration and exploitation by States of the resources of the sea-bed and its subsoil. The

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9/ ICJ Reports 1969, p.3.

Committee had chosen the right way of tackling its complicated task, in order to ensure that those inter-related fundamentals were solidly based on the generally recognized principles of contemporary international law - principles which were reflected in the United Nations Charter, in the 1958 Geneva Conventions and in General Assembly resolutions and declarations, particularly the Declaration of Principles adopted by the General Assembly at its twenty-fifth session. The Committee could achieve its objective only by pursuing that clearly defined course.

The basic principles of the law of the sea had already been laid down, particularly in the Geneva Conventions of 1958. His Government considered that those multilateral agreements had met with general acceptance, as was recognized by the General Assembly in its resolution 1307 (XIII) adopted at its thirteenth session, which emphasized that the 1958 United Nations Conference on the Law of the Sea had "made an historic contribution to the codification and progressive development of international law". Experience over the years had shown that the Geneva Conventions formed the basis for international co-operation in that particular sphere and in the modern world in general, where a whole array of new States were making their contributions to the development of international law.

The Czechoslovak Socialist Republic, which belonged to the group of land-locked countries, was convinced that the draft treaty should be based on the following criteria:

First, the sea-bed and its subsoil must be used exclusively for peaceful purposes in the interests of all mankind. The treaty should contribute to the use of the sea-bed's resources in the interests of the economic progress and social development of all countries, in an equal measure whether they be coastal or land-locked;

Secondly, the utilization of the sea-bed and its subsoil should contribute to the further progressive development of countries, particularly the developing countries, so as to enable them to expand their maritime operations, and further reduce the gap between the capacity of the developed countries and the operational capacity of the developing countries;

Thirdly, the treaty should make an important contribution to the further development of international co-operation aimed at the comprehensive and balanced socio-economic development of all peoples, the elimination of contradictions caused by colonialism in levels of development, and the strengthening of peace and security;

Fourthly, due attention should be paid to the further demilitarization and neutralization of the sea-bed, by eliminating nuclear and conventional weapons alike from the area;

Fifthly, no international régime covering such areas as the sea-bed could be stable and durable unless it were established under a treaty which was universal in the sense that every State in the world, without discrimination and without exception, was a party to it;

Sixthly, the treaty must be in keeping with the most important basic document of modern times, which provided the legal basis for all systems of international law in every sphere of contemporary international relations, namely: the Charter of the United Nations. The Charter, with its principles of respect for sovereignty, equality, mutual benefit, non-interference in internal affairs, peace and international co-operation, should be taken as the basis for any international treaty, whether it related to outer space, international air communications or the status of the sea-bed;

Seventhly, in the present age of scientific and technical advances which frequently, however, entailed harmful consequences for the biosphere and the whole human environment, increasing importance was being attached to problems concerning the protection of the environment - particularly the sea - from pollution and deterioration. Although such matters would receive special attention at the United Nations conference on the human environment to be held in Stockholm in 1972, the treaty on the use of the sea-bed for peaceful purposes should contain specific provisions in that regard;

Eighthly, in the modern scientific and technological age, States and authorized organizations must have complete freedom to conduct scientific research on the sea-bed and its flora and fauna.

Before and during its current session, the Committee had considered various drafts relating to the régime and machinery of a sea-bed treaty. His delegation considered that the provisional draft articles of a treaty on the use of the sea-bed for peaceful purposes (A/AC.138/43) submitted by the USSR delegation were the best of the texts submitted.

The USSR draft articles incorporated a number of the positive features of other drafts but did not suffer from some of the defects found elsewhere - such as the attempt to establish a supra-national or para-national consortium with economic

functions which would undoubtedly hamper the international sea-bed resources agency in its work of co-ordination, or the failure to give adequate consideration to the interests of land-locked States. In fact, the USSR draft articles, which were based on respect for international law and on the exploitation of sea-bed resources for the benefit of all countries, both coastal and land-locked, contained many provisions of particular importance to land-locked countries such as Czechoslovakia. For example, article 1 stated unambiguously that the sea-bed and the subsoil thereof were open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without any discrimination whatsoever. The USSR draft articles did not merely proclaim that as an important principle: they went further and took full account - more so than all the other drafts before the Committee - of the interests of land-locked countries in the international machinery to be established. Article 21 provided that the executive board would consist of 30 States, 5 each from 5 different groups and, in addition, 1 land-locked country from each group. Moreover, article 22 (f) stated that one of the functions of the Executive Board would be to consider specific problems arising for land-locked countries in connexion with the exploration and exploitation of the resources of the sea-bed and the subsoil thereof.

His delegation was also glad that the USSR draft articles attached particular importance to the development of the weaker countries: the preamble stated that the treaty was concluded in the interests of economic progress, including the interests of the economies of the developing countries. Article 7 specifically referred to the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), and article 8 provided that the interests and needs of the developing countries would be taken into particular consideration. Moreover, article 21 provided for the extensive representation of the countries of Asia, Africa and Latin America on the executive board and article 27 (c) referred to measures to expand the research facilities of the developing countries, including the participation of their nationals in research.

The USSR draft articles also contained important provisions to ensure the use of the sea-bed for peaceful purposes. Such provisions were contained for instance, in the preamble and in articles 7, 12 (4) and 22 (e); and article 6 was entirely concerned with that question.

Furthermore, in the USSR draft articles great importance was attached to the protection of the marine environment against pollution (articles 11 (2), 12 (4), 16, 18 (g) and 22 (h)), while navigational, fishing, scientific research and other traditional rights were protected by articles 4, 10 (2-4), 12 (1-3), 16, 25 and 26. Oceanographic research rights were protected by articles 22 and 27.

After studying a number of drafts, his delegation had accordingly decided to give its full support to the USSR draft articles, which made proper provision for the legitimate interests of all States, both coastal and land-locked, both developed and developing, and for the maintenance of peace and security and the protection of the environment.

As far as the international machinery was concerned, the main task should be to ensure observance of the treaty and to co-ordinate the activities of all States parties to it. The organs and mechanisms involved should be established solely for the purpose of serving the interests of the parties to the treaty. That meant, above all, that the international machinery for settling questions relating to the industrial exploration and exploitation of the natural resources of the sea-bed must not be a supra-national body - some kind of world State or world government - but should be based on the fundamental principle governing contemporary international relations and international law - the co-ordination of States rather than their subordination one to another.

His delegation was particularly impressed by the provision in the USSR draft articles to the effect that the basic function of the sea-bed resources agency would be to settle relations between States concerning the use of the sea-bed and that it would not itself engage in economic activities. Finally, his delegation felt that, notwithstanding the complications involved in resolving the extremely far-reaching problems before the Committee, substantial and positive results could be achieved through hard work and co-operation.

Mr. AL-SABAH (Kuwait) said that he intended to make a detailed examination of the subjects allocated to the Sub-Committee, and to state the position of his Government on each of them.

It had long been his delegation's belief that any régime to be established for the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction should a comprehensive one based on the concept of the common heritage of mankind, from which all other norms and rules should be derived. Though

well aware of the numerous obstacles to be surmounted in drafting treaty articles on the international régime, his delegation was optimistic that an agreement would emerge.

At the Committee's 1970 summer session, the Secretary-General's study on international machinery[10] had served as a useful and comprehensive background for an exchange of views on the future régime. His delegation felt that sufficient background material was now available and that the time had come to decide upon the type of machinery to be established as an integral part of the régime and to serve as its executive arm.

The Secretary-General had confirmed that there was urgent need to establish an international machinery with comprehensive powers, some of which it would exercise immediately and some at a later stage.

It was generally accepted that the proposed régime for the area beyond the limits of national jurisdiction should be established by means of a basic international treaty. Such a treaty should be of a universal character and should not permit States to enter reservations likely to undermine the régime. It should contain a clear provision for the establishment of the international machinery and its legal status, structure, powers and functions. The status of the international machinery should be such as to make it a legal personality and a subject of international law.

All activities, including the exploration and exploitation of the sea-bed area beyond the limits of national jurisdiction, should be strictly controlled by the international machinery, which should be given the power to deal with all entities whether subjects of international law or not. The machinery should be empowered to grant licences to government enterprises, international consortia, joint ventures or private undertakings. The licences granted should be subject to a new set of rules embodied in the treaty establishing the régime, so as to ensure uniformity and avoid complications caused by a conflict of laws. The machinery should also have the power to inspect operators, including the power to reject, suspend or revoke their licences.

10/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No.21 (A/8021), annex III.

His delegation did not share the view expressed by some speakers that licences should be granted exclusively to States, associations of States or international organizations, although it thought that operators should be State-sponsored, so that the State in question would be responsible for supervising their actions. When granting licences, the machinery would, of course, act according to definite criteria, including the merits of the applicant, the requirements of the developing countries and the need to prevent any single operator from obtaining control of disproportionately large areas. Since the machinery might well find itself involved in disputes with States and/or operators, it was necessary to agree on a specific procedure for the settlement of disputes.

His delegation had repeatedly stressed the need to ensure both the universal character of the machinery and equitable geographical distribution in the assembly as the political organ, in the council as the executive organ, and in the secretariat. The composition, powers and functions of the assembly and the council would require further consideration by his Government.

His delegation, like many others, believed that the régime should provide for equitable sharing of the benefits from exploitation of the sea-bed among all States, special consideration being given to the needs of developing countries, whether coastal or land-locked. It should also provide for price-control to minimize and eliminate fluctuations in the prices of land minerals and raw materials resulting from the exploitation of the sea-bed, together with any adverse economic effects thereof. That was a major issue, since every attempt should be made to avoid impoverishing those developing countries which were entirely dependent on the production of non-renewable raw materials.

The General Assembly in resolution 2750 A (XXV) had requested the Secretary-General to identify the problems arising from the production of certain minerals from the area beyond the limits of national jurisdiction, to examine their potential impact on the economic well-being of the developing countries and in particular on the prices of mineral exports on the world markets, to study those problems and to propose effective solutions to them. In compliance with that request, the Secretary-General had submitted a preliminary assessment of the situation (A/AC.138/36). His delegation would require further time to study that perhaps over-optimistic report in the light of the statements delivered in the

Sub-Committee by the most technically advanced countries. Like the representative of Peru (A/AC.138/SC.I/SR.7), it would also be interested in hearing the views of UNCTAD.

Three draft conventions had been submitted to the Committee, by the United States of America, the United Republic of Tanzania (A/AC.138/33) and the Union of Soviet Socialist Republics, respectively. His delegation held the view that the United States draft convention contained many provisions which were incompatible with the principle of the common heritage of mankind. The international trusteeship concept was designed merely to reduce the area beyond the limits of national jurisdiction and would mean in practice that the trustees would be permitted to retain for themselves most of the benefits derived from the exploitation of the area. His delegation felt bound, therefore, to reject any attempt to divide the area beyond the limits of national jurisdiction into a so-called international trusteeship area and an international sea-bed area along the lines of the United States draft convention. As for the other draft conventions, they were still being carefully studied by his delegation and he reserved the right to comment upon them at a later date.

He had refrained from referring to the question of the definition of the area beyond the limits of national jurisdiction, since his delegation believed that priority should be given to discussion of the régime and the machinery and that his Government's position on the question of limits would be more appropriately stated in Sub-Committee II.

Mr. NATORF (Poland) introduced a working paper (A/AC.138/44) submitted by his Government concerning the establishment of an international organization to deal with the problems of exploration and exploitation of the mineral resources of the international area of the sea-bed and the ocean floor and the subsoil thereof.

The working paper was concerned only with the problems of the international machinery to be established and not with the principles of the future international régime of the sea-bed and the ocean floor of the international area. It was based on the relevant provisions of the Declaration of Principles and its purpose was to set out some directives which might be adopted as a basis for a future international organization.

One of the main ideas in the working paper was the concept of a developing organization whose structure, functions and powers - as was generally accepted -

should be adapted to real needs. Those needs would arise out of the commercial exploitation of the mineral resources of the international area, in particular the exploitation of hydrocarbons.

In 1969 the value of subsea oil and gas production had been estimated at about 90 per cent of the total value of world production of marine mineral resources. According to the statement at the end of paragraph 3 of the Secretary-General's report on the mineral resources of the sea (E/4973) subsea petroleum was expected to hold its prominent place through the remainder of the present century and probably longer. In paragraph 17 of the same report the view was expressed that although a small but increasing number of wells had been drilled in water depths of 200 metres and more, petroleum exploitation beyond the shelf edge was still several years away.

In the coming years, therefore, exploitation of the mineral resources of the international area - the area beyond the limits of the continental shelf - were not likely to expand on a large scale and it seemed clear that there would be no need for a large and complex international organization during that period.

He therefore proposed that the international machinery should be set up in two stages. In the first stage, before the exploitation of the mineral resources of the international area was conducted on a large scale, the organization's subsidiary bodies should be limited in number, its secretariat should be small and its functions should be confined to the real needs existing during that period. The transition to the next stage would be linked with the commercial exploitation of the mineral resources of the international area and the attainment of a level permitting the organization to be financially self-supporting. The organization would be financed during the first or transitional period by contributions from its member States and during the second stage by revenues from the exploitation of the mineral resources of the international area. The organization itself should decide when to end the transitional period, on the basis of economic data and in accordance with the relevant provisions of its statute. As suggested in the working paper, the organization could be part of the United Nations in the transitional period and would become an autonomous organization with the status of a specialized agency in the second period. Its functions and powers should develop in parallel with the development of real needs.

One of the important aims of the organization should be to ensure observance of the provisions of the treaty to be concluded on the peaceful uses of the international area. Its functions would be the supervision and regulation of activities concerning the exploration and exploitation of the area's mineral resources. It should also ensure equal access for all States to the mineral resources and to that end should, at the request of its members, provide the necessary technical assistance to States - in particular developing countries - which were not yet fully equipped to participate but had an interest in the exploration and exploitation of the mineral resources of the sea-bed and the ocean floor.

Technical assistance could be financed from existing United Nations voluntary funds in the first stage, and from revenues derived from the exploitation of the mineral resources of the international area in the second stage.

The organization would be responsible for licensing and for ensuring the equitable sharing by States of the benefits derived from the exploitation of the mineral resources of the area. He would be opposed to the establishment of an international organization empowered to conduct direct exploration and exploitation operations, for reasons which had been ably expounded by the representative of France at the ninth meeting.

On the much discussed and controversial question of limits, his delegation considered that definition of the precise limits of the international area, and consequently of the organization's territorial scope of activities, was a prerequisite for the establishment of any international organization concerned with the problems of exploration and exploitation of the mineral resources of the sea-bed and the ocean floor. The feasibility of establishing an international organization was closely linked with the question of limits. If States continued to expand their jurisdiction to include the continental slope and the continental rise as well as the continental shelf, the most valuable undersea resources which could be exploited in the foreseeable future - namely oil - would come under their jurisdiction. In such circumstances, the usefulness of establishing any international organization, at least in the near future, would be questionable and the most solemn declarations about the common heritage of mankind or the equitable sharing of benefits would be meaningless.

His delegation believed in the vital importance of exploiting the mineral resources of the sea-bed and the ocean floor so as to contribute substantially to the solution of the difficult and urgent problems of mankind - and in particular the developing countries - and could not therefore accept a situation in which the international area would be deprived of exploitable resources. Generally speaking, therefore, it was in favour of reasonable sea-bed limits.

Regarding the boundary line of the continental shelf, his delegation could accept the uniform criterion of a 200-metre isobath; but bearing in mind the States which had no geological continental shelf, it would be prepared to accept a combination of depth and distance from base-line. That would mean that every coastal State could adopt either the 200-metre isobath or the agreed distance from the base-line, according to the formation of the sea-bed adjacent to its coast. The distance should not exceed the average extent of the geological continental shelf.

The outer limit of the continental shelf should be defined precisely at the earliest possible stage in the Sub-Committee's work; otherwise the drafting of the detailed provisions of the international régime and international organization might be no more than an academic exercise.

Mr. STEELE (United Kingdom) introduced the United Kingdom working paper (A/AC.138/46) containing proposals for the elements of a Convention. He did not propose to give a detailed introduction at that meeting but thought it might be helpful to comment on the salient points.

The proposals were in two parts. The first, concerning the functions of the international authority, contained proposals for a licensing system which should go a long way towards meeting the objections of many delegations, by ensuring a fair share in the sea-bed revenues for all countries and a fair participation in the development and exploitation of the sea-bed resources.

The second part, concerning the structure of the authority, contained ideas on the establishment of an institutional structure which would be adequate for the purpose, without using too much of the revenues, and would not be so complex as to be cumbersome in operation.

He hoped the Sub-Committee would agree that it was a fair and workable compromise between the conflicting suggestions put forward by the various delegations.

Some of the United Kingdom proposals were very similar in substance to suggestions made by other delegations - for example the Tanzanian proposal for a distributing agency, and the Jamaican representative's thoughtful remarks at the sixth meeting on opening up the sea-bed for exploitation as a gradual process, with part of it held in constant reserve.

He would comment in greater detail when delegations had had time to study the proposals.

Mr. HOLDER (Liberia) said that his Government had not yet established its final position on all the issues before the Sub-Committee.

Its approach was influenced to a large extent by operative paragraph 4 of the Declaration of Principles in which the General Assembly solemnly declared: "All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international régime to be established."

In accordance with operative paragraph 6 of General Assembly resolution 2750 C (XXV), the Sub-Committee had been given the responsibility of preparing draft treaty articles embodying the international régime and international machinery for the area and its resources, taking into account the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked, on the basis of the Declaration of Principles governing the area, the economic implications resulting from the exploitation of the resources of the area, and the particular needs and problems of land-locked countries.

It was necessary to repeat the relevant parts of the resolution because they set forth the conditions that should be satisfied in order to gain universal acceptance of any proposal or set of proposals on the establishment of the international régime for the area.

He proposed to comment on three questions. First, regarding the scope or limit of the sea-bed and ocean floor, the world-wide interest in the area suggested that to be effective the international régime should cover as wide an area as possible. States would therefore have to restrict their desire to expand their jurisdiction over the sea-bed in the interests of an effective international régime with effective international machinery for the purposes described in the relevant resolutions.

The fixing of the international area would involve questions concerning the limits of national jurisdiction. The conventional approach would be to start by attempting to set limits to the areas over which coastal States exercised jurisdiction; but it might be possible to consider starting with areas of the sea-bed over which no State exercised jurisdiction and trying to define their limits. Any expansion of the area would then by definition entail a contraction of the area of national jurisdiction; and the withdrawal of national limits would depend on benefits accruing from a corresponding expansion of the international area. The idea was not impossible in theory and, even if it proved unrealistic in practice, it might create an awareness of the interests at stake and provide guidance towards an equitable solution.

The various proposals for limits to national jurisdiction submitted by other delegations might eventually lead either directly or indirectly to a final solution of the boundary problem. The draft convention submitted by the United States of America contained a proposal which would provide for a continental shelf over which the coastal State would exercise absolute jurisdiction for exploration and exploitation, of an area not extending beyond the 200-metre depth isobath. That would appear to recognize the existing rights of coastal States under the 1958 Continental Shelf Convention.

A second limit extending seaward therefrom to the edge of the continental margin would be set to de-limit an area to be known as the trusteeship zone, beyond which international jurisdiction would be absolute. In the trusteeship zone, however, the international machinery would have the right to apply its rules and regulations; and the coastal State would have the exclusive right to issue licences in accordance with the international rules and regulations.

Obviously, some countries preferred a wider area for the exercise of national jurisdiction and others preferred a very wide international area. The United States proposal was evidently the result of much thought and was submitted as a compromise. In one respect, however - the need to bear in mind the special interests and needs of developing countries - it seemed to have compromised too much.

His delegation's reluctance to accept the United States proposal on limits was due mainly to the criterion on which the proposal was based. His delegation was equally reluctant to accept a distance criterion, for equally fundamental reasons.

It was not rejecting any of the proposals so far submitted, but it felt that the answer to the question whether or not one of the existing proposals on national boundaries found its way into the final treaty should depend on the total package deal.

Secondly, regarding the status of the international institution in relation to the United Nations, his delegation believed that, to be effective and to satisfy the requirements of the mandate, the international machinery should possess an international legal personality with the corresponding responsibilities and rights. His delegation was particularly concerned about the control, if any, that the United Nations would exercise over the international machinery.

If the international régime including the international machinery were established in accordance with the Sub-Committee's present mandate, there would be no room for any form of United Nations control. The United Nations had not been organized to meet the requirements or tests involved in establishing the international régime and machinery; it was not designed to meet the needs, demands and aspirations of the present world community of States or the crucial problems of 1971, let alone those of 1991. While appreciating the immense benefits accruing from the United Nations, his delegation would not be inclined to support any proposal providing for control of the sea-bed régime or machinery by the United Nations. The status of the machinery should be similar to that of the specialized agencies.

Thirdly, regarding judicial disputes and enforcement measures, he said that the fundamental need would not be satisfied by the formulation of rules and regulations. A firm and realistic grasp was needed of the fundamental principles underlying the rules to be established, including the concept of equality and of guaranteed justice.

Justice among States required that all should be entitled to the same rights and the same treatment, but in practice treatment had not been equitable. His delegation would favour a system for the settlement of disputes in which all groups would be equally represented. It had noted recent press reports on measures taken in certain ports to discourage the dumping into the nearby ocean of poisonous materials from a particular ship and would favour provisions encouraging similar action by the international community to ensure fulfilment of the obligations under the proposed international régime.

Mr. BEESLEY (Canada) commended the representative of Cameroon on his comprehensive, original and thoughtful statement. There were several ideas to which he wished to give careful thought and one on which he would particularly appreciate further comment. The representative of Cameroon had been critical of Canada's general position on international machinery on the grounds that the council would be too powerful. The Canadian delegation had stressed that in its proposals - unlike those of other delegations - the council would be wholly answerable to the assembly but would not be subject to weighted voting; the criteria for defining membership of the council contained special provision for including the developing countries - which would obviously have to be equitably represented in order to ensure that the machinery really worked for the benefit of mankind and in particular the developing countries. The council itself should have all the requisite authority to deal with very powerful entities, such as trans-national corporations and potential operators, as well as States, and it would therefore be in the general interest - and in particular that of the developing countries - to have a powerful council.

For the reasons he had given he would be interested to hear from the representative of Cameroon which of the powers suggested in the Canadian proposals should be assigned to the council and which powers should not. His delegation had given a great deal of thought to its proposals but was open to suggestions.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE THIRTEENTH MEETING

held on Wednesday, 4 August 1971, at 11.00 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. LEGNANI (Uruguay) said that his delegation had always maintained that the international régime for the exploration and exploitation of the sea-bed should be given priority in the Committee's work. That was the most significant topic on the Committee's agenda, and all the other subjects revolved around it.

When the Committee had been set up by General Assembly resolution 2467 (XXIII), the first duty that had been assigned to it was that of elaborating legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed within the international area and would ensure the exploitation of its resources for the benefit of mankind.

Resolution 2467 (XXIII) had emphasized the importance of the subject and 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 the international area and their use for the benefit of mankind, taking into special consideration the interests and needs of the developing countries. In resolution 2574 A (XXIV) the General Assembly had taken account of the close interrelation between all the topics connected with the law of the sea and had requested the Secretary-General to ascertain the views of Member States on the desirability of convening a conference to review the régimes regulating those questions, particularly in order to arrive at a clear, precise and internationally accepted definition of the international area "in the light of the international régime to be established for that area". Consequently, it appeared that the main and priority topic was the régime to be established for the international area.

Resolution 2574 B (XXIV) requested the Committee to expedite its work of preparing a comprehensive and balanced statement of principles designed to promote international co-operation in the exploration and use of the international area, and to ensure the exploitation of the area's resources for the benefit of mankind. Part C of resolution 2574 (XXIV) requested a further study on various types of international machinery - or, in other words, called upon the Committee to prepare a statute for the international organization which would put the international régime into effect.

Resolution 2574 D (XXIV) provided that, to ensure that the resources of the area were exploited for the benefit of mankind as a whole, activities in that field should be carried out under an international régime which included an appropriate machinery and declared a moratorium on any exploitation of the area's resources until the international régime was established.

The Declaration of Principles in resolution 2749 (XXV), together with resolution 2750 (XXV) on the exclusive reservation for peaceful uses of the sea-bed, the use of its resources for the benefit of mankind and the convening of a conference on the law of the sea, were also mainly related to the régime. The first resolution had set forth the basis of the régime, while the second had referred to several problems which would arise as a result of the functioning of the régime, such as the fluctuation in the prices of commodities and the problems encountered by the land-locked countries with respect to the area. That resolution provided that a conference should be convened in 1973 to deal with the establishment of an equitable international régime and allied questions, in the belief that such a régime for the international area would facilitate agreement on the other questions to be considered at the conference.

In actual fact, the promotion of international co-operation in the exploration of the area, to ensure that its resources were exploited for the benefit of mankind, was tantamount to proposing that the question of the system and form of governing the area and disposing of its resources should be given priority among questions on the law of the sea. That was perfectly justified, since the possible modalities and variants of the régime would govern the possible modalities of the solutions adopted for the other questions, while the reciprocal influence of the other questions on the régime would not be felt, or at least not to the same extent. Thus, the greater or lesser extension of the area - whose delimitation had been recommended for priority consideration - would not in any way change the nature or quality of the common heritage of mankind. At the present juncture, to give priority to the régime would not mean initiating consideration of the topic, but rather renewing or continuing it at the point where it had been left when some substantial progress had already been made.

Numerous references had been made to the need for advancing the work, on the grounds that the progress of scientific and technological knowledge concerning the exploration and exploitation of the sea-bed and ocean floor made it urgent for the

Committee to carry out its mission, to prepare for the establishing of local institutions and rules, taking account of the new realities resulting from that progress, and regulating international relations in an adequate fashion in conformity with the principles of reason and justice.

Furthermore, world production of minerals from the sea-bed - mainly oil, gas, coal, sulphur, iron ore and manganese nodules - had already reached a fairly high level, and geological data suggested that sea-bed oil resources would be even more abundant than land resources and that the value of world oil production from the sea-bed would shortly exceed the value of all other sea resources put together.

It was a heartening thought that in considering the interests of the present generation, foundations had been laid for the régime which marked a new, revolutionary development in the history of international relations.

The control and regulation of the international area should be clearly based on the Declaration of Principles among which the main axis was the one stating that the area of the sea-bed beyond national jurisdiction, as well as the resources of the area, were the common heritage of mankind. The Declaration implied that the régime should exclude exploration and exploitation by States in their own interests; that all States had the right to take part in the administration of the area; and that all States were entitled to share in the benefits of sea-bed resources, special consideration being given to the particular interests and needs of developing countries. The functioning of the régime would replace every kind of competition, rivalry and conflict by fair international co-operation. It was a happy coincidence that the Declaration had been approved roughly at the same time as 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 (General Assembly resolution 2660 (XXV)), and also the International Development Strategy for the Second United Nations Development Decade adopted by the General Assembly at its twenty-fifth session (2626 (XXV)).

Interesting sets of draft articles submitted by the delegations of Poland (A/AC.138/44), the United Republic of Tanzania (A/AC.138/33), the United States of America[1] and the Union of Soviet Socialist Republics (A/AC.138/43), and working papers submitted by the representatives of the United Kingdom[2] and France[3] were all

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1/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No.21 (A/8021), Annex V.

2/ Ibid., Annex VI.

3/ Ibid., Annex VII.

contributions deserving careful and thorough study. He was also acquainted with the draft prepared by some Latin American delegations, which would shortly be submitted to the Sub-Committee. For the moment, he had no intention of entering into a detailed analysis of those texts. He only wished to draw attention to the solutions that had his preference. His delegation did not approve of the "exclusive" method of exploiting the sea-bed, with the granting of licences and the payment of dues and royalties. The system to be established should involve the direct intervention of the international community. Under the licensing system, the community of nations would not itself be promoting and directing activities, although it would be indirectly responsible. An exploitation régime based on the licencing system could lead, ultimately, to a situation in which the enjoyment of the common heritage of mankind would be usurped by private interests in return for very small benefits which would not contribute in any significant fashion to development or to the general well-being of the international community as a whole.

His delegation was equally opposed to the idea of an international trusteeship area - an idea which would in practice benefit the trustees - the technological advanced countries - rather than mankind as a whole.

It would be equally wrong to assign the most important functions within the international organization to its executive organ, leaving the assembly to rubber-stamp what the council had decided. The composition of the council should not be such as would assure the dominance of the six most industrially developed countries, three of which could paralyze the operation of the régime. Such a composition of the council would give the advanced industrialized countries a decisive voice in the exploitation of the international area, and that would be contrary to the basic principles of democratic organization.

The draft articles submitted by the delegations of Poland, Tanzania, the United States of America and the USSR did certainly contain some very interesting provisions which would regulate, in a systematic way, matters which were of great importance for the exploration and exploitation of the sea-bed. His own delegation shared the views embodied in the Latin-American draft which would be submitted shortly to the Sub-Committee. That draft, through the organs it proposed to create and as a result of the extensive regulatory powers to be accorded to those organs and by the rest of its provisions, would be able to fulfil the basic task of ensuring that the common heritage of mankind was exploited for the benefit of mankind.

The proposed international authority, which would have a legal personality, would be responsible for scientific research and for the exploration of the area, the exploitation of its resources and all activities connected with production and marketing. It could carry out those functions in association with State undertakings or other legal persons, sponsored by States, or could act directly using the services of any person, individual or corporation, national or international. It would promote international co-operation and would grant licences for scientific research and for exploration for commercial needs to State-sponsored individual or legal persons. It would have sufficient authority to prevent and control pollution, to adopt measures to protect the developing countries from adverse economic effects, and it would also have effective powers of inspection, taxation, co-ordination, supervision etc. with respect to all exploration and exploitation activities in the area. The international authority would also be responsible for distributing the benefits of the area among States, taking into consideration the special interests and needs of the developing countries. The organs of the international authority would be: the assembly, the council, the international sea-bed undertaking and the secretariat.

The assembly would be the supreme organ of the authority and would include all States among its members. It would outline the policies of the organization, in pursuance of which resolutions would be adopted in the council, an organ elected by the assembly and constituted according to the principle of equitable geographical representation. The administration proper, with all its necessary functions, would be subordinate to the council.

The undertaking would be given the powers and facilities required to engage directly in scientific research and exploration, the exploitation of resources and also activities connected with production and marketing. The secretariat would have important advisory, informational and administrative functions.

The draft was, he thought, suitably structured to cover the very wide field in which the international machinery would have to operate. The international authority proposed would have extensive powers, all countries would participate in its management; it would be designed to promote a close and practical co-operation among States, it would establish joint administration by all States and it would distribute the benefits in an equitable manner. Moreover, its structure and functions would be readily adaptable to developments in its activities. His delegation considered that although regional centres - as proposed in the Tanzanian

draft articles - would not be established in the first stage of the work of the international organization, the flexibility of the system proposed by the Latin-American delegations would make it possible to incorporate regional organizations in the exploration and exploitation of the international area.

All those bodies should base their operations on the Declaration of Principles contained in General Assembly Resolution 2749 (XXV). His delegation did not call for a regionalistic structure on formal theoretical grounds nor did it advocate an independent régime for each region, but it held that the proposed organization should take full account of the characteristic regional diversity of the contemporary world. Regional interest in the satisfactory solution of questions relating to the sea, reflected in the declarations of Santiago (1952), Montevideo and Lima (1970) and the agreements concerning the North Sea and the Adriatic, must be taken into account.

In specific spheres such as the protection of the seas and oceans from pollution, it was vital to include regional organizations in the context of close and active international co-operation. That would, moreover, go a long way towards producing an appropriate solution to the problems affecting the land-locked countries, such as the effective implementation of their right to access to the sea and their participation in the benefits of sea-bed exploitation.

Such regional bodies would also help to disseminate technical know-how concerning sea-bed activities, would make it possible to adapt exploration and exploitation to the special features of each region, would strengthen bonds within the region and would promote relations at the international level for the benefit of the international community as a whole. Without attempting to work things out in advance, he suggested that a type of decentralization of activities and functions could well be developed by means of agreements between the international authority and the region in question.

If the immediate goal was to prepare a régime governing the international sea-bed area on the basis of the common heritage principle, the ultimate need was to contribute to the peace and security of the world. So exalted an objective would, in his opinion, justify delegations in sacrificing - at least in part - the respective solutions that each of them regarded as the best, in exchange for solutions that all of them regarded as merely good or acceptable.

Mr. CHAO (Singapore) said that his country looked forward to the successful establishment, by way of a universal treaty, of a meaningful and viable international régime, including machinery to govern the exploration and exploitation of the international sea-bed area and its resources for the benefit of mankind.

He was grateful to the delegations of the United States, Tanzania and the USSR for having submitted draft articles on the subject, and to those of the United Kingdom and France for their extremely useful working papers.

He wished to give his delegation's views on some of the broad issues before the Sub-Committee, and to make some general comments on the three sets of draft articles submitted.

It had often been stressed that the present law favoured the developed coastal States at the expense of the developing coastal States; but that was true only to a certain extent. The developing coastal States, though lacking in underwater mining technology, could always grant licences or concessions to foreign corporations to explore and exploit their continental margin. It was therefore probably more accurate to say that present law and practice unduly favoured coastal States adjacent to an open sea. The present law as embodied in the Convention on the Continental Shelf[4/] was inequitable because it completely ignored the rights and interests of land-locked - and to a considerable extent the rights of shelf-locked - States in the sea-bed and its marine resources, and was based on the premise that only coastal States were entitled to enjoy the resources of the sea-bed and the ocean floor.

Although land-locked and certain shelf-locked States had perhaps not shown enough interest in the resources of the sea, mainly because of technological and physical deficiencies, surely that was no reason to deprive them of what was rightly theirs. All States were entitled to a fair share in the sea-bed and in the living or mineral resources of the sea. The marine environment of the earth was an indivisible whole, of which every member of the international community was entitled to an equitable share. The statement in the Declaration of Principles that the sea-bed and ocean floor beyond the limits of national jurisdiction were the common heritage of mankind was merely a belated recognition by the international community of a basic rule of equity and justice.

4/ United Nations, Treaty Series, vol.499, p.311.

The scramble for the ocean that had begun soon after the Second World War, had culminated in the adoption at Geneva in 1958 of the Convention on the Continental Shelf, which essentially reflected the interests of coastal States. The Committee, as the preparatory body for the proposed 1973 Conference, should take the opportunity of rewriting the law to rectify some of its present inequities.

It was in that light that his delegation viewed the critical question of the precise delimitation of the limits of national jurisdiction. As a completely shelf-locked State, his country largely agreed with other land-locked and shelf-locked States whose delegations had already spoken. There should be optimum utilization of the resources of the continental margin and the sea-bed for the benefit of mankind as a whole. In accordance with the common heritage principle, the greatest possible area of the continental margin and the sea-bed should be reserved for the international régime. In any event, the régime should apply to a reasonably broad area of the continental margin and the sea-bed which was exploitable immediately. Only thus could international machinery be meaningful or useful.

Much emphasis had been laid on the riches that could be obtained from the sea. From the land-locked and shelf-locked States' point of view those riches would prove to be a mere delusion if the limit were established at a point far out in the ocean where there was no likelihood of exploration or exploitation within the next decade or two, for valuable resources were mainly to be found along the continental margin. He trusted that the principle of the common heritage of mankind would not remain a mere pious hope. Paragraph 7 of the Declaration of Principles provided, inter alia, that the interests and needs of the developing countries should be taken into particular consideration in the exploration of the area and the exploitation of its resources. In that connexion it should be constantly borne in mind that, of all the developing countries, the land-locked States in Africa, Latin America and Asia were among the least developed in their respective continents.

He wished to make some preliminary remarks on some of the suggestions concerning the precise limits of national jurisdiction.

His delegation was in favour of a limit determined by reference to a fixed distance criterion, which was precise and avoided the likelihood of confusion. But the distance must be reasonable and not one which would make the international régime a dead letter from the very start.

The representative of Kenya had suggested at the eighth meeting that the maximum breadth of the continental shelf at the 200-metres isobath should be taken as the limit for national jurisdiction, which would mean a distance of more than 200 miles from the coast. Such a distance had been suggested by several other delegations. His delegation viewed that development with grave concern, for it would have alarming consequences for the international régime. He recalled the statement of the Swedish representative at the tenth meeting that if 200 miles were adopted as the outer limit of national jurisdiction, only a small percentage of the economically valuable part of the sea-bed would come within the province of the régime, and only coastal States adjacent to an open sea would continue to benefit. The inequities would thus be perpetuated.

If an absolute distance criterion were to be adopted, one that would give meaning and scope to the régime had to be found. His delegation would therefore suggest that the average breadth of the continental shelf at 200-metres isobath might be more justifiable.

The intermediate zone concept proposed by the United States representative was interesting and merited further consideration. That concept sought to strike a balance of sacrifice on the part of all the wealthy coastal States. The weakness of an absolute distance criterion was that it would entail sacrifices only by certain coastal States with shelves extending beyond the absolute distance limit. The advantage of the intermediate zone concept was that the international community would be able to enjoy an immediate fair share of the benefits of a significant part of the sea-bed area where exploitation of mineral resources was possible.

However, in the United States draft exclusive right was conferred on the trustee party with regard to the particular portion of the international trusteeship area adjacent to its coast. The extensive powers and functions vested in the trustee party made it somewhat difficult to reconcile the idea with the international character of the trusteeship area. Draft article 29 provided that the trustee party might enter into an agreement with the international sea-bed resource authority under which the authority would perform some or all of the trusteeship functions in return for an appropriate part of the trustee party's share of international fees and royalties. Since, in accordance with the United States draft, the international trusteeship area was part of the international sea-bed area, in order to ensure that the international character was fully reflected in the operation of the international

trusteeship area, his delegation suggested that the powers and functions enumerated in the United States draft article 27 should be conferred on the authority. His delegation recognized that under the existing law a coastal State had an interest in the continental margin beyond the 200-metres isobath. For that reason it proposed that in the granting of licences for exploitation in the intermediate zone, consideration should be given to priority for the coastal State. In any event consideration might also be given to the idea of conceding to the coastal State a percentage of the revenue derived from the exploitation of that intermediate zone.

The Soviet proposal of dual criteria for determining the limits of national jurisdiction, depending on the geological features of the State concerned, was also valuable. At the present stage, however, his delegation felt that the Committee should try to work towards a single limit.

The limits to be established for national jurisdiction should not be confused with the establishment of any possible exclusive fishery zones. If any such zone were to be accorded to coastal States, the line drawn should not necessarily be the same line as for the limits of the international régime. Unless the different subjects were approached separately and on a functional basis, it might be impossible to find any solution at all. Whatever the criterion adopted to determine the limits of national jurisdiction, it would necessarily involve a certain sacrifice by coastal States. The present exercise was to effect an equitable readjustment of the law in order to take into account not only the interests of the coastal States but also those of the land-locked and shelf-locked States.

Turning to the question of the international machinery, he said that his delegation had been gratified to note that all three sets of draft articles recognized the need for representation of the land-locked and shelf-locked States on the council, and made provision therefor. It hoped that in the final form, the representation accorded to that group of States would be in accordance with the principle of proportionality.

Opposing views had been expressed on whether the international machinery should be empowered to conduct direct exploration and exploitation of the resources of the international sea-bed areas. After very careful consideration his delegation was inclined to believe that such a power should be vested in the machinery, as a way of implementing the basic concept that the international sea-bed area and its resources were the common heritage of mankind.

His delegation had listened with care to the views of those delegations which had counselled caution in the Committee's endeavours and had suggested that the international machinery should be practical and that elaborate machinery should be avoided in the initial stages. Since the establishment of extensive machinery was, in their view, a very complex matter and might take considerable time, they had suggested that it would be more reasonable to deal with the matter in stages. The first stage would be the establishment of a régime with all the essential elements, to be expanded as progress was made. At the ninth meeting, the French delegation had drawn attention to a host of problems which would face the international machinery if it involved itself in direct exploration and exploitation, including the question whether it would be useful to establish a vast bureaucracy with high administrative costs consuming a substantial part of the revenue.

In pursuance of General Assembly resolution 2467 C (XXIII), the Secretary-General had prepared a study on the international machinery for the promotion of the exploration and exploitation of the resources of the sea-bed area.5/ That report dealt with the possibility of direct conduct of operations by the international machinery, indicated its possible main functions, and the principal issues arising therefrom. A further study on the subject had been made by the Secretary-General pursuant to resolution 2574 C (XXIV).6/ In that second report the Secretary-General had stated that 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 if the international machinery were to arrange for third parties to perform those operations on its behalf by a system of service contracts or by way of joint ventures with other bodies.7/

In neither of the Secretary-General's reports had the question of the feasibility of the international machinery's involving itself in direct operations been considered in any depth. It would therefore facilitate the work of the Sub-Committee if the Secretariat could be requested to prepare a study on the specific

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5/ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No.22 (A/7622 and Corr.1), annex II.

6/ Ibid., Twenty-fifth Session, Supplement No.21 (A/8021), annex III.

7/ Ibid., para.960.

question of the feasibility and practicability of the international machinery's conducting direct operations, and on the economic implications resulting from any direct operations in which the international machinery might become involved, thus competing with land-based producers. His delegation appreciated that since the area of the sea-bed to which the international machinery would apply had yet to be determined, it might be difficult to assess with any degree of certainty the factors involved. However, its suggestion was merely for a conceptual study, based upon certain given assumptions.

With regard to the question of the distribution of the benefits deriving from the international sea-bed area, his delegation felt that the guiding principle should be paragraph 9 of the Declaration of Principles. That paragraph provided, inter alia, that the régime should ensure the equitable sharing by States in the benefits derived from sea-bed exploitation, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal. In that connexion the Committee had been provided with a valuable study by the Secretary-General (A/AC.138/38 and Corr.1). The various alternatives suggested in that study deserved careful consideration. His delegation was in general in favour of a criterion of distribution based on two inter-acting factors - population and per capita income.

With regard to the possible impact on world markets of sea-bed mineral production in the area beyond national jurisdiction, with special reference to the problems of developing countries, the committee had before it an excellent report from the Secretary-General which made a preliminary assessment of the problem (A/AC.138/36). It was natural and understandable that the topic should have engaged the minds of many delegations, especially those from the developing countries whose economies depended to a large extent on mineral products. His delegation had been greatly encouraged by the Secretariat's statement that it was unlikely that in the near future world markets would be affected in any significant way by the production from the international sea-bed area. If that were so, the international machinery would be able to commence operations almost immediately. As the Seceretary-General's report had stated, much would depend on the final delimitation of the international sea-bed area.

In any case, the question of economic implications should be kept under constant review. His delegation therefore felt that the proposal for establishing a stabilization board contained in article 35 of the Tanzanian draft might serve that purpose and deserved careful consideration. If exploitation of the international sea-bed area should take place at a rate exceeding that at which sea-bed minerals could be absorbed into the world market, it might be necessary to have internationally agreed measures to safeguard the interests of developing countries which depended heavily on mineral production.

The proposal, made by the representative of Canada at the tenth meeting, for interim machinery to apply to the area of the sea-bed beyond the limits of national jurisdiction based on claims concerning national jurisdictions was laudable and attractive. His delegation nevertheless felt that it was unrealistic and impractical, since it was based on the assumption that it was easier to reach a conclusion on the establishment of interim than of permanent machinery, and did not take account of the general reluctance on the part of States to enter into temporary arrangements for fear that such temporary arrangements might become permanent.

Mr. McKELVEY (United States of America) said that the subject of the economic implications of sea-bed mineral production beyond the limits of national jurisdiction had two aspects, one relating to the direct and indirect economic benefits that such production would yield, the other to its possible adverse effects on land producers, particularly those in developing countries that depended largely upon the export of minerals for their foreign exchange and, in some cases, their national income. Both aspects must be kept clearly in view. The Committee's fundamental objective was to provide for the useful development of sea-bed resources for the benefit of mankind, but undesirable consequences, including those that might arise from economic setbacks to land producers, must be avoided.

At the fourth meeting he had described the substantial progress made in the development of sea-bed exploration and exploitation technology, and had indicated the high probability that within the next decade it would lead to the production of petroleum from the continental margins beyond the 200-metre depth and to the production of metals from manganese oxide nodules on the deep ocean floor. He had stressed the uncertainty as to the volume of production that might be achieved in any given period, while emphasizing that there was a clear promise of meaningful economic benefits in the years ahead.

The Secretary-General's excellent report (A/AC.138/36) on the possible impact of sea-bed mineral production on world markets supported those general conclusions, and provided additional data and projections useful in judging the effects of anticipated production on the prices and markets of the minerals involved. Although his own Government's analysis of the problem had tended to favour a slightly different series of projections of future production, he concurred generally in the substantive aspects of the report. Some of his Government's interpretations of the data and projections, however, had led it to rather different conclusions, which he would indicate later. To give perspective to his Government's conclusions he wished to describe briefly the salient features of the United States assessment of future sea-bed mineral production and its effects on prices and markets, beginning with petroleum.

World production of liquid fuels in 1969 had been about 15,000 million barrels. It would probably be in the range of 25,000 to 30,000 million barrels in 1980 and 60,000 to 75,000 million barrels in the year 2000. Off-shore production now provided about 18 per cent of the total; it might supply 30 to 40 per cent in 1980 and possibly 40 to 50 per cent in the year 2000.

It was difficult to predict how much of that production might come from beyond depths of more than 200 metres. In an earlier report, he had speculated that it might be between 500 and 1,000 million barrels by 1980, but the Secretary-General had indicated in his report that 500 million barrels a year by 1980 could be considered a high figure. Production higher than 1,000 million barrels or so a year from beyond 200 metres in that period was unlikely because ample supplies of liquid fuels should be available from other sources at lower cost. Moreover, it took considerable time to achieve major production in a new province: it had for example taken about 25 years to achieve an annual production of 1,000 million barrels from the Gulf of Mexico. Nevertheless, the prospect for the discovery of giant fields, containing some 500 to 1,000 million barrels or more, from which petroleum could be produced at costs low enough to offset the higher cost of installations in deep water, were certain to attract exploration and would probably lead to gradually increased production over the years.

Whatever the amount that came from beyond the 200-metre depth during the next decade or two, it was certain to represent only a minor proportion of projected world production. In fact, it would not even satisfy the increment of new demand. With

an average annual growth rate of about 7 per cent anticipated for the next decade, the increment of new demand in 1980 would be about 2,300 million barrels, more than four times the 500 million barrels considered by the Secretary-General to be the maximum probable production from the sea-bed beyond the 200 metre depth by 1980. Although the rate of growth for petroleum production was expected to diminish after 1980, the Secretary-General's projection indicated that new demand in 1990 would be more than 3,000 million barrels.

Although petroleum accounted for 10 per cent or more of the exports of 13 developing countries and for more than 10 per cent of the gross national product of 9 of them, none of those countries would be adversely affected by the production anticipated from the sea-bed beyond the depth of 200 metres. In fact, increasing demand seemed certain to expand their markets steadily until the end of the century. Moreover, there was no danger that production beyond 200 metres would lead to a decrease in the price of petroleum on the world market. Because of the higher costs of deep-water petroleum exploration and production, the problem for deep-sea producers would be to meet competition from lower-cost operations in other environments; and that, combined with the expanding total demand, eliminated any possibility that deep sea-bed production would depress petroleum prices.

Thus far he had been speaking of liquid hydrocarbons. Natural gas was also produced off-shore, but off-shore sources had so far supplied only about 6 per cent of total production. In many parts of the world, gas had been under-utilized because of the difficulty of transporting it to markets. It had not entered much into world trade, and even in areas near markets, such as the Gulf of Mexico, production growth had lagged longer behind discovery than that of crude oil because of the time required to solve transport problems. With advances in pipeline technology, however, and in the transport of gas in liquified form, the role of gas in international trade was increasing greatly. Total world gas production was expected to increase from about 34,000,000 million cubic feet in 1969 to about 160,000,000 million cubic feet in the year 2000 - nearly five-fold, compared with the four-fold increase projected for petroleum over the same period. The percentage of the total produced off-shore was likely to increase considerably. No one had speculated on how much might come from beyond the 200-metre depth but because of the time-lag in solving transport problems, deep-water production of natural gas would probably grow more slowly than that of crude oil. Whatever the amount, it was certain to be only a fraction of new demand and would pose no threat to the markets of land producers.

Turning to the recovery of metals from the manganese oxide nodules on the deep ocean floor, he said that the principal metals contained in the nodules were manganese, nickel, copper, and cobalt. Joint-product recovery of nickel and copper from nodules was considered feasible by 1975 or 1976. Cobalt could also be recovered provided there was a market for it; cobalt was used now only in rather small amounts, but since some of its potential uses were similar to those of nickel, it was possible that at lower prices cobalt might be sold as a nickel substitute. Manganese recovery from the nodules was less probable because it would have to be produced as a high-purity metal, the market for which was small. One company believed that it could recover and market manganese metal to a limited extent, but it was generally recognized that the principal production of nodules would be directed towards recovery of nickel, copper, and possibly cobalt.

A viable operation required joint recovery of both nickel and copper. As pointed out by the Secretary-General, it would not be possible to mine nodules for their copper content alone, for the gross revenue from the production of copper alone would be only about a third or less of the estimated cost of recovery.

It was expected that world demand for those metals would continue to increase. Estimates of the rate of increase in demand varied considerably, but in the Secretary-General's analysis, manganese and cobalt would increase by 5 per cent per year and nickel and copper by 6 per cent a year up to 1980. At those rates, the annual increase in demand by 1980 would be about 690,000 tons for manganese, 660,000 for copper, 66,000 for nickel, and 1,800 for cobalt.

The metals did not occur in the nodules in the same ratio in which they were consumed in the world market. As pointed out by the Secretary-General, for each ton of cobalt produced from nodules of the composition being considered for mining, it would be possible to obtain 97 tons of manganese, 4.9 tons of copper, and 5 tons of nickel. World demand for those metals was in a completely different proportion. For each ton of cobalt consumed in 1968, the demand was for 381 tons of manganese, 279 tons of copper and 27 tons of nickel. If all the 1968 demand for nickel had been met by nodule production, there could have been a simultaneous production of 5.4 times the 1968 requirement for cobalt, 1.4 times the requirement for manganese, and only about 10 per cent of the world requirements for copper.

Those now considering the production of nodules believed that an efficient production unit, including both off-shore and land components, would be an operation mining and processing about 1,000,000 tons of dry nodules per year. The capital cost of such a production unit was estimated to be about $180,000,000. At the rate of concentration and recovery of metals assumed, one such production unit would yield 279,000 tons of manganese per year (if it could be recovered profitably), 14,000 tons of copper, 14,400 tons of nickel, and 2,880 tons of cobalt.

Compared with the increment of new demand expected in 1980 for those metals, a single million-ton operation would yield about 41 per cent of the increase in demand for manganese, 2 per cent of that for copper, 22 per cent for nickel, and 160 per cent of that for cobalt. If, as seemed probable, cobalt was sold as a nickel equivalent, the combined nickel and cobalt production would be equivalent to about 25 per cent of the increment of new demand. It seemed most unlikely that manganese metal could be produced cheaply enough from sea-bed nodules to compete with natural oxide and carbonate ores in most of their uses. If, as seemed probable, manganese were not produced in large quantities from the nodules, and cobalt became a nickel substitute, interest would focus on new demand for nickel and cobalt combined.

The production from four production units of the type described would be needed to meet the new requirements for nickel and cobalt in 1980, and four more such units could be added each year without reducing the market for those metals from land production. In view of the high capital cost of each unit ($180,000,000), it would be difficult to add sea-bed production units at such rates, much less at rates designed to take over a larger share of the market for copper.

The availability of capital might well prove to be a limiting factor in the rate of growth of nodule production. Even if it did not prove to be so it was highly unlikely that producers would attempt to expand production at rates that would exceed the increase in demand. Many of the potential nodule producers had substantial investments in land operations, and it was against their own interest to flood the market. Other potential producers not having an interest in existing land production also would not wish to flood the market, since they might then have to contend with prices too low to permit a profitable operation. However, if in spite of such constraints, metal production from nodules was to expand rapidly, the pressure on prices would be focused mainly on cobalt, to a lesser extent on nickel,

and to a much smaller extent on manganese, if its production proved economically feasible at all. It did not seem possible under any circumstances that nodule production could have any impact on the price of copper.

If sea-bed production influenced prices, which developing countries would be affected? Cobalt accounted for 5.2 per cent of the exports and 0.2 per cent of the gross domestic product of the Democratic Republic of the Congo, which was the world's largest producer of cobalt, and it supplied a fraction of one per cent of the exports of Zambia and Morocco. New Caledonia was the only developing area in which nickel production made up a substantial part of its gross domestic product or of exports, but nickel also made up 5.9 per cent of Indonesia's exports - although only 0.6 per cent of its gross domestic product - and 2.1 per cent of Cuba's exports. Manganese formed 21.2 per cent of exports and 12.7 per cent of the gross domestic product of Gabon, 3.3 per cent of exports and 0.45 per cent of the gross domestic product of Ghana, and contributed 1 per cent or more of the exports of only two other countries, the Democratic Republic of the Congo and Brazil. Copper accounted for more than 3 per cent of exports in nine countries, but the market and price for copper could hardly be affected by sea-bed production from nodules.

The most probable outcome of nodule production was that the price of cobalt would drop to that of nickel. Inasmuch as cobalt in the Democratic Republic of the Congo was recovered as a by-product of copper, its production there would continue, but lower prices would result in some loss of export value. Any adverse effect on the market for or price of nickel would be small, and in developing areas would be felt mainly in New Caledonia. It was hardly conceivable that electrolytic manganese could displace the high-grade oxide ores from Gabon and Ghana, but if there was downward pressure on prices it would reduce somewhat the value of their exports.

As the Secretary-General had concluded, it thus seemed improbable that production of the metals from the sea-bed would adversely affect any country to a major extent, and it was unlikely that ill effects would be felt by more than a few countries. Nobody, however, would want to see even a single country suffer from the development of sea-bed resources. Voluntary control by the producers themselves could be relied on to a considerable extent to prevent such effects, simply because they would wish to maintain favourable prices and might themselves fail if prices fell substantially. Yet in what other ways could adverse effects be avoided?

Several possible solutions had been suggested by the Secretary-General and others. First, there was the possibility of artificial control of production from the sea-bed to keep it at levels that would not interfere with land production or prices. If such controls were of a nature that could reduce production from a unit operation once it had begun, they would add substantially to the risk involved in sea-bed exploitation and would discourage exploration and production. Thus, the potential benefits to the international community would be much reduced.

A second alternative - global controls on production - would not discriminate against sea-bed production, since such controls would presumably apply to producers irrespective of the location of their mines. Such an agreement had been reached for tin, and in discussing the subject his delegation had previously urged that if production controls were considered, they should be considered only in such a global context. It had to be recognized, however, that such agreements tended to favour established producers as opposed to new entrants in the market. For that and related reasons global agreements were difficult to achieve. The threat of disruption to land producers came much more from potential new developments in other countries than from the sea-bed. Thus, whereas sea-bed metal production had not yet proved to be economic, new high-grade deposits were still being discovered on land in many parts of the world. Moreover, processes were continually being developed which would permit the economic production of previously marginal resources on land. For example, the nickel-bearing laterites of Australia, Indonesia, the Philippines and other countries in South-East Asia were being currently developed and would yield not only nickel but cobalt also. Increased secondary recovery of metals from scrap - an objective likely to receive increased attention for environmental and conservation reasons - would have the same net effect on producers as would new mines.

A third means of controlling production would be to limit the issue of exploitation licences to a rate judged appropriate to maintain a balance between land and sea production. If the terms of the licence itself were such that no controls could be imposed on production once it had begun, such a procedure would not have as depressing an effect on exploration as would direct production controls. Nevertheless, limited issuance of licences would tend to discourage exploration, since the prospector would have no assurance that successful efforts in exploration would lead to the production necessary to recover his costs. Moreover, because such a form of allocation would be a clumsy kind of control, it probably would not be very effective in achieving its purpose.

Rather than limit the size of the area to be licensed, a fourth approach that had been suggested for production control was to issue a licence for a specified amount of annual production of metal and to limit the number of such licences to that necessary for market and price stability. Such a system would avoid the uncertainty of ad hoc production controls for the producer and would be somewhat more effective in achieving whatever production limits might be established from time to time than would a limit on the total areas to be licensed. The system would tend to discourage exploration, however, since the prospector would have no assurance that success would be rewarded with a licence. Moreover, with each licence permitted a specified production over its life, unexpected imbalances that might arise as a result of new land production could not be dealt with in time to avoid price fluctuations.

A fifth idea, introduced by the Secretary-General, was that of imposing some sort of tax on the consuming countries that might benefit from a drop in price at the expense of producing countries. Such an arrangement would be even more impractical to achieve than global control on production. Everyone was a consumer, and whereas some producers might have suffered in the past from a drop in the price of mineral commodities stemming from new discoveries or technological advances, all mankind had benefited from the resulting greater availability of raw materials. It would be hard to say what the price of copper would be if it had been maintained at the level existing when it could be produced only from deposits of the native metal, but it was safe to say that would be approximately $25 per pound at least. Producers currently able to recover copper profitably at 50 cents per pound certainly would have a large profit at such a rate on a unit of production, but they would not have much of a market nor would mankind be able to afford the benefits of the use of copper in the many products in which it was an integral part. The benefits of lower prices resulting from past advances in technology had already been important to the peoples of the developing countries, and they would become even more important in the future as developing countries further industrialized and increased their consumption of energy and raw materials.

A sixth procedure, also suggested by the Secretary-General, would be that of compensatory payments by the international machinery to the countries affected by declines in export revenues. Since only a few countries at most could be adversely affected, some form of direct compensation had at first sight the appeal

of simplicity, and the cost might not be large. For example, if the price of cobalt was to drop to that of nickel - and that seemed the most probable adverse effect of sea-bed metal production - the decrease in the annual value of cobalt exports from the Democratic Republic of the Congo would be about $15 million. As pointed out in the UNCTAD report on manganese, growth in demand was likely to be enough to forestall any drop in price, even if manganese recovery from the nodules proved economically feasible; but if the price should drop, the decrease would be of the order of a few dollars per ton, and for a country such as Gabon, the effect would be a decrease in foreign exchange earnings of about $5 million a year. The amounts required to compensate for such losses over a period sufficient for adjustment would thus not be large.

Such a system of direct compensation, however, would have one extremely important disadvantage - namely, that of the difficulty of identifying the origins of a drop in price or a decrease in market opportunities, and assessing the portion assignable to specific sources. Many factors affected the price of and demand for raw materials besides the development of a new source of supply. It would be difficult, therefore, to identify the cause of any specific fluctuation and to assess the extent to which it was attributable to sea-bed production.

Nevertheless, his Government would be sympathetic to the plight of any country that would be adversely affected by sea-bed production, and believed that there was merit in some kind of direct approach. What a country so affected needed, of course, was not just the dollar equivalent of its loss, or protection that guaranteed a market for products that were not saleable at competitive prices. Those were at best only temporary solutions. What it really needed was to find other ways to maintain and expand its economy and adapt itself to a new situation. Accordingly, it might be desirable to explore the possibility of using some portion of the revenues collected by the international sea-bed resource authority for preferential technical assistance to developing countries adversely affected by sea-bed production.

With respect to revenues, the Secretary-General had suggested in his report two means of collecting revenue from the production of nodules, one a fixed amount per unit of nodules mined, and the other a fixed percentage of the market price of the metals produced. His delegation had already pointed out the problems of finding an equitable means for the collection of economi om nodule production, and had mentioned those alternatives among other possible solutions. Both had

their advantages and disadvantages, and whereas neither was perfect, either would probably work, provided that the level of payment established was such as would permit the producer to obtain a reasonable return on his risk investment and operations.

With reference to the Secretary-General's suggestion that rules should be established under which developing countries could purchase part of their crude oil requirements from the producers in the area under more attractive provisions, it should be pointed out that under the United States draft convention, the great bulk of petroleum to be produced beyond the limit of national jurisdiction would come from the trusteeship zone, in which the trustee party would have the authority necessary to negotiate favourable purchase terms in conjunction with the issue of licences.

In short, sea-bed production of oil and gas would produce no adverse effects on land producers. His delegation also agreed with the Secretary-General that any adverse effects from the production of metals from manganese nodules would not be large, and at worst would be felt to a minor extent by only a few countries. Rather than impose a system providing for the regulation of production, however, it would be far better to design a régime that would encourage sea-bed exploration and exploitation, and to consider appropriate measures to alleviate the effects on countries adversely affected by sea-bed production.

Mr. RIPHAGEN (Netherlands) recalled that at the fifty-eighth meeting of the Committee he had explained at some length his Government's general views with respect to the legal regulation of man's uses of the marine environment. The urgent need for a new approach to the international law of the sea had been stressed, and it was his Government's firm conviction that the present trend towards the unilateral extension of exclusive sovereign rights of individual States over larger and larger sea areas and resources must be reversed and replaced by an international system of collective management, adjustment and allocation, designed to alleviate at least some of the inequalities which history and geography had created among States.

The debate thus far had, if anything, reaffirmed that conviction. Tendencies to aggravate, rather than alleviate, the inequalities between States were apparent in various forms and degrees. In the name of so-called realism, and on the basis of

the fact that a majority of individual States were geographically in a position to benefit from an extension of their exclusive sovereign rights over vast sea areas, the principle that the seas were open to all States and constituted the common heritage of mankind was gradually being eroded.

So powerful was the notion of national territory, so great were the illusions created by lines on maps, that few coastal States seemed able to resist the temptation to claim exclusive jurisdiction over and exclusive use of sea areas said to be adjacent to their coasts. The alternative concept of the seas being open to all nations for their common use and benefit presupposed - if it was to be fully realized under current world conditions - a high degree of international co-operation. Where such co-operation was lacking, or insufficient to cope with the real problems of the marine environment, a real clash between coastal State activities and what might be called "flag-State" or "potential flag-State" activities could not be avoided and unilateral protective measures by the coastal State appeared to become inevitable.

However, that should not close the Sub-Committee's eyes to the fundamental difference between protection of coastal State interests against certain activities conducted under a foreign flag, on the one hand, and assertion of exclusive national jurisdiction over and the use of sea areas by the coastal State on the other. An effective international machinery could be devised to take over the task of protecting coastal interests, which were often common to a number of States, and at the same time to provide an opportunity for all States to make use of, or at least benefit from, the sea and its resources.

The establishment of such an international machinery was the only way in which the concept of the common heritage of all States could be realized in the present world. It followed that such machinery could not be meaningfully combined with a system under which only a number of geographically privileged coastal States had exclusive rights over large portions of that common heritage. Nevertheless, that was what was being proposed time and time again during the Sub-Committee's discussions. While all delegations appeared to accept the common heritage concept, many of them advanced, as a matter of course, claims for an extension of the national jurisdiction of coastal States to sea areas far beyond their coasts. So self-evident seemed to be the geographical privilege of some coastal States that

in a recently reiterated Canadian proposal (A/AC.138/SR.58 and A/AC.138/SC.I/SR.10) only coastal States were invited to make known the extent of their exclusive claims to the sea-bed and ocean floor; land-locked and shelf-locked States were conveniently forgotten. Were they supposed to wait quietly for their part of what was left over of the common heritage?

That criticism was levelled, not at the Canadian proposals as a whole, but at one particular aspect of them, because it was illustrative of an approach which was in principle incompatible with the common heritage concept. The serious efforts of the Canadian delegation to find a rapid interim solution were, of course, appreciated. Nevertheless, land-locked and shelf-locked States could hardly be expected to accept their exclusion a priori from large parts of the seas. It should be remembered that a sizeable number of States could not - or not to any considerable extent - benefit from a system of enlarged coastal sovereign rights over sea areas. Their legitimate interests in the use of the sea and its resources, either directly or through an equitable share in the benefits of direct use by other States, could be protected only by effective international machinery having the greatest possible area of the sea under its authority. Such machinery could and should provide for adequate protection of the coastal States as such. It could even recognize certain preferences for coastal State activities in sea areas not too distant from their shores. Those were matters for regulation in the instrument establishing the international machinery. Owing to the nature of things, such international regulation could not be of a kind which would give a quasi-automatic detailed solution for all the different situations. Much would have to be left to the decisions of the international institutions to be established, and several functions would have to be delegated to the national authorities of individual States or to common institutions of groups of States.

As to the decisions to be taken by the world-wide international institution, his delegation shared the opinion, already expressed by some other delegations, that the composition of the international bodies to be established should adequately reflect the division of States according to their geographical location in relation to the sea, which should be the primary criterion with regard to the distribution of seats. Indeed, there was a clear connexion between the question of representation and the question of limits of national jurisdiction. If the geographically privileged

States were given wider areas of national jurisdiction or were otherwise accorded a priori and automatic preferences in such areas, compensation should be given to the geographically underprivileged States in the matter of their representation in international organs collectively managing the rest of the common heritage. Within each of those two groups of States the developing States, which as such were most in need of the support of the international authority for their direct activities relating to the sea-bed and which should receive the bulk of the net profits from the exploitation of the international area by other States, should obviously be accorded representation commensurate to their special interests in the international régime. Both distinctions - that between geographically privileged and geographically underprivileged States, and that between developing States and developed States - would seem to be more relevant to the object and purposes of an international management of marine resources than the traditional distinction between regional groups.

With regard to the functions and powers of the international authority to be established, and with particular reference to the exploration, exploitation and marketing of the mineral resources of the sea-bed and subsoil, his delegation wished to make some general observations regarding the relative roles to be attributed to the entities concerned, of which there would obviously be three: first, the body which in actual fact carried out the exploration, exploitation and marketing, whether public or private; second, the State authority - or authority common to a particular organized group of States - under the personal jurisdiction of which the activities were carried out; and third, the international authority. With regard to the respective roles of and interrelationship between those three entities there existed an almost unlimited number of possible solutions, including solutions which virtually eliminated one of the three entities from the scene of decision-making in the field of exploration, exploitation and marketing.

In the outline which it had presented in 1968 his Government had opted in principle for a system retaining the three entities on the scene. Indeed, it had suggested that the individual State - or organized group of States - should be granted, by the international authority, functional powers and corresponding responsibilities relating to the exploration, exploitation and marketing of the mineral resources in specified areas by bodies designated beforehand by the individual State concerned.

His Government's attitude on that matter was, however, flexible. It did not wish to exclude a priori, in appropriate cases and at the appropriate time the establishment of direct relations between the international authority and the entity actually effecting the exploration, exploitation and marketing, for example in the form of a so-called joint venture between those two bodies. Neither did his Government wish to exclude the possibility that in other appropriate cases, and for an appropriate period, a specified area might be reserved for a particular State, to be exploited only when, how and by whom that State might eventually determine. The variety of cases to be dealt with, the interests to be taken into account, and the wide range of intermediary solutions dictated such a flexible and undogmatic attitude.

Furthermore, there was a clear connexion between that problem and the question of the limits of national jurisdiction on the one hand, and the question of representation in and structure of the international authority on the other. It was clear that to the extent that the international authority was involved in day-to-day decisions relating to exploration, exploitation and marketing, it could not act through large organs, lengthy debates and protracted procedures of compromise. It had to delegate its powers to what was in fact a supra-national body. The advisability of delegating powers to national authorities would clearly depend upon the extent to which the protection of the special interests of the State involved might justify a particularly preponderant position of its authorities in the decision-making process. Such special interests of a particular State might result from the proximity of the contemplated activities to its coasts, or from the special effects of the contemplated activities on its economy. In those circumstances it would seem doubly premature to suggest or lay down hard-and-fast rules in that field.

The meeting rose at 1.10 p.m.

SUMMARY RECORD OF THE FOURTEENTH MEETING

held on Wednesday, 4 August 1971, at 3.25 p.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. FARHANG (Afghanistan) said that his Government considered that neither maritime nor coastal States could effect changes in the law of the sea or establish a new legal régime without the participation of the land-locked countries, which comprised one quarter of the membership of the United Nations and almost half that of the Group of 77. Consequently, any theory which purported to justify changes in the oceanic balance of rights and interests, particularly unilateral claims, necessarily violated the right of participation of the land-locked countries. The régime which the Committee was to set up must therefore ensure their right of participation and their right to exploit the vast resources of the ocean. The existing legal régime did not satisfy those criteria nor indeed would any legal régime which established legal equality but did not provide practical means of implementing it. The new régime must be truly equitable and take into account the needs, interests and rights of developing countries.

The Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and th Subsoil Thereof, beyond the Limits of National Jurisdiction, contained in General Assembly resolution 2749 (XXV), accepted and guaranteed the right of participation of all States, land-locked or coastal. The right of participation was a very broad concept embracing different meanings, such as participation in the formulation of a precise definition of the area, participation in the establishment of the régime, including the international machinery which would govern activities in the area, and participation in benefits on an equitable basis.

With regard to the formulation of a precise definition of the area, i.e. the fixing of the borderline between the area and the national jurisdiction, his delegation believed that the demarcation line should be drawn as close to the coast as possible and fixed in accordance with the formula proposed in 1956 by the International Law Commission[1/]. A very high proportion of marine mineral resources

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1/ See Year book of the International Law Commission, 1956, vol.II, p.265 et seq.

were found at a relatively short distance from the coast. Dredging and exploration of a variety of minerals, ranging from aragonite, diamonds and gold to tin and titanium, were carried out mostly up to a depth of 200 metres. A report by the Secretary-General entitled "The Sea - Mineral resources of the Sea" (E/4973) predicted that many new off-shore fields would be discovered during the next decade and exploited up to a depth of about 300 metres (para.15). Present off-shore petroleum production was mostly limited to a depth of less than 100 metres and if the international area were to be defined as covering the sea-bed beyond a depth of 200 metres, only a relatively small proportion of off-shore oil production would come from that area.

The sedimentary basins of the continental shelf were thought to be very rich in petroleum resources. They were believed to extend to the outer shelf and the upper continental slope. Off-shore petroleum production had increased six-fold since 1960, and in 1969 was worth $6,000 million a year. Proven off-shore reserves had tripled and now constituted 21 per cent of the world's total proven reserves. The total value of world-wide production of marine mineral resources had been $7,100 million in 1961. The value of oil and gas production had been estimated at $6,100 million. Coal production had been $355 million, that of salt $173 million, and that of magnesium $75 million.

As the representative of Sweden had said, the 200-mile limit would cover a depth of up to 2,500 metres. If national jurisdiction were extended to such an area, a large proportion of the marine resources would be controlled by coastal States. That would be tantamount to a complete repudiation of the concept of the common heritage of mankind and would run contrary to the principles contained in the Declaration.

His delegation therefore opposed not only the present definition of the continental shelf but also the idea of a 200-mile limit suggested by some delegations. The Committee should endeavour to formulate a definition which would make the international areas as large as possible and restrict national jurisdiction to the narrowest possible limits.

It seemed unfair that the land-locked countries, which, as a result of their geographical situation, were deprived of the privilege of having territorial waters, a continental shelf and special fishing zones under their national jurisdiction,

should suffer the additional misfortune of being deprived of the benefits of the suggested trusteeship zones. Although half or two-thirds of those benefits were to be paid to the authority, it was obvious that that percentage would be shared by all members of the international community, i.e. that a share would be given even to the coastal States. His delegation believed that the proposal submitted by the United States delegation[2/] called for close study to ascertain whether it was compatible with the concept of a common heritage of mankind.

His delegation was in favour of a free, unrestricted right of access to the international area in order that the land-locked countries should be able to participate, individually or collectively, in the exploration and exploitation of the sea-bed, ocean floor and the subsoil thereof. The same free, unrestricted right should be guaranteed to them for access from the sea to their own territory. Thought should also be given to the possibility of establishing free or operational zones or ports in the nearest and most appropriate area of coastal country, in which land-locked countries would have the right to establish their operational institutions, stores or processing plants and ensure the free and unrestricted transfer of their products to their own territory.

With regard to the right of participation in the international machinery, his delegation was in favour of the idea of "one state, one vote" without any explicit or implicit special or preferential right for a country or a group of countries.

The seats in the council or governing body should be allocated equitably to coastal and land-locked countries, in proportions which respected their membership of the assembly. Benefits derived from the exploitation and rational management of the area and its resources should be shared in accordance with the principles set forth in the Declaration, and with the provisions of General Assembly resolution 2750 B and C (XXV) on the reservation for peaceful purposes of the sea-bed and the ocean floor.

His delegation noted with satisfaction that, in the preparation of his report entitled "Study of the question of free access to the sea of land-locked countries and of the special problems of land-locked countries relating to the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction", (A/AC.138/37 and Corr.1 and 2), the Secretary-General had taken into consideration the suggestion made by the Afghan delegation

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2/ See Official Records of the General Assembly, Twenty-fifth Session Supplement No. 21 (A/8021), annex V.

that in any study on the question of the sharing of benefits, the land-locked developing countries should be regarded as the least developed and treated as such.

On the basis of the criteria established by two studies, made by the Committee for Development Planning[3/] and UNCTAD (TD/B/288), almost all land-locked developing countries were identified as being among the least developed countries.

The Secretary-General had also included that concept in his report 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 beyond the limits of national jurisdiction (A/AC.138/38 and Corr.1). His delegation was in favour of the idea that during the crucial period of exploitation, until revenues had attained a high enough figure, net revenue might be concentrated in regional and national programmes designed to promote development in the least developed countries. The adoption of such a suggestion would be in accordance with the provisions of the International Development Strategy for the Second United Nation's Development Decade (General Assembly resolution 2626 (XXV)). Should programmes of assistance to the least advanced countries financed out of benefits from the exploitation of the sea-bed be administered by existing financial international organizations, as suggested in the Secretary-General's report, (para.73), his delegation hoped that the supplementary aid thus granted would not be regarded as a substitute for assistance already given by those institutions under other programmes, but would be additional to it. Lastly, it requested that account be taken of the special training requirements of the least advanced countries and that training programmes for their nationals should be established within the framework of that common international action.

Mr. VOICU (Romania) recalled that, at the twenty-first meeting of the Committee, his delegation had explained its views on the ideas by which the Committee should be guided in carrying out its terms of reference. At the present session, therefore, he would confine himself to discussing the task assigned more especially to Sub-Committee I.

3/ Official Records of the Economic and Social Council, Fifty-first Session, Supplement No. 7 (E/4990), paras. 54-71.

That task was extremely complex, since the preparation of draft articles for a treaty concerning the international régime applicable to the area and resources of the sea-bed and the ocean-floor and the subsoil thereof, beyond the limits of national jurisdiction, was a new field which had never before been thoroughly discussed in international organizations. The need, in working out such a régime, to ensure to all States a fair share of the benefits accruing from the exploitation of the area in question, having regard to the special needs and interests of the developing countries, gave a real idea of the dimensions of the job to be done.

The very novelty of the subject increased the complexity of the task of bringing about international regulation of the exploration and exploitation of the sea-bed and ocean-floor, and the subsoil thereof, beyond the limits of national jurisdiction, especially as there was nothing to go by. There did exist, however, a legal substratum of relevant international action. The fundamental principles of international law enshrined in the United Nations Charter and reaffirmed and developed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the United Nations General Assembly on the very day of the Organization's twenty-fifth anniversary (General Assembly resolution 2625 (XXV), annex), were the instruments which now governed all relations between States and co-operation between members of the international community. Co-operation and relations of confidence could only be established if the following major principles were observed: national sovereignty and independence, equality of rights, non-interference in internal affairs, non-recourse to force or the threat of force, and mutual advantage.

The Declaration of Principles governing the Sea-Bed and the Ocean-Floor solemnly declared that States would operate in the area in accordance with the applicable principles and rules of international law, including the United Nations Charter and the above-mentioned Declaration on Principles of International Law.

The Declaration of Principles expressed the will to transform the sea-bed and ocean-floor into an area for peaceful international co-operation whose resources would be explored and exploited for the benefit of mankind as a whole. The area would be used for peaceful purposes by all States, which consequently meant the prohibition of the use of the sea-bed and ocean-floor, and the subsoil thereof,

beyond the limits of national jurisdiction, for military purposes. In that respect, the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass-Destruction on the Sea-Bed and Ocean-Floor and in the Subsoil Thereof (General Assembly resolution 2660 (XXV),annex) was a first step towards the exclusion of that area from the arms race. His own country, which had played an active part in drawing up the Treaty, would continue to campaign for the complete and definitive exclusion of the area from the sphere of military activities.

His delegation attached special importance to paragraph 8 of the Declaration, which provided that one or more international agreements should be concluded as soon as possible in order to implement effectively the principle of reserving the area exclusively for peaceful purposes, and to constitute a step towards the exclusion of the sea-bed and ocean-floor, and the subsoil thereof, from the arms race.

The establishment of an international régime for the sea-bed and ocean-floor required that due regard should be paid to the rights and legitimate interests of the various States. All States must participate in the planning of the régime, which must be approved by all. Consideration should be given to the needs and interests of coastal States in the sea area adjacent to their coasts, as well as to the interests of the international community. The régime should take into account the interests of all countries, large and small, developed and developing. Moreover, history had shown that, to be viable, any regulatory system must be worked out with the participation of all the States concerned and have their general consent. The international régime must respect the sovereign rights of coastal States over their continental shelf and the natural resources contained in the area situated within the limits of their national jurisdiction, while also respecting accepted freedoms of the high seas.

Again, the area in question and its resources would be exploited in such a way as to promote the development of national economies and a balanced expansion of international trade, and reduce to a minimum any undesired economic consequences of fluctuations in the prices of the raw materials obtained by such exploitation.

In proclaiming that the area must not be subject to appropriation, the Declaration of Principles gave a clear and most timely answer to the question of who would utilize, and how, the tremendous, increasingly important resources of that area which the revolutionary advances of science and technology would win for mankind.

It was the realization that political and economic realities and the progress of science and technology during the last few years had increased the need for an early and progressive development of the law of the sea that had induced the General Assembly to convene, in 1973, another conference on the law of the sea (General Assembly resolution 2750C(XXV)). The international community had embarked on the irreversible process of creating an international régime for the area of the sea beyond the limits of national jurisdiction.

The General Assembly had given precise indications regarding the form of the instrument which would define that régime. The Declarations of Principles, mentioned earlier, envisaged the drafting of an international treaty of a universal character. Therefore, all States should be invited to the next conference on the law of the sea so that they could all participate in planning the international régime. Similarly, the instrument or instruments adopted would have to be open to signature and accession by all States, in conformity with the principle of universality. Exploration and exploitation of the area in question was a concern of all States. Respect for the principle of universality was vital if the regulatory system to be worked out were to be lasting, equitable, consistent with contemporary international law, capable of securing the widest possible accession of the community of States, and thus of contributing to peace, friendly relations and co-operation between nations.

In conclusion, he assured all delegations that the various texts submitted to the Sub-Committee were being studied by his own delegation with the necessary care and that the drafts whose submission was pending would be examined with the same interest.

Mr. RUIZ-MORALES (Spain) said that the legal régime for an international area of the sea-bed - which was the common heritage of mankind - should be created in keeping with the principles of social justice and in a spirit of co-operation, and that the Declaration of Principles adopted by the General Assembly in its resolution 2749 (XXV), the proposals made by various delegations and the Secretary-General's reports constituted a good beginning.

At the present stage of its work, the Sub-Committee should not allow itself to be disheartened by the problems posed by the precise delimitation of the international area of the sea-bed. As the Secretary-General's report on the possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries:

a preliminary assessment (A/AC.138/36) clearly showed, the richest mineral deposits were to be found at great depths, beyond the continental shelf. The first priority should therefore be to determine the general norms of the international régime and the structure and functions of the international machinery, so as to ensure that those resources were exploited in the best way possible.

With regard to the precise delimitation of the area, a consensus appeared to have emerged in favour of a limit of 200 nautical miles for the continental shelf. The Spanish delegation had carefully examined those proposals and was prepared to support them. Where necessary, additional criteria might be applied to safeguard the legitimate rights of certain States.

As to the international régime and future international machinery, his delegation attached the utmost importance to the ways in which the sea-bed resources would be explored and exploited. In that connexion, there were two possibilities: either to establish a régime based on licenses or, more precisely, concessions granted to States or public or private bodies, or to set up a system of direct or joint management by the international authority or an enterprise responsible to it. His delegation was of the view that a régime based on licenses or concessions would not be equitable. As the aforementioned report of the Secretary-General pointed out, the exploration and exploitation of manganese nodules were very expensive, which meant that only well-financed enterprises of the developed countries would have the means of engaging in such activities. Consequently, the industrialized countries would be better treated at the expense of the developing countries. Furthermore, the high initial cost of exploitation would necessitate the establishment of large international consortia inevitably made up of the developed countries, and would thereby entail a further disadvantage for the developing countries in that the industrialized countries alone would enjoy the "non-financial benefits" because they would continue to monopolize the technology and skilled personnel required to exploit the resources. For all those reasons, his delegation preferred a formula whereby exploitation would be the responsibility of the international body, either acting on its own or in association with other public or private bodies operating under its control. His delegation was, however, aware of the difficulties which the international body would have to face, particularly at first, in financing its activities. His delegation therefore favoured the

adoption of a flexible formula whereby management would be entrusted either directly to the international organ or an enterprise answerable to it, or to joint enterprises or other bodies which would in a sense, be the agents of the international body. The question of which form of administration to choose would be decided by considerations of economic efficiency, and the choice would lie with the international body.

His delegation considered it extremely important that sea-bed resources should be administered rationally and exploited methodically and safely. Like the delegations of Iceland (A/AC.138/SR.49) and Jamaica (A/AC.138/SC.I/SR.6), it favoured notification beforehand of, and obligatory consultations with, the coastal States, in keeping with paragraphs 11 and 12 of the Declaration of Principles. The legitimate rights and interests of coastal States, for instance, with regard to fishing, conservation of the biological resources of the sea, and pollution, would have to be respected. The establishment of pertinent rules would inevitably have a direct bearing on the functions to be given to the international machinery. In that connexion, reference had been made to both political and economic functions. His delegation considered that political functions raised a particularly important question, namely the co-ordination of the activities conducted in the various maritime areas. The international authority should therefore have adequate powers, in particular with regard to the peaceful use of the international area.

He then referred to some aspects of the future international machinery: its composition, structure and functions.

As to composition, all States should be allowed to be members of the future body, since it would be administering an area which belonged to the whole of mankind.

With regard to structure, he favoured a simple structure and a limited staff so as to keep administrative costs to a minimum and allocate maximum capacity to exploitational activities.

With reference to the functions of the future international machinery, he said that it was important to ensure a balanced distribution of functions among its main organs and, in particular, to prevent the council from improperly arrogating functions which belonged primarily to the assembly. With respect to the taking of decisions, no one group of countries should be favoured over any other. He therefore urged that the composition of the various organs of the international machinery should be truly representative and that clear and precise rules should be laid down regarding the taking of decisions, in accordance with the principle of the absolute equality of States.

On the question of economic problems resulting from exploitation of the sea-bed, his delegation considered it necessary to be vigilant and be alert to the possible repercussions of the exploitation of marine resources on world markets. To that end, provision might usefully be made for the co-ordination of the activities of the future international body with those of other bodies, such as UNCTAD. Such co-ordination should also apply to the sharing of the benefits derived from exploitation. The benefits might be allocated, through the intermediary of existing agencies, to programmes of particular value to the developing countries, or to a special programme, administered by the international body to which all or part of the benefits would be earmarked, and depending upon which of the two formulas would be most rewarding. Whatever formula was adopted, his delegation considered that the geographically least favoured countries, i.e. the land-locked countries, should enjoy preferential treatment in the sharing of the benefits derived from exploitation of the sea-bed and the ocean floor.

The meeting rose at 4.25 p.m.

SUMMARY RECORD OF THE FIFTEENTH MEETING

held on Thursday, 5 August 1971, at 3.25 p.m.

Chairman: Mr. FEKETE Hungary

In the absence of the Chairman, Mr. Fekete (Hungary), Vice-Chairman, took the Chair.

GENERAL DEBATE (continued)

Mr. BAUM (Secretariat) said that during the general debate several delegations had referred to the two reports of the Secretary-General respectively entitled "Possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the developing countries; a preliminary assessment" (A/AC.138/36) and "Possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from the exploitation of the resources of the area beyond the limits of national jurisdiction" (A/AC.138/38 and Corr.1). He wished to clarify the scope of those papers and to make some general remarks on the complex subjects they covered.

The papers had one characteristic in common. They made no attempt to provide final answers either on the economic impact of the exploitation of sea-bed mineral resources or on the sharing of the proceeds of that exploitation. They merely provided information as requested by the General Assembly and the Committee.

Referring to the impact of the exploitation of sea-bed resources, he said that there had been an acceleration in the process of technological development and diffusion during the past 70 years; the average time-span between initial discovery of a new technological innovation and its commercial application had steadily decreased since the beginning of the century, and it could be safely assumed that the trend would continue at a quickening pace. It was therefore with some reservations that the Secretariat regarded their own forecast of the rate at which the mineral resources of the deep sea would be put to use; such forecasts could be very quickly invalidated by events. That was also why the Secretariat had had to envisage a wide range of possibilities regarding the number and scope of future ocean mining operations. He drew the Sub-Committee's attention to two other reports by the Secretary-General, one entitled "Mineral

resources of the sea"[1] and the second, updating it, entitled "The Sea: Mineral resources of the sea" (E/4973), which could serve as a useful background for the two reports now before the Sub-Committee.

The report A/AC.138/36 was only a preliminary assessment, made in consultation and co-operation with UNCTAD. That co-operation would grow still closer, especially in the work on the conclusion of international agreements on primary commodities within the international régime.

The first part of the report described the pattern of demand and supply of petroleum, natural gas, manganese, copper, nickel, and cobalt, with particular reference to the importance of those commodities as earners of foreign exchange for the developing countries. Further on in the report, the Secretariat had endeavoured to assess on the basis of several sets of assumptions the probable impact of future production of hydrocarbons and solid minerals. There also, it had paid particular attention to the developing countries and outlined some possible international approaches to the problems raised by the production of those items.

He would like to attempt to draw some tentative conclusions from the study. With regard to nickel and copper, it did not appear that sea-bed production could lead to a drop in world prices, but that did not hold true for manganese, and some developing countries might find it increasingly difficult to compete in world markets within a decade or two. It was difficult to assess the prospects of petroleum production, as the advance of technology might considerably affect all forecasts. In view, however, of the high cost of deep water production and the abundance of known reserves, it was probable that such production would remain marginal for 10 to 20 years.

Nevertheless, even if the adverse consequences of some forms of sea-bed production might be only minor, or if they affected only a few countries, adequate safeguards should be provided to ensure that the brunt of adjustment was not borne by the developing countries. The concept of rational management contained in the Declaration of Principles governing the Sea-Bed and Ocean-Floor and the Sub-Soil Thereof beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)) necessarily implied some form of international regulation. It appeared questionable whether traditional stabilizing schemes

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1/ United Nations publication, Sales No.: E.B.4.

were adequate for that purpose. That was obviously a problem area which would require further studies on the basis of some tentative ideas put forward in the Secretary-General's report, such as a levy per ton of metal produced, compensatory arrangements for developing countries which might be affected and so on.

In its resolution 2750 A (XXV) on the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, the General Assembly had requested the Secretary-General to keep those problems under constant review, in co-operation with UNCTAD. In that connexion, the Secretariat considered that there was ample room to examine further the ways and means by which international machinery could protect the interests of developing countries which were producers of minerals, and to explore possible elements of international arrangements for commodity agreements. The Secretariat would have to work on that complex task, in co-operation with experts in UNCTAD.

He then turned to the paper on possible methods and criteria for the sharing of proceeds and other benefits derived from exploitation of the resources of the international area (A/AC.138/38 and Corr.1). The Secretariat had not made any attempt to analyse all possible methods of distribution, but adopted the basic premise that there would be a given sum to be shared by the international community, the practical method of sharing depending on the amount available. The report only provided some examples to illustrate the various approaches which the Committee might wish to consider. The report divided possible benefits into two categories: non-financial and financial. With regard to financial benefits, the Secretariat had envisaged two general methods: direct distribution to all Governments or allocation to specific international programmes of particular interest to developing countries, on the understanding that the flow of resources thus generated would be distinct from international aid.

With regard to net financial benefits - that is to say, after deducting the expenses of the international machinery which would be set up - the Secretariat had chosen five possible distribution criteria based on the common heritage principle, which seemed to indicate that sharing should be based to a certain extent on each country's population as a percentage of the world total, with adjustments to favour the developing countries. The calculations were based on the criterion of gross domestic product (GDP) per head of population because, in spite of its imperfections, that was the simplest available indicator. He wished to elaborate very briefly on three of the five criteria. In criterion A,

per capita benefits were inversely related to the level of per capita GDP. In criterion B, net benefits were divided into three equal blocks. The first block would be shared by all countries irrespective of their per capita GDP level; the second block by all countries with a per capita GDP below $1,000, and the third block by countries with a per capita GDP under $150. Each block would be shared according to the size of each country's population as a percentage of the total population of the group. In criterion D, the size of each country's population as a percentage of the total population of the world was used as a starting point. All countries with a per capita GDP of more than $500 would have their share reduced by a certain factor, and the amounts thus withdrawn would be redistributed in such a way that half the sum would be shared by all countries with a per capita GDP below $500, and the other half allocated to the 25 developing countries considered by the Committee for Development Planning as the least developed.

In conclusion he said that the Secretariat was conscious that the two reports in question were only a beginning, and that much remained to be done to clarify the economic aspects of the international régime to be established. It would therefore appreciate it if the Sub-Committee would give it specific directions for the work to be done.

Mr. van der ESSEN (Belgium) said that Belgium had been one of the sponsors of the draft Declaration of Principles Governing the Sea-Bed and the Ocean Floor, which the General Assembly had adopted on 17 December 1970. That meant that it accepted those principles and their logical consequences. The Committee must translate them into precise legal terms, in the form of a treaty or convention. Several comprehensive drafts had been submitted to the Committee, all of which were interesting.

The first principle stated in the Declaration was that the sea-bed and ocean floor were the common heritage of mankind. That called for international machinery endowed with real powers, because a common heritage had to be administered and it was difficult to imagine a heritage with each beneficiary taking the share he considered due to him.

There must therefore be an authority, and not merely an international organization consisting of States which remained sovereign in their own territory. The competence of the new body would be exercised in a field which lay beyond the sovereignty of States; it should have real powers of decision, control and inspection. That did not mean that it alone could exploit the

resources of the area. That possibility should not be excluded, but for reasons of efficiency it would be preferable for the authority to authorize States or groups of States to engage in exploitation in accordance with certain conditions. Responsibility for compensation for damage caused by exploitation should be attributed to States rather than to the international community itself. Some damage would probably be caused, especially during the initial period.

If the Declaration of Principles was to have a practical meaning and not remain a mere empty formula, the authority to be established must exercise its powers over the widest possible geographical area.

Belgium did not agree with the idea that the area of international jurisdiction would start only beyond the 200-nautical mile limit. That would be a mere delusion. Very little would in fact be left to exploit before an unforeseeable but certainly very distant future. It would be a delusion, with the developing countries as victims. The seventh and ninth principles of the Declaration stated, however, that their interests and needs should be taken into particular consideration.

His delegation therefore considered that a reasonable limit should be fixed for national jurisdiction or, more specifically, for the exercise of certain rights of national jurisdiction. It should not exceed either the 200-metre isobath or its average equivalent in distance, or both.

It must, of course, be admitted objectively that that would represent a sacrifice for certain maritime Powers. The shortcomings of the exploitability criterion incorporated in the 1958 Convention on the Continental Shelf[2/] had operated to their advantage. States which had ratified that Convention might legitimately consider that, by virtue of that controversial criterion, they held a right beyond the 200-metre isobath; but they would have to renounce the right. However, that right - which they had not yet had the practical opportunity to exercise - would not be renounced in favour of another State, but for the benefit of the international community, which was a very different matter.

The sacrifice requested of them would however justify the establishment of an intermediate zone, such as the trusteeship zone in the United States draft proposal,[3/] or some similar arrangement. Naturally, in order to comply with the

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2/ United Nations, Treaty Series, Vol. 499, p.311.

3/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21, (A/8021), annex V.

ideas expressed in the Declaration of Principles, that intermediate zone should be reasonably narrow and should not cover all the sea-bed areas likely to be exploitable in the near future.

The Belgian delegation considered that under the authority to be established, the land-locked and shelf-locked countries should be represented in proportion to their actual numbers. His delegation endorsed the view so ably expressed in that connexion by the Austrian representative at the ninth meeting.

In the event of a dispute, Belgium considered that any differences concerning the legal interpretation of the future treaty or any conventions annexed thereto should be referred to the International Court of Justice. It was preferable to submit them to a higher jurisdictional body which did not form part of the authority. However, disputes concerning facts, probably of a technical nature, should rather be submitted to the special tribunal which was proposed in the United States draft and which would have a role to play within those specific limits.

Mr. CHOONHAVAN (Thailand) said that at the thirty-sixth meeting of the Committee, his delegation had expressed its views on the type of machinery to be established under the international régime, benefit sharing, the control of fluctuations in the prices of minerals extracted from the sea-bed, the reservation of exploitable resources in the margin of the continental shelf for coastal States or regional management among coastal States, the training to be given to nationals of and the transfer of sea-bed technology to the developing countries, and the granting of preferential or weighted voting rights to some members.

His delegation therefore wished to confine its remarks to two interrelated topics, the limits of national jurisdiction and fisheries. It appeared from the debate that States having an extensive continental shelf were in favour of the depth criterion while others which had a narrow continental shelf were inclined to choose the distance criterion. His delegation believed that every State should have the right to choose between the depth and the distance criterion in defining its national jurisdiction, subject of course to regional agreements. States should not be compelled to accept the 200-metres depth formula as the sole criterion.

His country had ratified the 1958 Geneva Conventions[4/] and had adopted legislation regarding its national jurisdiction over the continental shelf in accordance with the depth and exploitability criteria.

If the exploitability criterion was to be abandoned, it should be compensated for by greater depth, otherwise States Parties to the Geneva Convention on the Continental Shelf would lose their legitimate rights.

His Government considered that to fix the limit of national jurisdiction at the 200-metre isobath, as proposed by some delegations, would be somewhat unrealistic and unduly restrictive, in view of present advances in technology and those likely in the near future. That criterion had been appropriate during the last twenty years, when that was the depth at which technology could permit scientific research, exploration and exploitation.

If the depth criterion were to be accepted, his delegation would propose that the Sub-Committee should look into the possibility of increasing the isobath to more than 200 metres, in order to satisfy the needs of many countries which would accept that criterion to define their national jurisdiction.

At present, the limit of Thailand's territorial sea was 12 miles. It considered that breadth to be reasonable, realistic and consistent with existing international law as accepted by a great number of States.

Another issue with which his Government was greatly concerned was fisheries. In that respect, a clear and precise distinction should be made between sovereign rights over the territorial sea and special rights in the waters of the economic zone, particularly the right to fish. The extension of national jurisdiction seaward according to the distance criterion advocated by many delegations should only apply to the exploration and exploitation of sea-bed resources. Freedom of fishing in the superjacent waters, or in the waters beyond the territorial sea should not be jeopardized or interfered with.

His delegation assured the delegations of Tanzania, the Union of Soviet Socialist Republics, the United Kingdom and the Latin American countries that the Thai Government would give careful consideration to the working papers they had submitted on the international régime and machinery.

4/ See United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.: 58.V.4, Vol. II), annexes, pp. 132 et seq

Mr. YANGO (Philippines) said that his Government was still carefully considering the various aspects and implications of the international régime governing the sea-bed and ocean floor beyond the limits of national jurisdiction and that had not yet reached a final decision.

In his opening statement at the fifty-fifth meeting of the Committee, the head of the Philippine delegation had referred to the Declaration of Principles as the cornerstone of the international régime and had said that the principles set forth in the Declaration should be reflected in the régime.

His delegation maintained its position in that respect and considered that in accordance with paragraph 9 of the Declaration, an international régime, including appropriate international machinery, should be established by an international treaty of a universal character, generally agreed upon.

During the debates in the General Assembly, the Philippine delegation had recognized that the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, were the common heritage of mankind and that they should be reserved exclusively for peaceful purposes, for the benefit of all States, irrespective of their geographical location, whether land-locked or coastal, and taking into particular consideration the interests and needs of developing countries.

His delegation considered that the international régime should embody the following features: exclusion of the area in question from the arms race at the earliest possible opportunity; equitable sharing by the contracting parties of the net revenues derived from the exploration of the area and the exploitation of its resources and of scientific information and other benefits resulting from such exploration and exploitation; adoption of measures designed to minimize or eliminate fluctuations of prices of the minerals and raw materials resulting from such exploitation; exchange of scientific and technical information on the peaceful use of the area and its resources; exchange and training of scientists and experts in the field of the exploration of the sea-bed and the exploitation of its resources; provision of services, equipment and facilities to meet the needs of research on the development and practical application of scientific techniques for the exploration of the area and the exploitation of its resources for peaceful purposes; establishment and administration of safeguards to ensure that services, equipment and information made available by the international machinery or at its request or under its supervision or control were not used for any military purpose; establishment of safety standards for the protection of the

living and other resources of the marine environment in connexion with the exploration of the area and the exploitation of its resources; respect for the legitimate rights and interests of the coastal States in the activities carried out in that area, consultations being maintained with the coastal States concerned with respect to activities relating to the exploration of the area and the exploitation of resources in order to avoid infringement of their rights and interests, the coastal States having the right to adopt any measures necessary to prevent, reduce or eliminate danger to their coasts or related interests that might result from pollution, the threat of pollution or any other hazardous occurrences that resulted from such activities; lastly, definition of the liability of any contracting party in respect of damage for which it was responsible.

He fully endorsed the views expressed by the representative of Ceylon at the eleventh meeting concerning scientific research, transfer of technology, the preservation of the marine environment and the prevention of pollution.

The Sub-Committee now had before it several specific proposals submitted by France, the Union of Soviet Socialist Republics, the United Kingdom, the United Republic of Tanzania and the United States, and a draft treaty submitted by the Maltese Government.

His delegation was studying all those proposals and would comment on them at a later stage. It appeared from the discussion so far that there was some measure of agreement as to the general structure of the international machinery, and more specifically that its organs might consist of a conference or assembly of all parties to the treaty, as the supreme authority, a council or board, as the executive authority, a secretariat, as the administering arm of the machinery, and a tribunal or some other procedure for the settlement of disputes.

The international machinery should be simple, efficient and inspire confidence. There should be room for flexibility in order that it could develop with the progress of technology and the resulting increase of activity in the international sea-bed area.

His delegation thought that the proposal for an international organization to be established to deal with the problems of the exploration and exploitation of the mineral resources of the international area submitted by the Polish delegation (A/AC.138/44) was worthy of consideration.

It was important above all that the machinery should not open the way for domination by one State or group of States over other States.

There should therefore be a proper balance of all geographical groups and legitimate interests in the representation in the executive board.

He would not comment at present on the question of limits, since his delegation's position had been clearly stated at the fifty-fifth meeting. He merely wished to emphasize that until that question had been satisfactorily settled, his delegation would be unable to support the establishment and operation of the regime applicable to the international area. It reserved the right to revert to the question of limits in Sub-Committee II, after studying the various proposals submitted in the documents previously referred to.

The meeting rose at 4.20 p.m.

SUMMARY RECORD OF THE SIXTEENTH MEETING

held on Friday, 6 August 1971, at 10.50 a.m.

Chairman:	Mr. THOMPSON-FLORES	Brazil
later:	Mr. SEATON	United Republic of Tanzania

In the absence of the Chairman, Mr. Thompson-Flores (Brazil), Vice-Chairman, took the Chair.

GENERAL DEBATE (continued)

Mr. KUSUMAATMADJA (Indonesia) said that his country had voted for the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction embodied in General Assembly resolution 2749 (XXV) and subscribed to the principles it set out concerning the establishment of an international régime and machinery. The machinery to be established should not be so costly that it would use up all or most of the revenue from the exploitation of the international sea-bed area. Elaborate machinery and cumbersome procedures would add to the cost of extracting minerals beyond the limits of national jurisdiction, which would inevitably be very high in comparison with the cost of extracting them on land or in the shallower areas of the continental shelf. To operate a drilling rig at a depth of only 50 metres costs about $25,000 a day. Efficiency and speed were thus essential in sea-bed operations.

Representation on the principal organs of the international machinery, i.e., the assembly, the executive council and the management organ, should be such that the interests of the developing countries, whether land-locked, shelf-locked or coastal, were adequately represented. As the main beneficiaries of the common heritage of mankind, their rights must be fully safeguarded. As regards the machinery for the settlement of disputes, his delegation doubted the wisdom of establishing a tribunal with compulsory jurisdiction, as proposed in the United States draft treaty.[1/] In its opinion, disputes should be resolved in accordance with Article 33 of the Charter.

1/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), annex V.

With regard to the benefits to be derived from the international sea-bed area, his delegation fully supported the view that the developing countries should not merely receive financial benefits, but should also be given the opportunity to acquire skills and technical competence in the exploration and exploitation of sea-bed resources and to obtain information and technical data relating to the geology and mining of the sea-bed and the ocean floor. With that objective in mind and considering the need to keep down costs, his delegation wondered whether the production and profit-sharing system successfully adopted in Indonesian off-shore exploration and exploitation of petroleum and gas resources might not be a suitable procedure to adopt.

Under that system, the ownership of the deep ocean resources would remain with the international community, and the international sea-bed authority would have the exclusive right to exploit the resources on its behalf. The authority, or the management organ acting on its behalf, would then conclude a contract with a third party which would undertake the actual exploration and exploitation on a production and profit-sharing basis. Unlike the concession system, which usually only produced financial benefits, in the form of concession fees and royalties, the production and profit-sharing system gave the owner of the resources a share in management, access to geological and mining data obtained from the work area by the contractor and a chance to acquire technical skills and expertise through training programmes.

The need for supervision by the sea-bed authority was reduced to a minimum, because of incentives in the contract which ensured that the contractor would work efficiently in order to maximize his share of the profits. In discharging its functions, the authority would be able to draw on the knowledge and experience of member States, particularly with regard to the computation of costs, which would be a vital element in management. To ensure that potential profits were not absorbed by inflated costs, a ceiling on costs and prior approval of work programmes, schedules and cost estimates would be necessary.

The adoption of such a system would admittedly pose some problems. First, there was a legal problem, in that a production and profit-sharing contract could not be concluded in a legal vacuum. For obvious reasons, however, it could not be subject to the laws of contract of a particular country. It was also open to question whether it could properly be regarded as a purely private law contract. The answer might be to create a body of rules of international administrative law, along the lines suggested by the representative of Ceylon at the eleventh meeting.

In giving that outline of a production and profit-sharing system, he was not making a formal proposal, but merely offering an example of how the situation might be dealt with. He understood that there were similar proposals in the Latin American draft which would shortly be submitted to the Sub-Committee.[2/]

Since the question of the international régime and machinery was closely linked with the question of limits, he would mention a few basic principles which, in his delegation's view, should govern the question of limits. There was general agreement that, despite the establishment of an international sea-bed area, sea-bed areas under national jurisdiction would continue to exist. In defining the limits of the international area, existing areas under national jurisdiction established in accordance with the 1958 Geneva Convention on the Continental Shelf[3/] and with customary law and other existing treaties or agreements would have to be recognized. The definition of limits had thus to be viewed as a re-definition of the outer limit of the continental shelf, taking into account not only the need for the orderly exploration and exploitation of the international sea-bed resources and the rapid advance of modern technology, but also the need for a more equitable distribution of the benefits to be derived therefrom. Such a re-definition of the continental shelf would mean revising the relevant article of the 1958 Convention. Failure to do so would result in the impossible juridical situation of two instruments defining what would in effect be the same thing, the outer limit of the continental shelf and the limit of the international sea-bed area.

With regard to the principle that should govern the definition of limits, his delegation had stated at the fifty-fifth meeting that it should be a combination of a depth criterion and a distance criterion. At the present session, however, an increasing number of representatives had argued in favour of a simple distance criterion. The distance criterion was acceptable to his delegation, provided that in its application the archipelago principle was recognized.

2/ Subsequently distributed as document A/AC.138/49.

3/ United Nations, Treaty Series, vol. 499, p.311.

It would be helpful to developing coastal nations to have a wide sea-bed area under their national jurisdiction. How wide that area should be was of course a subject for negotiation. Recently there had been considerable support for a distance of 200 miles. Even if at present developing nations were unable to exploit such an area themselves, they would at least be able to reserve it for future generations, or to lease it out now on terms favourable to them.

Admittedly, such a distance criterion would put land- and shelf-locked developing countries in an unfavourable position. The remedy might perhaps be to give those countries priority in the sharing of benefits that would accrue from the exploitation of the international sea-bed area.

Indonesia took the view that the continental shelf area lay outside its archipelagic waters and therefore did not include their sea-bed and sub-soil, which, according to Indonesia's legislation, was part of Indonesian territory and thus under its full sovereignty. He wished to make that clear because at some points within the Indonesian archipelago the sea reached a depth of several thousand metres. In an effort to prevent any future dispute with its neighbours about the exact outer limits or common boundaries of their continental shelf areas, Indonesia had concluded agreements with some of them and was negotiating with others.

In arguing the need to allow warships to pass unimpeded through straits forming part of the territorial waters of another State, some delegations had suggested that such passage would not endanger the security of the coastal State. His delegation disagreed. The interests of the coastal State could only be fully protected from the harmful effects of the passage of foreign warships if, in addition to an assurance of the good intentions of the passing warship, an absolute guarantee could be given that there would be no accidental encounters with other warships of an unfriendly nature or accidental discharge of weapons; given the potential of modern weapons of mass destruction, such encounters or accidents would have disastrous consequences for the coastal State and its population. His delegation did not consider that such a guarantee could be given. It therefore took the view that the passage of warships through straits forming part of the territorial sea of a State should be subject to regulation by that State. The purpose would not be to prevent passage but rather to make sure that it would not be harmful to the coastal State and its population. That was why Indonesia could not accept the concept of "corridors of free passage" through the territorial sea.

Mr. STEVENSON (United States of America) said that his delegation wished to reply to some of the comments made on its proposal for a trusteeship system.

Some delegations, including delegations from land-locked and shelf-locked States, had expressed the view that an international regime should apply to the broadest possible area of the sea-bed beyond a relatively narrow limit of national jurisdiction. He understood their concern. His delegation's calculations showed that with a limit of national jurisdiction set at a distance of 200 miles, as some had proposed, the area under the exclusive control of the coastal State would be three times greater than with a limit set at a depth of 200 metres.

Other delegations had stated that exclusive coastal State control should apply to the entire continental shelf and margin, or up to a very great distance from shore, such as 200 miles. He also understood their concern. States with very broad continental shelves and margins wished to control and benefit from exploitation of those areas; and States with very narrow shelves and margins wanted some form of compensation.

His delegation had proposed a trusteeship zone beginning at the depth of 200 metres in order to accommodate those various concerns. International standards and revenue sharing would be applicable in that zone, but the coastal State would be given practical control over those aspects of exploitation of most interest to it. The coastal State would also be entitled to a share of the revenue derived from such exploitation. The precise balance between coastal State, maritime and international interests under the trusteeship system should be the subject of further deliberation and negotiation within the Sub-Committee. A clear-cut answer in favour of either coastal State or international interests would be regarded as unfair by the group of States at a disadvantage, and it was therefore necessary to reconcile those conflicting interests if the treaty was to endure. The trusteeship system was a means of doing so.

The debate in the Sub-Committee had also shown that some delegations were concerned about the method proposed in article 26 of his delegation's draft treaty for delimiting the outer boundary of the trusteeship zone; they found the system complicated and thought it would be hard to apply. Some delegations had suggested that the outer boundary might instead be set at a certain mileage. The United States of America was not committed to the method proposed in its draft.

If the trusteeship system provided adequately for coastal, maritime and international interests, the method of delimiting the outer boundary should not be an obstacle to agreement. The question should be approached in the same spirit of accommodation as he had suggested for determining the details of the trusteeship itself.

Mr. Seaton (United Republic of Tanzania), Chairman, took the Chair.

Mr. TRAORE (Republic of Ivory Coast) said that his Government was in full agreement with the principle that access to the resources of the sea-bed and the sharing of profits resulting from their exploitation should be effected in the most equitable manner possible and that every effort should be made to remedy present inequalities attributable to geography or of a technological or economic nature.

At the same time, it was necessary to ensure that a proper balance was achieved between the interests of the international community and the legitimate interests of coastal States in the sea-bed immediately adjacent to their coasts. That would probably be the most difficult task facing the Committee because of the great differences between individual national claims.

The solution was to find an equitable criterion for fixing the limit of national jurisdiction over the sea-bed, which in turn meant fixing the limit of application of the concept of the common heritage of mankind. Many representatives had rightly emphasized that in carrying out that task the Committee should be guided by a concern to make good the natural inequalities between regions in the breadth of their continental shelves. While geography could not be altered, there was no doubt that the existing legal régime adversely affected the position of countries with narrow continental shelves. His delegation considered it unfair that a State whose coastal sea-bed sloped gently and whose continental shelf might thus extend for hundreds of miles should have the exclusive right to exploit the resources of the whole of that vast area, while a State located on a coast which fell steeply had only a very small area or none at all.

His delegation accordingly considered that the Committee should disregard the 1958 Convention on the Continental Shelf. Many developing countries which had since attained independence had not been present at the 1958 United Nations Conference on the Law of the Sea. The two criteria which had been adopted at that Conference to fix the limits of national jurisdiction had sanctioned inequalities - geographical inequalities in the case of the depth criterion and

technological inequalities in the case of the exploitability criterion. Coastal States with an extensive and shallow continental shelf and with the necessary technical skills and resources to exploit it derived great advantages from the 1958 Convention.

His delegation was of the opinion that the criteria of the Convention should be replaced by a criterion of distance from the coast. Depth might perhaps be retained as a secondary criterion applicable only to countries with an extensive continental shelf. Furthermore, his delegation considered that the concept of the continental shelf should be abandoned, because of the uncertainties inherent in it. Once agreement has been reached on a reasonable distance, which admittedly was not easy, the concept of the continental shelf would no longer serve any useful purpose. For some States, the distance fixed would include the whole of their continental shelf and perhaps even an area beyond it; in other cases, it might cover only a part of their continental shelf. The latter group, however, would still be in a favourable position because the resources of the whole area over which they had exclusive rights would be easily exploitable.

As far as the actual distance was concerned, he supported the view expressed by the representative of Singapore at the thirteenth meeting that it should be fixed so as to leave in the international area a substantial part of the sea-bed which could be exploited with existing technological knowledge. If that view was accepted, there was no doubt that a reasonable distance would be very much less than the 200 miles proposed by some delegations.

With regard to the régime to be established, his delegation wished to emphasize four basic principles which should govern it. First, it was essential that all States, whether coastal or land-locked, should have access to the resources of the international area. That principle should guide the international authority in the granting of licences, the sharing of benefits and the provision of technical assistance. Secondly, the powers and organs of the authority should be adequate to ensure its efficiency, particularly in the field of supervision. The authority should have full powers of regulation with regard to the exploitation of the resources of the area and it should not delegate its powers to any State in any part of the area. On the other hand, the authority should not itself become a commercial enterprise. At least to begin with, the resources of the sea-bed should be exploited by the member States to which licences

were granted, and which would be fully responsible to the authority. The authority could, however, be given certain economic powers in the area, such as, for instance, those provided for in article 16, paragraph 4, of the Tanzanian draft. Thirdly, the international authority should take measures to ensure the safety both of the marine environment and of each member State. Every coastal State should, for instance, be kept informed of any exploitation planned in a sector relatively close to its coast. Fourthly, with regard to the institutional aspect of the régime, his delegation would support any proposal which would ensure equitable representation of the developing countries, particularly land-locked ones, and effective equality of all member States in the various organs of the authority.

Mr. ZOTIADIS (Greece), said that his Government fully supported the Declaration of Principles, adopted by the General Assembly in its resolution 2749 (XXV), which provided that the sea-bed and ocean floor and the sub-soil thereof underlying the high seas and situated beyond the limits of national jurisdiction was the common heritage of mankind. It also supported the general principle embodied in the resolution that an international régime should be set up to ensure the equitable sharing by States of the benefits derived from the international sea-bed area and its resources, taking into particular consideration the interests and needs of the developing countries.

The most important feature of the principles set forth in the resolution was that sources of revenue deriving from the area to be recognized as the common heritage of mankind would become available to all States of the world community. The size of the revenue and the economic significance of the international sea-bed régime, however, would not depend only on the mineral and other resources to be found. They would also depend to a great extent on the way in which the international sea-bed area was delimited.

His delegation shared the view of a number of other delegations that the problem of limits could be solved without any serious prejudice to the present status of international law on the sea-bed, as defined by the 1958 Convention on the Continental Shelf. The shortcomings of the Convention, which provided no clear limit to the rights of coastal States other than those set by the ill-defined concept of "adjacency" and by technology, could be overcome by accepting a criterion combining the 200 metre depth and a distance formula. A distance limit, if reasonable, would leave a significant area of the sea-bed under international jurisdiction. The criterion of distance was used in the Judgment of the

International Court of Justice in the North Sea Continental Shelf cases of 20 February 1969[4], in which it was stated that the jurisdiction of the coastal State over the bed of the sea and the ocean floor extended only a limited distance from the coast (the continental shelf).

The criterion of distance for the delimitation of the area in which States would renounce sovereignty over the natural resources of the sea-bed did not exclude acceptance of an intermediate trusteeship zone within which coastal States would continue to enjoy certain existing rights. The trusteeship system had the merits of a compromise solution. It would reconcile the differences between States that possessed broad continental shelves and States that did not. The coastal State would have full control over operations in the zone under its trusteeship and would receive a share of the international revenue from that zone. At the same time, the international community as a whole would benefit from a sifnificant area of the sea-bed now claimed by individual nations. However, a final answer to the problem of limits would depend to a large extent on the nature of the régime to be established.

If the resources of the sea-bed and its subsoil were to be properly utilized an efficient international régime would be required for some two thirds of the earth's surface. The Declaration of Principles set forth the principles and objective of the international régime and its machinery, which would be one of the greatest efforts at world organization ever contemplated. The functions of the international régime would necessarily include the maintenance of peace and order, the issuing of licences and concessions to enterprises, the collection of royalties and taxes, the enforcement of safety and anti-pollution rules, the conduct of scientific research and the protection of archaeological discoveries. His delegation attached particular importance to the last item and would like to see included among the international authority's functions the protection and licensing of archaeological activities in those parts of the sea, such as the Mediterranean, which were known to contain historical and archaeological treasures.

4/ ICJ Reports 1969, p.3.

In the view of his delegation, the international machinery for regulating exploitation of the sea-bed beyond the limits of national jurisdiction should be an agency established by the United Nations. The General Assembly should authorize the international authority to manage the leasing of the resources of the sea-bed and ocean floor, which should be exploited under reasonable conditions with equitable distribution of the benefits. It should be given all the powers required to realize its objectives and perform its task. All activities in the area under its jurisdiction should be conducted in accordance with the United Nations Charter. They should not cause any interference with the freedom of the seas, and in particular, they should not impede navigation and fishing and should not cause pollution or damage to animal and plant life.

Mr. NUR ELMI (Somalia) said that the Sub-Committee did not have much time left to deal with all the political, legal and economic problems that had to be solved before the conference on the law of the sea in 1973. It should be careful, however, not to take hasty decisions. It was concerned with some of the most important aspects of the sea-bed question, and any hastily prepared document would ultimately prove ineffective.

Somalia, as a coastal and developing State, attached great importance to all questions relating to the sea-b d in general and to the resources of the sea in particular. Although it had a long coastline of some 3,000 kilometres, its technological and scientific knowledge of the problems of the sea, its resources and exploitation, was very limited - as was the case with many other developing countries, especially in Africa. With the tremendous disparities in knowledge between the developed and the developing nations, it would be too much to expect the latter to enter into international commitments without first having an opportunity of evaluating the political, legal, economic and other implications of such a complex matter.

At the time of the Geneva Conference on the Law of the Sea in 1958, many African and other countries had not yet attained independence and had consequently had no voice in the deliberations of the Conference. Today, as masters of their own destiny, they were still in the initial stage of consolidating their newly-won independence and were faced with numerous and pressing problems in their economic development programmes. They had therefore not yet been able to devote much time to the problems of the sea but they viewed the resources of the sea-bed and ocean floor as a new area of development.

Their desire to take advantage of those new resources, however, would be frustrated by lack of the necessary means and knowledge. It might be argued that provision would be made for the equitable distribution of benefits, taking into account the special interests and needs of the developing countries. He agreed with that idea, which was embodied in the Declaration of Principles, but the developing countries would prefer to be given an opportunity of acquiring a reasonable amount of scientific knowledge of their own, in order to be able to safeguard their interests during the preparatory work for the third conference on the law of the sea. The mistakes and omissions of the past would have to be rectified and compensated for in the new treaty or treaties on the law of the sea; otherwise, if developing countries were not given the chance to participate actively and to benefit directly from the exploitation of the sea-bed and ocean floor resources beyond the limits of national jurisdiction, the international régime and machinery would be just like any other international agency which granted aid to the poor nations of the world, with all the political and other conditions attached to it.

His delegation was in favour of establishing workable and practical machinery with the necessary powers and the capacity to ensure equitable distribution of benefits, as envisaged by the Declaration of Principles. It supported the draft statute for an international sea-bed authority submitted by the Government of the United Republic of Tanzania (A/AC.138/33).

Regarding the limits of national jurisdiction for territorial seas, the best solution would be a reasonably defined single limit for all States.

The meeting rose at 11.45 a.m.

SUMMARY RECORD OF THE SEVENTEENTH MEETING

held on Monday, 9 August 1971, at 10.45 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. YANKOV (Bulgaria) said that the stage was fast approaching when the Sub-Committee would be able to concentrate its attention on more specific topics. Consequently, he intended to confine his statement to certain aspects of the international régime and to some of the problems related to the powers, structure and operation of the international machinery.

The international régime would constitute a body of legal rules determining the rights and duties of States while the international machinery would form the institutional superstructure of the régime. The working papers submitted by the delegations of the United States[1/], the United Kingdom[2/], France[3/], Tanzania (A/AC.138/33), the USSR (A/AC.138/43), Poland (A/AC.138/44) and Malta (A/AC.138/53) and by a group of Latin American States (A/AC.138/49) had, together with the various other proposals, provided the basis for a meaningful and constructive discussion on the foundations of the international régime and its institutional elements.

The basic objective of the régime was to furnish a viable framework for the readjustment of the uses of the sea to the new technological achievements which were making the vast resources of the sea-bed and its sub-soil increasingly accessible. The régime should provide for the rational and orderly exploration and exploitation of those resources for the benefit of all mankind, special consideration being given to the interests and needs of the developing countries.

1/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), annex V.

2/ Ibid., annex VI.

3/ Ibid., annex VII.

It should foster international co-operation on the basis of the principles and rules of international law, including the Charter of the United Nations. It would have to be built on the generally recognized and applicable tenets of the law of the sea and on the emerging new regulations concerning the exploration and exploitation of sea-bed resources. It would also have to reconcile the various new and promising opportunities provided by technological advances with the traditional uses of the sea for navigation, fishing and scientific research.

In endeavouring to adjust the existing law to new realities, the Committee should attempt to avoid any hasty and drastic revision of the existing rules which might affect the stability of the legal order. Although the draft ocean space treaty submitted by the delegation of Malta seemed a very impressive attempt to solve the problems of the existing law of the sea once and for all, an extremely cautious attitude should be adopted to the consequences of such an endeavour. His delegation would deal with the merits and demerits of the draft treaty on a future occasion.

The fundamental principles of the international régime were laid down in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, adopted by the General Assembly in its resolution 2749 (XXV), though some of them needed further clarification and elaboration. The régime would have to be based upon the sovereign equality of all States without any discrimination, due regard being given to the needs and interests of all countries, particularly the developing ones. It would have to enjoy universal recognition and ensure respect for the freedom of the high seas.

His delegation considered that the régime should apply only to the exploration and exploitation of the mineral resources of the sea-bed and ocean floor and the sub-soil thereof. For both legal and practical reasons, it did not share the view that it should also cover the exploration and exploitation of the living resources of the sea.

The main problem regarding the area of application of the régime was that of fixing the limit between the area of the sea-bed under national jurisdiction and the international area. Excessive and continuously escalating claims to national jurisdiction over the sea-bed would reduce the economic and practical significance of the international area. A small international area, or one poor in natural

resources, would make any international machinery both meaningless and unnecessary. It was, therefore, puzzling that some countries claiming an excessive extension of national jurisdiction had strongly upheld the concept of the common heritage of mankind and had favoured granting most comprehensive powers to the international machinery. Such an attitude appeared inconsistent to say the least.

It was obvious that a proper balance should be maintained between the interests of coastal States and those of the international community and that rights acquired under the 1958 Convention on the Continental Shelf[4/] could not easily be reduced. On the other hand, the legitimate rights of shelf-locked and land-locked States should not be neglected and there were other factors of a geophysical, economic and political character which should be taken into consideration in connexion with the problem of delimitation. Thus, for example, countries without a continental shelf or with an extremely limited one should not be deprived of access to sea-bed resources.

All those factors had led his delegation to the conclusion that no single depth or distance criterion would be justified, equitable, or workable. The solution might be to adopt a combined depth/distance criterion which would form a sound and realistic approach to accommodation of the various interests involved. The basic objective should be to prevent any excessive national claims inconsistent with the interests of the international community. In that connexion, it should also be emphasized that precise delimitation of the sea-bed area beyond national jurisdiction was a basic prerequisite for a viable and effective international régime.

During the general debate, a number of speakers had suggested that the international régime should be given the power to exploit sea-bed resources directly. In view of the various legal, economic, financial and other obstacles involved, they had tried to put forward some suggestions and arguments which deserved careful consideration but, with all due respect to their views, his delegation was not entirely convinced by the reasons they had adduced in favour of a supra-national institution. It was not a question of deciding whether to maintain the traditional

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4/ United Nations, Treaty Series, Vol.499, p.311.

pattern of an international organization or to search for something new. The establishment of such an institution was neither an intellectual exercise nor the expression of an attractive ideal, but rather an attempt to produce a workable and efficient instrument, based on a realistic assessment of the facts. In the face of the inevitable problems of investment and costs and of the administrative, legal, political and other obstacles, the advocates of a supra-national machinery had taken the line that the institution they contemplated would not embark on direct exploitation of the sea-bed immediately and that their recommendations merely represented long-term objectives. That being so, it was legitimate to ask whether it was reasonable and justifiable to set up an expensive and cumbersome machinery for the sake of the distant future.

The working paper submitted by a group of Latin American countries had gone even further. It would not only give the international authority most extensive powers in many fields, but would actually give it "exclusive jurisdiction" over the international area. That phrase had far-reaching legal implications. The authority would be more than supra-national; it would constitute a super-State and hence would presumably require its own legal system and be involved in a complex law-making process that would be most costly in terms of human and material resources. Interesting though that might be as a Utopian ideal, it would be extremely difficult to realize in practice, given the deep-rooted differences in the international community.

The advocates of an international institution with comprehensive powers had also tried to reduce some of the more obvious drawbacks of their scheme by suggesting such hybrid systems as joint ventures and association of the international body with States or international consortia. He had no need to elaborate further on the other legal and practical problems involved, since the French representative had done so in a most lucid and convincing way in his statement at the ninth meeting.

The problem should be considered from a more realistic and pragmatic angle. An inter-governmental institution with regulating, co-ordinating and supervisory functions could well be both viable and efficient. It should foster international co-operation and promote the rational and orderly exploration and exploitation of the mineral resources of the sea-bed and its sub-soil. The machinery involved, which should be as simple as possible, should be empowered to issue licences to all States for prospecting, development and exploitation. In that connexion, the dynamic approach adopted in the Polish working paper deserved serious consideration.

For the above reasons, his delegation was in full agreement with the basic concept of the international institution contemplated in the Soviet provisional draft articles on the use of the sea-bed for peaceful purposes. There were also, of course, a number of provisions in the other texts before the Sub-Committee, submitted by Tanzania, the United Kingdom, France, the United States of America and Malta, which deserved careful consideration and which might make a useful contribution to the final draft treaty.

For the moment, he wished simply to point out that the assembly or conference should be composed of all States parties to the instrument establishing the institution and that the latter should be open to all States without discrimination. Since the principle of universality was a basic requirement for the effective functioning of the international machinery, it was gratifying to find that it had been embodied in the draft articles submitted by Tanzania and the USSR, as well as in the Polish working paper, and that it had been supported by a considerable number of delegations.

Another important prerequisite for operational efficiency was observance of the principle of general agreement on important decisions. Some delegations had suggested that insistence on that principle, would be tantamount to granting a veto to every member State. That was not his delegation's understanding of the word "veto". In the practice of the United Nations and other international organizations, a consensus emerged after long and sometimes painful negotiations during which all countries made some sacrifice for the sake of reaching a compromise. A veto on the other hand, was a right which was granted to an individual State or group of States in all or specific circumstances and which enabled it to overrule the majority decision.

The secretariat of the institution should be simple and effective. Where the settlement of disputes was concerned, his delegation thought that it would be quite feasible to apply Article 33 of the Charter of the United Nations, unless some special arbitral procedure were established similar to that provided for in the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas[5/] or the draft convention on international liability for damage caused by space

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5/ United Nations, Treaty Series, Vol.559, p.285.

objects (A/AC.105/94). Another possibility would be to attach a special protocol on the settlement of disputes to the basic instrument.

The international institution to be set up would require an international personality of its own with all the necessary attributes, such as treaty-making capacity, and would be entitled to hold property, initiate legal proceedings, bear international responsibility and enjoy the privileges and immunities provided for in Articles 104 and 105 of the United Nations Charter.

In conclusion, he reiterated his delegation's suggestion that, once the over-all consideration of the régime and its machinery had been completed, the Secretariat should be requested to prepare a comparative table or synoptic chart of the various texts submitted to the Sub-Committee. If that suggestion were adopted, it might be advisable to request that all delegations still intending to submit proposals should do so as soon as possible.

Mr. FATTAL (Lebanon) said that the range of the debate in the Sub-Committee had recently greatly widened and the discussions would henceforth be distinguished by the broad scope and complexity which had characterized, and made so difficult, the work of the 1958 and 1960 United Nations Conferences on the Law of the Sea. It was to be hoped that the same degree of vehemence would not be reached and that the results achieved would be more satisfactory than those which had been obtained at those Conferences, which had ended in deadlock.

Despite the Committee's modest title, it had been made responsible under General Assembly resolution 2750 C (XXV) for preparations for the 1973 Conference on the law of the sea. It had been called upon not only to prepare draft treaty articles embodying a régime and machinery for the sea-bed, but also to study "a broad range of related issues", such as the régimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and preservation of the marine environment. The Committee had indeed been discreetly requested to revise the public international law of the sea in its entirety. Full advantage had been taken of the opportunity thus provided and, as a result of the attention given to the related issues, the major problem before the Committee had been relegated to the background. Even the most long-established definitions and terms were being questioned. In view of the vast extension of the scope of the debate, the Canadian delegation had held that the Committee's present misleading title should be replaced by a more exact description - "Preparatory Committee for the Conference on the Law of the Sea".

The effects of the upheaval had been felt in the organization of the Committee's work. The modus vivendi painfully achieved at the Committee's forty-fifth meeting in March 1971 now appeared artificial. The plenary committees and sub-committees which had been established had become virtually identical. Their membership was the same; they followed the same procedure and they all dealt with every subject.

With regard to the régime for the sea-bed, the Committee's sole concern for the common heritage of mankind seemed to be to offer up the choicer parts of that heritage on the altars of national sovereignty. There were several possible means of achieving that end a territorial sea of excessive breadth could be claimed; the adjacent sea could be placed under the trusteeship of the coastal State or the establishment of an ineffective international organization could be advocated. Those three procedures had been used in turn. An organization whose material sphere of competence was extensive but whose spatial sphere of competence was small or restricted to the abyssal depths would be ineffective at the present stage of technological development. Similarly, an organization which was weak ratione materiae and strong ratione loci would be unable to curb the demands prompted by national sovereignty. It was therefore somewhat ingenuous to attempt the detailed elaboration of machinery to regulate the sea-bed before the area to which that machinery would apply had been delimited. As the Polish representative had rightly emphasized at the twelfth meeting, until the frontiers had been fixed, the deliberations of the Sub-Committee might be no more than an academic exercise.

What had been given with one hand must not be taken away with the other. If the sea-bed was the public property of the international community, the more advantageously situated States should not begin by pre-empting a considerable part of it in the form of territorial seas or trusteeship zones. His delegation was strongly in favour of the internationalization of marine resources or rather of their socialization or collective ownership by the subjects of international law. There seemed to be no reason why high sea fisheries should not also be collectivized. In a world suffering from malnutrition, fisheries were just as valuable natural resources as petroleum and metallized nodules. The 1958 Conference had been a flagrant example of the war waged by rich States against poor States. International economic law had since made little progress and had not alleviated the situation. It was difficult to remain indifferent to the arguments advanced, for

instance, by the representatives of the Latin American States. The moving words of the Peruvian representative at the 1958 Conference had, however, passed unheeded. Was the Sub-Committee going to repeat the same mistake and remain deaf to such appeals?

Before commenting on the machinery to regulate the sea-bed, his delegation would endeavour to define the limits of the international public domain. If the coast was taken as the starting point, it was possible to recognize the following zones in which the coastal State would enjoy varying degrees of competence. First, there was the territorial sea - 12 nautical miles to be reckoned from the base lines provided for in the 1958 Convention, with the exclusion of the contiguous zone: by "territorial sea" his delegation understood the area of full sovereignty, which Gilbert Gidel had aptly termed "the submerged territory". Secondly, there was the exclusive fishing zone - 24 miles from the base line of the territorial sea; thirdly, the preferential fishing zone - 48 miles from the base line of the territorial sea; fourthly, the continental shelf - 48 miles from the base line of the territorial sea or the 200-metre isobath, whichever the coastal State preferred, and fifthly, international straits, with maintenance of freedom of navigation.

The territorial sea should not exceed a breadth of 12 miles, since territorial sovereignty presupposed a minimum of effective control. What effective control could a State claim over sea areas several times larger than its own territory? If his country, for instance, extended the breadth of its territorial sea to 200 miles, it would annex a sea area seven and a half times the size of its territory. If Cyprus made identical claims, Lebanon and Cyprus would have to share the sea area between them, in accordance with the principle of the median line. The Lebanese would hardly be in a position to exercise effective control over so large a sea area.

Of the different texts dealing with the international machinery, the one submitted by the representative of Malta would have obtained the Lebanese delegation's support if it had had some chance of success. However, in his delegation's view, it was a futuristic dream, with its strongly structured international organization enjoying legislative, executive and judicial powers and responsibility for maintaining public international order on the seas.

At the ninth meeting, the French representative had rightly expressed apprehension concerning the establishment of an institution which would itself be responsible for exploiting the sea-bed. The idea of an international industrial and commercial organization could not be condemned out of hand. Nevertheless, its

establishment bristled with difficulties and uncertainties. The developing countries had many reasons to distrust the developed countries, but their confidence would be misplaced if they invested it unreservedly in an international organization whose strengths and weaknesses were known to all.

Was it desirable, pending an agreement, to adopt an interim statute on the sea-bed and to declare a moratorium on national claims to the sea, as the Canadian delegation had suggested at the fifty-eighth meeting? There were precedents for interim solutions in the life of international organizations. They could be very useful, but they could be dangerous in situations such as the present one, in which there was a marked conflict of interests. A moratorium and an interim solution might mean failure, endorsement of the fait accompli and perpetuation of the prevailing anarchy. On the other hand, the Canadian idea of the delegation of powers was most promising. That idea should, however, be incorporated into machinery dealing not only with the sea-bed. The interesting draft articles on the breadth of the territorial sea, straits and fisheries, submitted by the United States delegation (A/AC.138/SC.II/L.4), seemed to point to the same conclusion; it called for the establishment of ad hoc machinery to ensure that the proposed regulations functioned correctly. Fisheries were just as valuable economically as the sea-bed and could be exploited for the benefit of the international community; that fact had led his delegation to embrace the idea of an international sea authority, larger than the machinery envisaged for the exploitation of the sea-bed but smaller than the organization proposed by the representative of Malta.

The Lebanese delegation was painfully aware of the multiplicity of problems raised by the use of the sea and of the difficulties involved in solving them. Many public and private institutions, both national and international, were working on them. There was no question of fusing them in a model super-organization or of replacing them, at least in the immediate future. The international sea authority would have the following main functions: first, it would act as a study, documentation and research organ with particular responsibility for publishing marine charts on which the rights of States to different areas would be indicated; secondly, it would operate as a liaison and co-ordination organ between existing institutions; thirdly, it would enjoy modest legislative powers relating to the exploitation of the sea-bed, scientific research, fisheries, conservation of the biological resources of the sea and preservation of the marine environment, such powers being applicable

either to the whole of the marine surface or only to the high seas; fourthly, it would ensure that the freedoms of the sea, or what was left of them, were respected; fifthly, it would have jurisdictional, or at least diplomatic, powers to secure the peaceful settlement of disputes. Such an authority would soon perform a most important public service in the interests of the world economy. If it succeeded in inspiring confidence, its powers would gradually be increased and diversified.

The representative of El Salvador had spoken at the sixty-third meeting of the Committee of the romanticism of those who looked backwards and refused to make the slightest modification in the rules of international law. Yet there was nothing less romantic than positive law, which more often than not sought merely to consolidate vested interests. The real romantics were the developing countries such as Lebanon, which cherished the impossible dream of an international society working for justice and able to see beyond States and distinguish the human beings behind them. Who could help them to realize that dream?

Mr. RIPHAGEN (Netherlands) said that whatever aspect of the law of the sea was under discussion; there was the same choice between two basic approaches, the one placing emphasis on the organized international community of States and the other taking as its starting point the national sovereignty of individual States. That was indeed the option in the whole field of international law and international relations, but it was particularly apparent in problems related to the law of the sea because the marine environment had traditionally had a special legal status based on its unity. In discussing any particular aspect of the law of the sea, it was therefore necessary to keep in mind its relation to other aspects of the law of the sea and also the fundamental importance of the general concept of the legal order that the Committee had been requested to elaborate. The relationship between the different aspects of maritime problems and the ideas underlying their regulation had been clearly expounded by the representatives of El Salvador (A/AC.138/SR.63), Canada (A/AC.138/SR.58) and Malta (A/AC.138/SR.56-57).

In his stimulating statement, the Canadian representative had made some tentative suggestions concerning the possible general shape of the future law of the sea. He had in particular, suggested that much of the administration of that law should be delegated to the coastal States, which should act not only in their own interests but also as custodians of the vital interests of the international community. The notions of delegation of powers and custodianship were very close to the trustee-

ship concept advocated in the United States proposals. The Netherlands delegation considered that the interests of coastal States could be adequately accommodated by a system based on those notions and that the implications of such a system should be studied. What would it mean for a coastal State to exercise delegated powers as a custodian or trustee for the international community? What was the difference between that system and the classical system under which a State had sovereign rights which it exercised subject to certain obligations under international law?

In the opinion of his delegation, such a system would imply functional limitation of the rights of individual States and the exercise of those rights under the supervision of the organized community of States. A functional limitation of the rights of individual States meant that those rights were not sovereign but were conferred for specifically defined objects and purposes. They could not be unilaterally interpreted by the State concerned as implying more than the power actually given.

The difference between that system and the classical system of State sovereignty limited by legal responsibilities might appear to be purely theoretical and without practical consequences. Indeed that would be the case were it not for the other element of the new system, namely, supervision by the organized community of States of the exercise of those functionally limited rights.

Such supervision had a number of implications. In the first place, it implied some form of legislative power exercised by the competent organs of the future international organization. The complexity of the problems to be dealt with, the need for constant adaptation to changing circumstances and the necessary differentiation between regional and local solutions would make it impossible to cover all situations in the rigid set of rules embodied in the constitution of the international organization. While therefore those rules should be as clear and detailed as possible, the competent body of the international organization should be empowered to adopt binding provisions relating to the exercise of the functional power accorded to individual States.

In the second place, it implied acceptance of some form of compulsory settlement of disputes relating to the exercise of the power acquired by a State under the system. The obligation of States under Article 33 of the Charter of the United Nations to settle their disputes by peaceful means was not sufficient. It could not

be stipulated that a State's rights constituted delegated power to be exercised on behalf of the international community unless provision were made for accountability to an impartial tribunal.

In the third place, it implied that in the event of a State's deliberate violation of its obligations as a custodian or trustee for the international community, the competent body of the international organization could terminate the delegation of power to that State. The essence of delegation, as opposed to transfer, of power was that it could be withdrawn if that was necessary to safeguard the objects and purposes of the system.

The precise details of the functional limitation of the rights of coastal States and the degree and system of supervision to be exercised by the community of States over the use of such rights could be fully discussed if it were decided to explore that method of accommodating the interests of coastal States, flag States and the community of States. It was essential, however, that the full implications of the system should be appreciated from the outset. His delegation was prepared to accept those implications and was anxious for detailed discussions to start as soon as possible. Ample material was available, for example, in some of the drafts submitted to the Committee.

Mr. ZARROUG (Sudan) said that the Declaration of Principles adopted by the General Assembly set forth the essential elements on which a régime for the peaceful utilization of the international area of the sea-bed might be established. Certain concepts had emerged from the Sub-Committee's discussion on ways of incorporating those principles in an international régime, but progress was being seriously hampered by the fact that the limits of the area were still unknown.

In the circumstances, the best way in which the Sub-Committee could advance its work was to concentrate on those aspects that were relevant to preparations for the new conference on the law of the sea. That conference would not have an easy task, since it would have to tackle some of the most complicated problems in international law. Its task would, however, be facilitated by the Sub-Committee's work.

The law of the sea had taken shape in the era of colonial empires which had been concerned with freedom of the high seas for their warships and merchant fleets. But the freedom they had desired and sought to codify had been a limited one: the smaller nations had had no navies and their interests, if they had been considered at all, had taken a subordinate place. As the representative of New Zealand had pointed

out at the Committee's sixty-second meeting, the law of the sea as it now existed still bore the marks of its origin.

His delegation, like others, hoped that the conference would deal with the problems of the law of the sea in a new perspective. One of its main functions should be to consider the breadth of the territorial sea and endeavour to draw up principles for its delimitation. It should also explore the possibility of drafting agreed principles applicable to a more limited area subject to the jurisdiction of the coastal States, whose rights over the management of fisheries and the conservation of food and other resources should be preserved and regulated, thus taking into account the rights of States in Asia and Africa which had hitherto been neglected in the face of the rapid advances in the technology of exploration and exploitation of under-sea resources. The area of national jurisdiction, which would include the rights of possession, utilization, supervision and legal protection, would have to be clearly defined before it was possible to identify areas lying beyond it as the common heritage of mankind.

The régime for the area, once defined, should be based on the principle of an equitable distribution of deep-sea resources. The developing countries were entitled to expect that the injustices of the colonial era would be remedied and that they would have their fair share of the resources they so sorely needed.

While there was merit in the proposals concerning revenue-sharing contained in the draft statute submitted by the representative of the United Republic of Tanzania and in the proposals submitted by other delegations, he shared the fears expressed by the Nigerian representative at the tenth meeting that the proposals so far submitted concerning the international régime and international machinery did not include adequate safeguards, or provide the necessary incentives for the benefit of the developing countries.

His delegation fully agreed with the views expressed by the representative of Somalia at the sixteenth meeting and with the underlying implication that the conference should not be over-hasty and should not complete the drafting of the treaty on the international law of the sea until all the proposed articles were largely satisfactory to all parties concerned.

It was important that the establishment of an international sea-bed authority should not impinge on the special rights legitimately acquired by coastal States under the existing law and that the interests of those States should not be

compromised when the authority came into being. Sudan would certainly not view with favour any suggestion that it should renounce its title to that area of the Red Sea in which it had already been carrying out exploratory and prospecting activities for a number of years, since it possessed those rights under existing law. His country's position was justified by legal considerations and by considerations of equality. Its eastern border was formed by a coastline of nearly 800 kilometres along the Red Sea, which represented its only outlet to the high seas. Shortage of rain and groundwater and lack of running water in the Red Sea hills had severely limited agricultural development in that area and the Red Sea fisheries were thus an important source of food.

Desalination of sea water had been envisaged in the development scheme for the region and with the scarcity of mineral resources in the country as a whole, the prospect of using the deep-sea metalliferous brines that had been discovered close to the coast was of great importance to his country's development. He had mentioned Sudan as an example; there were undoubtedly many other coastal States which had begun prospecting and would not wish their rights to be jeopardized.

Unless the discussions took into account the practical considerations relatin to the interests of member States and their development needs, they would be ineffectual and academic.

The meeting rose at 12.20 p.m.

SUMMARY RECORD OF THE EIGHTEENTH MEETING

held on Tuesday, 10 August 1971, at 10.55 a.m.

Chairman: Mr. RANGANATHAN India

later: Mr. SEATON United Republic of Tanzania

In the absence of the Chairman, Mr. Ranganathan (India), Vice-Chairman, took the Chair.

GENERAL DEBATE (continued)

Mr. HUDSON-PHILLIPS (Trinidad and Tobago) said that all members of the Latin-American regional group had voted in favour of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction contained in General Assembly resolution 2749 (XXV). The first of those principles was that the sea-bed and the ocean-floor and the subsoil thereof beyond the limits of national jurisdiction were the common heritage of mankind. The principle of common heritage, though the cornerstone of the proposed international régime, was declaratory and did not establish the legal status of the area. It had, however, been recognized and given juridical content, its main elements having been clearly identified as: ownership and administration of the area by all; non-appropriation of the area by any; and progressive and equitable distribution of the benefits to all in accordance with agreed criteria. Those three elements of the common heritage principle would have to be built into the international régime.

His delegation envisaged the establishment of a system in which the whole of mankind would participate directly in the administration and management of the area and the exploitation of its resources. If, in the initial stages, it was not possible for the international community itself to undertake activities in the area, it might enter into arrangements with other parties for the purpose. Such arrangements must in no way, however, derogate from the fundamental principles of the common heritage, including the element of non-appropriation. A body should be created, therefore, which, as the agent of the international community, would undertake direct scientific investigation, exploration of the area and exploitation of its resources. In the early stages, it would probably be more appropriate for the body to enter into joint ventures, establishing production-sharing and profit-sharing arrangements with other entities, public or private, national or international, rather than issuing licences to such entities.

A licensing or concession system would be inconsistent with the principle of the common heritage. Under such a system, an area was given to an operator, for which he paid royalties, and the area then became more or less his own property, with which he could do more or less what he liked. In the partnership system his delegation envisaged, the entity would operate in conjunction with the international body would be given no licence and would own no part, however limited, of the area or its resources. Ownership of the area and its resources would remain vested in mankind, on whose behalf the international body would exercise exclusive jurisdiction over the area and its resources. It was in terms of that approach that the great majority of the Latin American States represented in the Sub-Committee had examined the question of setting up an international régime (including an international machinery) for the sea-bed and ocean-floor and its resources beyond the limits of national jurisdiction. The result of their examination was the working paper on the régime for the sea-bed and ocean-floor and its sub-soil beyond the limits of national jurisdiction (A/AC.138/49), of which his delegation was a sponsor.

At the present stage, the working paper was no more than a preliminary draft and outline. The five substantive chapters were based on the fundamental principles set forth in the General Assembly Declaration. From the institutional point of view, provision was made for the establishment of an international authority, the supreme organ of which would be a constituent assembly. The executive arm of the authority would be a council, while an organ known as the "international sea-bed enterprise" would be created for the purpose of undertaking technical, industrial and commercial activities in the area. The administrative co-ordination of the work of the authority would be catered for by the establishment of a secretariat, headed by a secretary-general.

In the view of the sponsors, the structure was a simple, rational and practical one. Due regard was paid to the rights and legitimate interests of coastal States and to the principle of peaceful purposes, which was essential for rational and orderly management of the area and its resources. If the principle of the common heritage was to have any meaning, membership of the authority must be open to all States. The authority would be empowered to take measures to combat pollution, to undertake direct exploitation of the area, to train personnel from developing countries in all aspects of marine science and technology and to transfer sea-bed

technology to the developing countries. It would authorize pure scientific research subject to appropriate regulations. Although the regulations in question were not spelt out in the working paper, the sponsors hoped that they would provide for the prompt publication of the results of such research.

The assembly would be empowered to decide from time to time which parts of the area should be open to exploration and exploitation and to establish reserve areas free from exploration and exploitation. Orderly and efficient management of the area and rational exploitation of its resources made it necessary to establish a planning commission within the framework of the authority. It would concern itself with the development and use of both human and material resources in the area and would devise, inter alia, appropriate measures to strengthen the technological capability of the developing countries and to prevent any fluctuation in the prices of raw materials that might adversely affect their economies.

It would be noted that the sponsors rejected any system which would give any group of States a privileged position in the council by reason of their technological superiority. They also rejected any system of preferential voting rights or vetoes for any State or group of States. Land-locked countries were entitled to equitable participation in the council, which should have a membership of at least 35; although a smaller size might be conducive to administrative efficiency, unbalanced representation of different groups or interests would undoubtedly lead to bias.

The international sea-bed enterprise, the organ of the authority empowered to undertake technical, industrial or commercial activities, should have no difficulty in entering into joint ventures or other contractual arrangements with other bodies. The authority would, of course, determine in every case the conditions under which joint ventures or other contractual arrangements might exist. The authority would be perfectly entitled, whether in its constituent assembly or elsewhere, to lay down precise criteria applicable to activities in the area. The enterprise, as co-manager of every joint venture, would have access to work programmes and costs and to all data and charts concerning all areas and would thus be well placed to include in contractual arrangements requirements for the training of personnel from the developing countries and their participation in joint ventures. To enable it to carry out its functions, the enterprise would have to be endowed with its own independent juridical personality, separate and distinct from that of the authority.

The structure of the secretariat put forward in the working paper was intended to be simple and reasonably cheap, at least at the outset. Any commissions or boards the assembly created should be limited to small numbers of technical experts. The enterprise would, in its early stages, be a simple and streamlined structure, which would expand only in proportion to organic needs.

It would be noted that the working paper was silent on certain matters. It did not include a preamble; the formula for the geographical distribution of seats on the council had not been elaborated; and fuller treatment would obviously have to be given to the functions of the enterprise. Nothing had been said on the settlement of disputes, including international responsibility, or on final provisions. Those matters were still being debated. The document was a preliminary one and had been submitted as a working paper to the Sub-Committee to enable members to comment. The sponsors hoped to benefit from the views and observations of others and would be available to discuss the provisions of the working paper with any member or group of members of the Sub-Committee.

Mr. LEVY (Secretary of the Sub-Committee) said that in article 26 of the French version of the Latin American working paper, the figure "36" should be "35".

Mr. Seaton (United Republic of Tanzania) took the Chair.

Mr. KAZEMI (Iran) said it seemed to him that there were two prevailing trends in the Sub-Committee. Some delegations thought the Sub-Committee had reached a stage at which it could embark on the task of drafting articles for the treaty, while others took the view that more thought should be given to the problems involved before drafting began. Since the problem was such a complex and relatively new one, his delegation was inclined to think that the Sub-Committee should beware of hasty decisions.

For the present, therefore, he would confine himself to a few brief general observations. There were two interrelated problems: the delimitation of the international sea-bed area and the régime and machinery to be established. Agreement on one of those problems would undoubtedly have a decisive impact on the other.

The Declaration of Principles, and particularly the principle of the common heritage of mankind, provided a firm basis for the Sub-Committee's work and should be taken in conjunction with the concept of the natural prolongation of the land domain into and under the sea, as reflected in the decision of the International Court of Justice in the North Sea Continental Shelf cases.1/

It was generally agreed that most of the natural resources of the sea-bed which would be exploitable in the foreseeable future were located in the continental shelf. It was likewise understood that the real value of the common heritage of mankind largely depended on the extent of the international area, its resources and the feasibility of exploiting them. The task of striking a balance between the interests of mankind as a whole and those of individual States was no easy one.

The drafts before the Sub-Committee offered a number of solutions to the various problems, including different criteria for the delimitation of the sea-bed area such as depth, distance or a combination of the two. His own delegation was inclined to favour the distance criterion, provided that the distance was such as to protect the interests of the international community, while taking account of the rights of coastal States under the existing law of the sea. It was true that the depth criterion had certain merits, but he felt that the distance criterion was less discriminatory, more precise and more practicable. If the suggested distance of 200 miles was applied uniformly, some 25 per cent of the sea-bed area would come under national jurisdiction. By comparison, the continental shelf, slope and rise had been estimated at 20 to 25 per cent of the ocean floor. It had also been pointed out that a 200-mile off-shore limit would place more than three times as much area under coastal State control than the 200-metre depth limit. Any widening of the areas under national jurisdiction would necessarily mean a reduction in the international area and, in view of the fact that not all countries had an extensive continental shelf and that the exploitation of the resources of the sea-bed beyond the continental shelf would not be feasible or economic in the near future, it might well be that the common heritage of mankind should be evaluated in terms of resources of the sea-bed rather than the actual size of the international area.

1/ ICJ Reports 1969, p.3

As regards the régime and machinery to be set up, the common heritage of ma kind would only be meaningful if the régime was a comprehensive one and the machinery powerful enough to undertake all activities connected with the explora and exploitation of the international area's resources. In the early stages, however, it would hardly be practicable for the machinery to cover all the varic functions and activities and his delegation shared the views of those who sugges a stage-by-stage approach. That, of course, did not necessarily mean that the authority would be prevented from discharging its functions by means of joint ventures with other bodies, as provided for in the Latin American working paper. Nevertheless, his delegation firmly believed that the various functions and attributes of the authority at the various stages should be stipulated from the very outset in the instrument establishing the authority.

The authority's membership should be universal and based on the sovereign equality of member States. The criteria for the selection of the members of the executive organ should be equitable geographical distribution and equitable representation of geographical interests, such as the interests of land-locked a shelf-locked countries. His delegation did not favour any preferential rights o weighted votes in the executive or other organs of the authority.

With regard to the sharing of benefits, his delegation agreed with the representative of Ceylon and other representatives that the benefits derived fro the exploitation of the sea-bed area should be distributed equitably, with due regard for the interests and needs of the developing countries. Such benefits should not be confined to revenue-sharing but must include an equitable particip ation of member States in all activities relating to the sea-bed, as well as the sharing of information, technological know-how and training opportunities.

His delegation greatly appreciated the Secretary-General's report on the possible impact of sea-bed mineral production in the area beyond national juris-diction on world markets with special reference to the problems of developing countries: a preliminary assessment (A/AC.138/36). It would, however, welcome further studies by other competent organs in the United Nations system and, in that connexion, was glad to learn that a representative of UNCTAD was soon to address the Sub-Committee on the subject.

Mr. RAGAL (Mauritania) said that his country had a coastline of over 700 kilometres. Fishing was its second industry and it was prospecting for oil on its continental shelf. The statement by the representative of Malta at the twenty-second session of the General Assembly had made the international community aware of the urgent need to regulate activities on the vast area of the sea-bed and the ocean floor beyond the limits of national jurisdiction, in order to prevent certain technically advanced States from taking over its economic potential. The question had been studied in the United Nations and at its twenty-fifth session the General Assembly had adopted the Declaration of Principles embodied in resolution 2749 (XXV).

The Declaration of Principles, in particular paragraphs 1 and 2, was of vital importance. It stated the fundamental principle that the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, belonged to the whole of mankind; and it raised new and complex problems. Acceptance of the principle implied that each State - developed or developing, coastal or land-locked - was a joint owner of the area; that all exploration or exploitation of the soil or subsoil of the area should be carried out in the name of and authorized by the international community; that the resources derived from exploitation of the area were the common heritage of mankind; that every State which accepted the principle was willing to enter into international economic co-operation; that international machinery would be needed to manage the international area; and that every State was committed to assisting the operation of the machinery so as to ensure exploration and exploitation of the resources of the area for the benefit of all mankind.

Universal acceptance of the principle was an important step in the development of the law of the sea and every State should understand and accept its implications.

On the basis of that principle, the General Assembly had decided in resolution 2750 C (XXV) to convene in 1973 a conference on the law of the sea for the purposes set forth in operative paragraph 2 of that resolution. In the same resolution the General Assembly had entrusted the Committee with the task of preparing for the conference, including the preparation of draft treaty articles on the international régime and international machinery for the area.

The problems before the Committee were important and complex. Some of them, such as the limits of territorial waters, the continental shelf and the area of exclusive fishing rights had already been debated at length at earlier international conferences, in particular the 1958 and 1960 United Nations Conferences on the Law of the Sea[2/]. Some of the questions had never reached the stage of international agreement and remained open; others had been the subject of agreements which were inappropriate in the light of present-day technical progress. Apart from the questions dealt with at the 1958 and 1960 Conferences, the 1973 conference would be concerned with the entirely new problem of the establishment of an international régime and international machinery, as defined in General Assembly resolution 2750 C (XXV). It would have to elaborate a new international law of the sea, broader and more comprehensive than the existing one; the Committee was laying the foundations.

The 1973 conference would have three advantages over the 1958 and 1960 Conferences, which would give it broader representation and better chances of success. First, since the resources of the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction were the common heritage of mankind, all States - developed and developing, coastal and land-locked - would be deeply concerned about what was happening in the area of which they were joint-owners and the preparation of the new law of the sea would be tackled in a new spirit of universality and the desire for international co-operation on the part of all States, based on just and equitable principles. Secondly, many of the countries which would participate in the 1973 conference had not participated in the 1958 or 1960 Conferences, so that the debates would be more representative of international opinion and the results more likely to gain acceptance. Thirdly, with continued technical progress in exploration and exploitation of the sea-bed, the limits of the exploitable area could be expected to recede gradually and ultimately to disappear.

2/ United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.: 58.V.4, vol. I-VII) and Second United Nations Conference on the Law of the Sea Official Records (United Nations publication, Sales No.: 60.V.6).

In connexion with the special task of the Sub-Committee - the establishment of the international machinery - a number of questions came to mind. The first was the delimitation of the zone of action of the international machinery, which involved the definition of the areas of national jurisdiction. Although the question of limits was the responsibility of Sub-Committee II, he wished to comment on it, because the two questions were so closely linked that it was difficult to speak of one without the other. The area under national jurisdiction which concerned the Sub-Committee coincided with the continental shelf, which term was defined in the 1958 Convention on the Continental Shelf[3/] as referring "(a) to the sea-bed and the subsoil of the submarine areas adjacent to the coast but outside the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands". That definition contained the two criteria of depth and exploitability. It gave the coastal State a very broad area, limited only by technical possibilities. The Convention had been in force for nearly 13 years. It defined an international law of the sea which was in force and which some countries not parties to the Convention had used to define their continental shelf. Thus countries had already granted off-shore licences covering zones up to 200 metres in depth, the licensees having affirmed their technical capacity to explore such zones. His delegation would be reluctant to accept the adoption of a continental shelf limit which cut across the established rights of certain coastal States. It would be difficult for a State to renounce an area which it had acquired by law. Any proposal on limits should take into account the existing situation and international practice.

The Declaration of Principles placed the coastal States at a disadvantage compared with their position under the 1958 Convention. His delegation fully supported the idea of an international area whose resources would benefit all the States of the world, including the land-locked States; but it considered that the area should have a reasonable limit which would respect the interests of both the international community and the coastal States. Some developing countries,

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3/ United Nations, Treaty Series, vol. 499, p.311.

including his own, which had turned to the sea through lack of adequate land resources, placed great hopes on the potential of the soil and subsoil of the sea-bed off their coasts. He referred in that connexion to the statement by the Nigerian representative at the 10th meeting. One way of implementing the principle in General Assembly resolution 2749 (XXV) that exploration and exploitation should take into account the interests and needs of the developing countries was to allow those countries an adequate area adjacent to their coast from which they could derive resources direct to help in developing their economies. The aim was to ensure the rational exploration and exploitation of the whole of the sea-bed and the ocean floor and the subsoil thereof, to the benefit of all. The easier areas adjacent to their coasts could be left to the coastal States and all States together should concentrate their efforts on exploiting the more difficult deep-sea zones.

Regarding criteria for the precise delimitation of the continental shelf, two ideas had emerged from the discussion: the depth criterion and the distance criterion. The 1958 Conference had adopted the depth criterion in combination with the idea of exploitability. Since 1958, oil prospecting and scientific research along the coast of different countries had led to a better knowledge of the configuration of the different continental shelves. The breadth of the continental shelf was said to differ appreciably from one country to another, so that the adoption of the depth criterion would give some countries immense areas and others insignificant ones, thus placing some States in a much more advantageous situation than others.

In his opinion, the distance criterion was more in keeping with the general interest. It would be necessary to decide on the limit of the zone of national jurisdiction, which his delegation proposed should be 200 miles. The coastal State would then have the exclusive right to explore and exploit the mineral resources of the soil and subsoil of the sea-bed of the area between its coast and the 200 mile line. It was a reasonable limit in that it left the international machinery a sufficiently large area while safeguarding the interests of the coastal States.

The second question that arose in connexion with the international machinery was its role and powers. It would have two tasks: first, to start the rational exploration and exploitation of the natural resources of the subsoil of the international area; and secondly, to ensure the equitable distribution among all States

of the profits, taking into account the particular interests and needs of the developing countries. The machinery should be given such powers as would enable it to carry out the tasks assigned to it. It should act within the framework of a policy defined by all member States, but should have the freedom of action necessary for the sound management of the international zone.

Regarding the nature of the machinery, two views had emerged from the discussions: one in favour of an administrative body, a kind of international mining department responsible only for granting licences and collecting dues on activities in the area. That system would have the advantage of being cheap and easy to set up and operate; moreover, the risks of research would be borne by private enterprises which had the necessary means. Its disadvantage was that it would mean a policy of "first come first served", so that a small number of technically advanced countries would monopolize the area under the protection of the international machinery. The machinery would have a passive role; and activity in the area would depend solely on private firms, which might ultimately dominate the international machinery through their superior technical and financial means. Moreover, the firms would only accept the risks of research in exchange for a large part of the benefits, at the expense of the share of the international community.

The second view was in favour of strong machinery able to engage in direct exploitation itself. Some delegations had opposed the idea on the grounds that it would involve an unduly cumbersome system and that high operating and other costs would make the machinery unprofitable. There were, however, great advantages. Only strong machinery could effectively apply policies decided on by all States. But if the machinery lacked sufficient means, it would not be able to translate into fact the political will of the international community, and all the fine principles set forth in the General Assembly resolution might become a dead letter. It had been universally accepted that one of the characteristics of the machinery should be that all States should participate in and benefit from it on an equitable basis. That was a just principle which would preserve the machinery's universal character. Its practical application might raise difficulties owing to the inequality of States' initial means, and measures would have to be taken to remedy the situation. In that respect, one of the first tasks of the machinery should be the training of personnel from the developing countries so that those States could participate effectively in the machinery.

The choice of machinery was not an easy one. His delegation considered that strong machinery would be better able to safeguard the interests of all States, but during a transitional period a combination of the two systems should be applied, so that the machinery could grant licences to private firms during that period. If the idea of strong machinery was adopted, its activity would have two aspects. First, it would be responsible for administering the international area of exploitation and would have to draw up international legislation defining the conditions for exploration and exploitation in the area under its authority - who should be entitled to licences; what should be the conditions for obtaining a licence; what activities would be required of licensees; what should be the destination of the products mined and how they should be marketed; how the profits should be shared between the exploiting firm and the machinery. The machinery should also set up a technical control service to supervise all activities in the area - by private enterprises and by the machinery itself - and draw up safety regulations. The mining regulations should specify the nature of the licences to be granted: either they could be long-term concessions in which the enterprise concerned would own the mineral substances discovered and would bear all the costs of exploration and exploitation, the machinery receiving rent in proportion to the value of the products; or the machinery could employ a technically competent enterprise, keep the products itself and bear all the costs and risks, in which case it would need large funds to finance the operations. The kind of licence was closely linked with the kind of machinery chosen. Licence by concession would be appropriate to purely administrative machinery and licence by service contract to strong machinery.

The second aspect of the machinery's activities - still assuming strong machinery - would be to conduct direct exploitation, either itself or through enterprises directly under its control, including research, marketing and the whole range of mining activities. Those operations, especially in deep waters, would obviously require large capital and other technical resources and the machinery would need the effective co-operation of all States.

Another question concerning the role of the machinery was the attitude towards scientific research by a State or States in the area. Since, in accordance with the Declaration of Principles, the area would be the property of the international community, no one should have the right to carry on any activity there without the consent of the international community. In his delegation's view, control of the

area in the name of the international community should rest with the machinery, and scientific research or any other activity in the area should be carried out through the machinery or authorized and controlled by it. That would not hamper scientific research; it would merely take account of the wish expressed in paragraph 10 of the Declaration of Principles.

His delegation would like to see strong machinery set up with wide powers over the international area so as to assure its rational management for the benefit of all mankind.

Another question concerning the machinery was its functioning. The machinery would be an international organ of a new type; its structure would have to be defined, and so would its rules of operation, which should be less restrictive than those of existing bodies. The structure would depend on the type of machinery desired. In the case of strong machinery, the structure must be such as to facilitate rapid decisions; that was essential in the interests of sound economic management. The machinery had the economic aim of administering and managing the international area in such a way as to derive resources for the benefit of all States. It would differ from other international organizations in being a production organization, in contrast to political or service organizations, and would therefore need different rules. Two points should be kept in mind; the machinery should be operational in order to fulfil its role; and it should keep its international character so that all States felt associated with it.

The draft articles submitted by the United Republic of Tanzania (A/AC.138/33), the United States of America[4/], the Union of Soviet Socialist Republics (A/AC.138/43) and other delegations contained useful ideas which would help and guide the Sub-Committee in its work. The main proposals in those drafts were for an international authority composed of a general assembly consisting of all the contracting parties which would elect a council, approve the budget and lay down general policy; a council which would implement the general policy laid down by the assembly, take administrative and technical decisions and be responsible for the exploitation of

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4/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21, (A/8021), annex V.

the resources of the international area; and a secretariat headed by a secretary-general responsible for administrative and technical tasks involved in the functioning of the authority, in particular the appointment of staff.

That system might be satisfactory, but the relations between the council and the secretary-general would have to be defined more clearly. To avoid overlapping of powers the secretary-general should be responsible to the council and act on its directives. He should be elected by the council - as in the United States draft - or by the assembly on the proposal of the council - as in the USSR draft. Other points, such as frequency of meetings of the assembly and council, voting procedure, the membership and composition of the council, on which the drafts differed somewhat, could be settled on the basis of the need for efficiency. The council should be the organ empowered to decide on the granting of licences, for research and exploitation, as in the Tanzanian and USSR proposals. The operations commission envisaged in article 42 of the United States draft or a similar body, could examine applications and submit them to the council for decision.

His delegation had reservations on the proposal that licences should be granted only to contracting parties or their enterprises and that control of exploitation should be exercised through States, since that procedure would distribute the area among a few technically advanced States. Obviously, many countries, especially developing ones, were not yet in a position to start deep-water research and exploitation and therefore could not obtain licences, so the machinery would lose much of its universal character and would operate to the advantage of the few and the disadvantage of the many. Moreover, the existence of an intermediary between the machinery and the exploiting enterprise would lessen the machinery's influence and affect the revenue that it might receive from exploitation by the enterprise.

He would prefer a system of direct contact between the research and exploitation firms and the machinery. Although it could be argued that that method would have the same disadvantages as the other, it would in fact ensure that the international administration maintained direct control over activities in the area concerned, obtained the results of research direct, and could impose the general policy laid down by all States. In the first stage, when it would be essential to accumulate resources, it would be necessary to call on those States which possessed

the technical and financial means to carry out the exploitation. In the second stage, once the machinery had acquired enough revenue, it could apply a policy enabling all countries to participate in operations in the international area.

As for the suggestion that supervision of installations and maintenance of public order should be carried out by the contracting party sponsoring the enterprise, that would be difficult in practice unless each State was allocated a part close to its area of national jurisdiction.

In connexion with the sharing of benefits derived from activities in the international area, the principle of an equitable share for all States, taking account of the interests and needs of the developing countries, should be specified in the treaty articles, embodied in the rules of application and accepted universally from the start.

On the settlement of disputes, the creation of a tribunal was essential. The United States draft contained sound proposals which could serve as the basis for setting up a tribunal.

Mr. WARIOBA (United Republic of Tanzania) said that he wished to explain the reasons which had led his delegation to abandon other methods of delimiting the areas of national jurisdiction in favour of the distance method. Of course, it was not easy to consider one issue in isolation, since all sea-bed issues were interrelated and there was a particularly close link between the question of delimitation and the nature of the machinery to be established. However, the approach to those issues was not necessarily the same, and he would confine himself for the moment to the problem of delimitation.

There were various ways of approaching that difficult question. Some delegations approached it as a problem of mere width - i.e. whether national limits should be narrow or broad. It was argued on the one hand that narrow national limits would make it possible to preserve the greater part of the sea-bed as the common heritage of mankind, thereby benefiting the international community as a whole, but more particularly the developing and land-locked countries. On the other hand, it was argued that broad limits would confer equity on all, especially if the method used was a uniform distance. His delegation respected both views but did not consider the question to be one of narrow or broad limits, for the simple reason that it was not easy to agree on what was narrow or broad.

The question of delimitation was essentially one of arriving at the legal, as distinct from the geological, definition of the continental shelf - a matter in which the historical development of the norms of international law could not be disregarded. There was no evidence to indicate that narrowness or broadness had had any impact on the development of the present definition of the continental shelf. President Truman had not based his 1945 declaration on distance from the coast, but on depth; and the over-riding considerations had been economic - the desire to reserve all the known reserves of fluid minerals to the coastal State. By 1958 the principles of that declaration had crystallized and had found their way into the Convention on the Continental Shelf. In the meantime, however, other developments had taken place. First, it had become clear that the 200-metre isobath gave little in terms of distance to some coastal States; secondly, the possibility had arisen that oil and gas might be found beyond the 200-metre isobath; thirdly, the question of sedentary fisheries had also become a topic of negotiation. As a result the exploitability test had been added, which at that time had applied merely to fluid minerals and sedentary fisheries; nobody had seriously considered the narrowness or broadness of the limits.

The impact of that historical development on the current negotiations was tremendous. There appeared to be a presumption that anything within 200 metres was vested in the coastal State and that, whatever method was adopted all sea-bed areas within the 200-metre isobath should be placed under the jurisdiction of the coastal State. Some sea areas had actually been divided amongst the surrounding coastal States, and nobody had even tried to question that division.

As a result of the exploitability provision in the Convention on the Continental Shelf, claims had also been advanced beyond the 200-metre isobath, and attempts were being made to preserve and protect such claims. Referring to the United States proposal for a trusteeship zone, he said that there was no element in a trusteeship arrangement whereby the international community would be the beneficiary Article 27 (chap. III) of the United States draft convention stated that "Except as specifically provided for in this Chapter, the coastal State shall have no greater rights ..... than any other Contracting Party". However, analysis of the provisions of chapter III revealed that nothing much had been left to other contracting parties. First, article 3 was not applicable, since it was clearly

indicated that the trusteeship area was not open to use by all States; in other words, it was a national area. Secondly, the powers of the coastal State were so extensive that the authority was completely excluded. It was no consolation that the management of the area would be subject to the terms of the convention. The provision in question certainly did not serve the interests of the international community but rather those of the coastal State. Thirdly, chapter III, taken together with appendix A and appendix C made it all too clear that the enjoyment of the benefits from the trusteeship area was almost wholly vested in the coastal State. The only benefit accruing to the international community was a portion of the fees - in other words, a very minor portion of the financial benefits. No mention was made of non-financial benefits. Fourthly, there was no suggestion that the trusteeship arrangement would ever come to an end. It was not intended that the area would ever revert to the international community; it was a sort of perpetual trusteeship area, a national area in disguise.

International law had been developed in that manner in order to safeguard the interests of coastal States in oil, gas and sedentary fisheries. The present attempts to establish precise limits of national jurisdiction by a depth method were attempts to protect and perpetuate the interests of coastal States in those resources. The 200-metre criterion, combined with the trusteeship zone, might extend the coastal State's control as far as the continental rise - i.e. over the entire area which had oil and gas potential and in which sedentary species could be found. In his statement at the 16th meeting, of 6 August 1971, the United States representative had indicated that his delegation was prepared to consider some method of delimitation other than depth for the trusteeship zone. That, however, would not make any significant difference. If, for example, a fixed distance method was used, what would be the starting point? If it was proposed that the 200-metre isobath should be the starting point, the intention would still be the same - namely, to include all the geological continental shelf in the area, in order to reserve all the hydrocarbon potential for the exclusive use of the coastal State. That obvious fact could not be disguised. It was well known that, owing to the geophysical nature of continents, some continental shelves would stretch hundreds of miles into the oceans, while others would end a few miles from the coast. That made it very difficult to determine what was a narrow or a broad limit. The average width of the continental shelf was, of course, about 40 miles, and that had been suggested

as one possible limit: but a general average was not the best method of determining national limits unless it was intended to be uniform. The depth-distance combination meant, however, that what was considered to be narrow should apply to countries with very narrow shelves, while those with broad shelves should have broad limits.

Another problem was that the discovery of hard minerals on the deep ocean floor had led to a completely new situation in which States which had previously considered themselves at a disadvantage had suddenly begun to see some hope that they might reap benefits from the sea-bed. They were, of course, aware that such riches would not be available for some years to come, but that was no discouragement. In 1945 there had been many countries which did not hope to derive any benefits from their continental shelves, owing to the lack of the necessary technology, yet in 25 years the picture had changed considerably, and, in another 25 years, there might be a completely new perspective for hard minerals. The Committee was seeking to establish the law now, so that the coastal States previously at a disadvantage could in the end realize their hopes.

The depth method had been ideal for oil, gas and sedentary species, but was not ideal for hard minerals. For hard mineral exploitation, the larger the area the better - an arrangement which could be best assured by a distance criterion. So the tendency was to think in terms of distance from the coast. However, there was now a consciousness that ocean space belonged to all mankind, and that, although the coastal States had a special relationship with the sea, their economic interests had to be reconciled with the wider interests of mankind. The over-riding consideration was not whether national limits were based purely on the narrowness or broadness of the coastal belt. There was now a compounded problem: some States preferred a depth method of delimitation, while others opted for a distance method. Because of the over-riding interests of the international community, both sides wished to keep the limits as narrow as possible, but because of the special economic and, possibly, military and security interests of coastal States it was difficult to determine what a narrow limit was. A real narrow limit could be arrived at only if a complete break was made with the past. If the depth method was abandoned altogether and a short uniform distance method was adopted, narrow limits could be achieved. However, the realities of international life made such an idea meaningless.

In its original proposal, his delegation had believed that the problem could be solved by a combination of the depth and distance methods, but after extensive consultations it had discovered that it was almost impossible to reach agreement on a narrow distance. After giving the matter much thought, it had decided that the only possible way to reach agreement was to adopt a distance method, although it still had an open mind regarding the actual distance. Various suggestions had been made as to the exact distance, ranging from 40 to 200 miles, and his delegation had listened with interest to the reasons given in support of each suggestion. Its final position would, however, be determined by what it considered equitable in the circumstances - equitable in the sense of striking a balance between the interests of all coastal States and those of the international community. It might opt for less or more than the maximum that had so far been suggested.

Some delegations, in defence of a narrow limit, had made the point that a broad distance arrangement would lead to wide claims and that, when that happened, the interests of land-locked - and perhaps shelf-locked - countries would be prejudiced. It was argued, for example, that if coastal States should stretch their claims to 200 miles, all the areas exploitable at present or in the near future would be under national jurisdiction, and the international area would be left without benefits in the foreseeable future. That argument, which ironically enough was advanced by those who preferred the depth method, was unsound for two reasons.

First, there was no expectation that areas within the 200-metre isobath would be given up by coastal States. Indeed, there appeared to be a determination to cling to areas beyond that depth - a determination which was reflected for example in the trusteeship concept - although it was common knowledge that oil, gas and sedentary species did not exist at greater depths. If the depth method was used, there was virtually no prospect of the international area's yielding any oil, gas or sedentary species. It was, of course, argued that the trusteeship concept would yield something to the international community, but in his delegation's view such benefits could not be regarded as benefits from an international area. Indeed, in terms of benefits in the foreseeable future, the argument was even less convincing. The United States representative had said that the only known deposits of hydrocarbons were within the 200-metres isobath. Thus no exploitation of hydrocarbons in the trusteeship zone was expected in the foreseeable future.

Secondly, it was assumed that a broad limit would deprive the international area of a substantial amount of hard minerals. It was said that, the greater the depth, the better were the chances of exploiting manganese nodules, and that most of the significant experiments which had been carried out for the recovery of manganese nodules had been in deep areas. National limits would cover a relatively small part of the deep ocean floor, unless some States still insisted that far-off rocks and uninhabited small islands which they claimed to be theirs should be entitled to limits of their own. Assuming that exploitation of manganese nodules began in the rich areas - the deep ocean floor - the first proceeds would come from the international area, for the benefit of the international community, including land-locked and shelf-locked countries. Thus the distance method would not have caused any adverse effects as far as hard minerals were concerned. Land-locked States would not be in better position if a distance method was used, but they would not be in a worse position. The position of land-locked countries should be considered not only in relation to the international area, but in relation to the whole ocean. A global or regional solution to the problem should be sought and, as far as the sea-bed was concerned, an arrangement should be made which would benefit land-locked countries not only in the international area but also in the national areas. The question of delimitation would not be determined by the narrowness or broadness of national limits, but by the harmonization of the special interests of coastal States with those of the international community.

It had been said that a distance method which might lead to broad claims was incompatible with the concept of strong international machinery. However, a depth method did not promise much in hydrocarbon resources, and a distance method did not deprive the international area of much hard mineral. The riches of the international sea-bed would be much the same whichever method was adopted. A dramatic change could take place only if coastal States made concessions so that hydrocarbons could be included in the international area. If the international machinery was to be successful, it must be given strong and comprehensive powers; otherwise it would be at the mercy of certain entities and the concept of the common heritage of mankind would be meaningless.

Mr. OXMAN (United States of America) said that he wished to express his delegation's appreciation of the Tanzanian representative's statement, on which it might wish to comment in detail at a later stage. For the time being he merely wanted to state that although there were important oil and gas deposits in the sea-bed beyond 200 metres, almost all important known deposits beyond 200 metres were within the continental margins.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE NINETEENTH MEETING

held on Wednesday, 11 August 1971, at 10.55 a.m.

Chairman:	Mr. FEKETE	Hungary
later:	Mr. SEATON	United Republic of Tanzania

In the absence of the Chairman, Mr. Fekete (Hungary), Vice-Chairman, took the Chair.

GENERAL DEBATE (continued)

Mr. ESPINO-GONZALEZ (Panama) said that the principle governing legal status of the high seas, namely, res unius, res nullius and res communis, was not applicable to the sea-bed, particularly in the conditions created by rapid technological progress. In the absence of any other adequate legal concept, his country accepted the expression "common heritage of mankind" since it realized full well that the sea-bed and ocean floor beyond national jurisdiction and their resources belonged to mankind, which was now entitled to be recognized as a subject of international law and to establish the necessary organs to represent it.

On the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)), therefore, which it had supported, his delegation was in favour of establishing an organ by means of which the resources of the sea-bed could be exploited on behalf of all countries. It had accordingly co-sponsored the working paper on the régimes for the sea-bed and ocean floor and its subsoil submitted by the Latin American group (A/AC.138/49).

On 2 February 1967, the National Assembly of Panama had passed a law decreeing that the sovereignty of the Republic of Panama extended beyond its continental and insular territory and its interior waters to an area of territorial sea 200 nautical miles wide, together with the sea-bed under it and the space above. In doing so, his country had put into effect the proposals of the Declaration on the Maritime Area signed by the Governments of Chile, Ecuador and Peru at Santiago, Chile, on 18 August 1952.

According to that Declaration, Governments had an obligation to guarantee their peoples the necessary conditions for subsistence and a consequent duty to preserve and protect their natural resources. It was also their duty to prevent any exploitation outside their jurisdiction which was likely to jeopardize the existence, integrity and preservation of their vital resources.

Another reason why Panama had extended its territorial sea to 200 nautical miles was to ensure the defence of its territory and to maintain the neutrality of the Panama Canal.

At the 1958 United Nations Conference on the Law of the Sea his delegation had helped to shape article 2 of the Convention on the Continental Shelf[1/] by advocating the inclusion of a provision which, in the report of the International Law Commission, had only been given in the commentary to the article, namely, that the sovereign rights of the coastal state over the continental shelf for the purpose of exploring and exploiting its natural resources were "exclusive". That expression was intended to signify that, even if the coastal State took no action to explore or exploit its continental shelf, no other State had the right to do so without its permission.

There were various aspects of domestic law which would have to be taken into account in attempting to reach a consensus on a régime for the sea-bed and ocean floor. Most countries had laws governing the exploration of mineral deposits within their territory. Thus, for example, the Panamanian Code of Natural Resources declared that all types of mineral deposits within the territory of the Republic of Panama, including the islands, the territorial sea, its sea-bed and subsoil, and the continental shelf, were the property of the State. In addition, an article in his country's constitution contained provisions regulating the property and the rights of the State in that connexion. The proposed régime would thus have to be harmonized with national constitutions, where appropriate, or with mining codes and other domestic laws regulating the subject in the various countries. His delegation agreed with the representatives of Jamaica (A/AC.138/SC.I/SR.6), Iceland (A/AC.138/SC.II/SR.9) and Spain (A/AC.138/SC.I/SR.14), therefore, that any exploration and exploitation activities within the area should, at all times, respect the legitimate rights and interests of the coastal State.

The people of Panama approached the 1973 conference on the law of the sea with considerable caution and no little apprehension. Tired of being economically exploited, they were turning to the sea as a source of their daily bread. If

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1/ United Nations, Treaty Series, vol. 499, p. 311.

through pressure, force or legal craft, they were obliged to relinquish what was historically theirs - as had occurred in the case of the Panama Canal Treaty of 1903 - the citizens of his country would be condemned to die of starvation.

Referring to the proposed visit of the President of the United States to the People's Republic of China, he said that the changes currently taking place in the international situation might well require delegations to reconsider their positions in the Committee, and subsequently at the conference on the law of the sea.

Mr. KALONJI-TSHIKALA (Democratic Republic of the Congo) said that the law of the sea and the questions related to it had always been of concern to maritime States. Until 1958 the participants in conferences on the subject had been the maritime Powers - all with sea coasts, all at more or less the same stage of economic development and all with similar political systems. The legal status of the sea had varied between res communis and res nullius, the latter principle being advanced by States wishing to contest the claims of some of the great sea Powers to dominion of the seas. At present, since no State was making any such claims, the idea of the sea as res communis prevailed and could potentially lead to a state of anarchy. Since the eighteenth century, the principle of the freedom of the high seas had been generally accepted; It applied to all States including, since 1921, those without sea coasts; and it was codified in article 2 of the 1958 Geneva Convention on the High Seas.2/

With the advent of new countries on the international scene, maritime conferences had ceased to be so homogeneous and the principle of the freedom of the high seas was beginning to be restricted. The development of the law of the sea had been accompanied since 1945 by unilateral claims by coastal States to sovereignty beyond the traditional limits.

The United Nations Conferences on the Law of the Sea at Geneva in 1958 and 1960 had reflected that change. The developing countries, participating for the first time, had associated freedom of the seas with colonization, remembering that

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2/ United Nations, Treaty Series, vol. 450, p. 82.

Europe had come by sea to colonize the rest of the world. For them the sea was not so much a waterway as a reservoir of natural wealth, including fisheries.

Thus there was a conflict between the principles of the freedom of the seas and the sovereignty of States over certain parts of the sea. The trend towards extending the area of sovereignty had continued after the 1958 and 1960 Conferences.

Between 1960 and 1971 great economic and scientific developments had taken place. The mineral resources of the sea-bed and the subsoil had become better known and with rapid technical progress their exploitation became increasingly profitable. The problem now was to find a well balanced instrument for international co-operation with a view to exploring and exploiting the vast potential resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction, for the benefit of all mankind.

How could that need for co-operation be reconciled with the unequal development of States, the differences in their geographical location in relation to the sea and their technological level? What should be the limit of the area beyond the limits of national jurisdiction? What régime should be set up for that area and what machinery should be set up for international co-operation?

During the past decade it had become apparent that the Geneva Conventions were outdated. The legal solutions adopted in 1958 no longer corresponded to the scientific facts. The great development of technology had rendered the 1958 rules on the continental shelf inapplicable: mineral resources were now exploitable at depths far beyond 200 metres and the criterion of exploitability would extend the rights of coastal States indefinitely. The adoption by the General Assembly of resolution 2574 A (XXIV) regarding a new conference on the law of the sea, had thus been a wise step.

The nature of the régime and the international machinery to be set up would depend to a considerable extent on the limits of the area. The Committee therefore had to fix the extreme limits of national jurisdiction beyond which international jurisdiction prevailed. That question could only be solved within the framework of paragraph 7 of the Declaration of Principles, which stated that the exploration of the area and the exploitation of its resources should be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into particular consideration the interests and needs of the developing countries. The peaceful use of the

sea-bed required the complete exclusion of national sovereignty; the exploration and exploitation of the seas must be planned internationally, with particular attention to the interests of the developing countries. A tax should be imposed, in the interest of those countries, on the revenues from the exploitation of the resources. That would not exclude the possibility of special consideration for particular cases. Some countries were located in a favourable situation in relation to the sea, others less so. The Democratic Republic of the Congo, for example, with only 37 kilometres of coastline, was still a maritime country whose interests should be protected by the international régime. Its merchant fleet was expanding and needed freedom of movement unhampered by the restrictions of national sovereignty. Its fishing industry, an important source of protein, was developing but was in danger of being stifled by unilateral extensions of national sovereignty over the sea. As a result of prospecting oil deposits had been found on the continental shelf and were likely to be profitable. Marine scientific research was developing slowly and needed greater international co-operation.

All those circumstances maintained nis country's interest in the questions before the Committee, and in particular in the régime for the area beyond the limits of national jurisdiction. It had supported the Declaration of Principles, which it saw as a turning point in the philosophy of the international community regarding the law of the sea. The laisser-aller attitude which had resulted in anarchy and abuses must be replaced by a rational organization, an international régime with powerful machinery capable of using the vast resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction for the benefit of mankind as a whole. The developing countries lacked capital and technological means, but should be able to benefit from those resources. The machinery should therefore be given the power to ensure equitable distribution of the revenues derived from exploitation of the area. It should also be able to supervise production and markets and to prevent excessive variations in the prices of primary commodities. Uncontrolled use of the sea-bed resources in the area might lower the prices of some mineral products and thus restrict the progress of certain developing countries, such as his own, which were producers of primary commodities. The granting of exploration or exploitation licences should be strictly controlled. The rights of the countries lacking capital and technical means should be safeguarded by means of a system of information and control.

The Secretary-General's report on the possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment (A/AC.138/36), prepared in pursuance of General Assembly resolution 2750 A (XXV), stressed the undesirable effects for some of the developing countries of fluctuations in the prices of primary commodities resulting from submarine exploitation. The Democratic Republic of the Congo was the principal producer of cobalt and would be seriously affected by a fall in prices. His delegation was therefore particularly interested in the imposition of a tax, which would act as an automatic stabilizer of the markets of metals likely to be affected by new forms of production, or by compensatory measures which could have a similar effect.

The decision-making machinery should be established in accordance with the democratic rule of "one State, one vote". There should be no veto and no weighted or preferential votes.

The sea-bed resources authority might consist of four main organs: an assembly consisting of all the contracting parties; a small council; a machinery for settling disputes; and a secretariat. The secretariat's functions would include giving technical assistance to the developing countries to help them to catch up in technology and to participate effectively in the activities of the régime. The council should have equitable representation of developed and developing countries, coastal and land-locked countries, countries with a large continental shelf and countries without one or whose continental shelf had special features, and countries with coastlines on closed seas.

Decisions on matters of substance should be taken by a majority of two-thirds.

The problem of limits was undoubtedly the most important and the most difficult. In his delegation's opinion the area beyond national jurisdiction should be as large as possible. Its limits should be drawn in an equitable manner, taking particular account of the interests and needs of the developing countries. His delegation therefore favoured reasonable limits for the territorial seas and continental shelf which would enable all States, whatever their geographical location, to benefit equally from the international régime. The breadth of the territorial seas should not exceed 12 miles. His delegation was opposed to any provision for a trusteeship zone, which would benefit the more powerful States. It rejected the criteria of depth and exploitability, which would be particularly unfair to the African States, whose coastline was extended by only a small continental shelf. It favoured a uniform criterion of distance from the coast.

Mr. KOLESNIKOV (Ukrainian Soviet Socialist Republic) said that the Committee's task of preparing a draft treaty for the establishment of an international régime, including international machinery, for the area and resources of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of the continental shelf and a precise definition of that area had been made easier by the submission of working papers by the Soviet Union (A/AC.138/43), Poland (A/AC.138/44), the United States,[3] Tanzania (A/AC.138/33), the United Kingdom,[4] and France.[5] Those documents, together with any other proposals which might be submitted, would undoubtedly serve as a basis for its future work.

With regard to the régime for the international sea-bed area, his delegation had already pointed out, at the fiftieth meeting of the Committee, in March 1971, that a number of vital principles must be incorporated in the draft treaty, including a provision whereby the use of the sea-bed for military purposes would be prohibited and the resources of the sea-bed and its subsoil would be exploited solely for peaceful purposes by all States, both coastal and land-locked, with particular regard for the interests of the developing countries. Consequently, it would be inadmissible for any State or natural or juridical person to arrogate to itself any part of the sea-bed area concerned, and any claim to, or attempt to exercise sovereignty over, any part of the sea-bed or its subsoil must be rejected.

No objection had been raised to the view that the treaty should not affect the legal status of the waters covering the sea-bed or the air space above those waters, from which it followed that industrial exploration and exploitation of the resources of the sea-bed and its subsoil must not create difficulties for navigation, fishing, scientific research and other marine activities. Such provisions should be clearly stated in the draft articles regulating the procedure for setting up and operating stationary or mobile installations for exploring and exploiting sea-bed resources.

3/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), annex V.

4/ Ibid., annex VI.

5/ Ibid., annex VI.

Another vital principle was that the treaty should be universal and open to all interested States, whether or not they were members of the United Nations or its specialized agencies. Provision should also be made for strengthening co-operation between States in the interests of universal peace and security, for strict observance of the principles and rules of contemporary international law, and for measures to promote the realization of the Purposes and Principles of the United Nations Charter.

As far as the future powers of the international machinery were concerned, the draft articles submitted to the Sub-Committee and the statements made by a number of delegations had revealed substantial differences of opinion. Nevertheless, there were already indications that the divergent positions were in the process of being reconciled, and it might even be said that a measure of general agreement was becoming apparent on some of the principal provisions, including the proposal that the main function of the international machinery must be to supervise and co-ordinate the activities of States with a view to the rational and regulated use of sea-bed resources. Agreement on a number of other important provisions of great significance for the efficient functioning of the international machinery to be established was more doubtful.

At the same time, it had to be recognized that there were a number of essentially controversial provisions, which were unacceptable to his delegation. First, there was the idea of empowering the international machinery to engage in direct exploration and exploitation of sea-bed resources. At the 9th meeting, the French representative had quite convincingly shown the practical and legal unsoundness of the idea and had pointed out a number of possible harmful economic and other consequences which could ensue, particularly for the developing countries. Other delegations had made similar comments. His own delegation was opposed to the idea of direct exploitation. Apart from the objections put forward by the French representative, the establishment of an international organ with supra-national functions was really not feasible under present-day conditions, in a world containing States with different social and economic systems. Would the world consortium be a capitalist or a socialist undertaking, or an enterprise of some other kind? On what principles would its activities be based? Many similar questions could be asked, but it was doubtful whether anyone would offer to answer them. Furthermore, so far no international organization had been

granted powers of direct management, as was evident from the document prepared by the Secretary-General on the possible types of international machinery.[6] In addition, there was the problem of financing the expenses connected with direct exploitation. In the documentation prepared by the Secretariat and in the statements of many delegations it had been repeatedly emphasized that the exploration and exploitation of sea-bed resources was a costly operation requiring enormous capital investment. Where would the international organ find the finance to purchase the necessary machinery, materials, plant and equipment? It was hardly conceivable that, at least in the initial stage, such operations could be financed out of the income from the exploration and exploitation of sea-bed resources. Nobody appeared to be under the delusion that the finance could be obtained by means of contributions from States parties to the treaty. The financial difficulties experienced by intergovernmental organizations such as the United Nations and the ILO were well known, as was the way in which the States bearing the major financial burden reacted to yearly increases in their contributions to the budgets of those organizations. Yet the cost of direct exploitation as proposed by some delegations would be incomparably greater than the largely administrative expenses of existing intergovernmental organizations.

Two sets of proposals had been put forward with regard to the structure of the international machinery. Some favoured a structure with four organs, while others opted for a simple structure with three organs - a conference or assembly, an executive board and a secretariat. His delegation favoured the simple structure.

As far as representation on the executive board was concerned, his delegation agreed with those who felt that the different regional groups of States should enjoy equal representation, with special regard for the interests of the land-locked countries. Proposals to that effect were set forth in some detail in the draft articles submitted by the Soviet Union. The case for the proper representation of the land-locked countries on the executive board had also been most convincingly stated by the delegation of Austria at the ninth meeting and by those of Czechoslovakia and Nepal at the twelfth meeting.

6/ Ibid., annex III.

Another important provision to protect the interests of regional groups of States was the Soviet Union's proposal that the executive board's decisions on the most important matters should be taken by consensus and those on procedural matters by a simple majority of members present and voting (article 23). Such an arrangement was the best way of securing the equality of all States, including the developing countries. Some delegations had expressed doubts regarding that procedure, maintaining that it could make the executive board unworkable. Yet the proceedings of the Committee itself provided the answer to those objections, since it had been agreed earlier that decisions regarding the preparation of a treaty on the peaceful uses of the sea-bed and its subsoil would be taken by consensus. It would therefore be quite logical to adopt the same principle when the provisions of the treaty were implemented, particularly in view of the fact that the executive board would be a body of limited membership. If it could be assumed that the members of the executive board would really want to reach decisions acceptable to all their colleagues, the adoption of the consensus principle would certainly not make the board any less effective.

As it had explained in its statement at the 50th meeting of the Committee, his delegation's position on the delimitation of the international sea-bed area was that due account should be taken of both the depth and the distance criteria. The debate in the Sub-Committee had shown that similar views were held by quite a number of other delegations.

Mr. Seaton (United Republic of Tanzania), Chairman, took the Chair

Mr. SIMPSON (United Kingdom) said that he wished to draw attention to those sections of the United Kingdom proposals for elements of a convention (A/AC.138/46) which related to the powers and functions of the international authority. It was his country's basic proposition that the essential task of the authority should be to issue licences to all States parties to the convention for the exploration and exploitation of the resources of the international sea-bed area in such a way as to provide them all with fair and equal opportunities for direct access to the resources of the area.

Consequently, his delegation was unable to endorse the idea put forward by a number of delegations that one of the authority's functions should be to engage directly in the exploitation of the resources of the international area. Though there were certainly attractions in such an idea, there were also some very substantial difficulties, and he was convinced that his delegation's proposals,

when fully understood, would provide much more effectively for the fair treatment of all States parties. Since the representative of France had lucidly expounded many of the difficulties involved in that idea, he would not dwell upon all aspects, but there were some he wished to mention.

The first was connected with the enormous financial implications of direct exploitation by the authority. It was generally accepted that the authority should be self-supporting and that its activities should be financed out of its revenues. As the Canadian representative had said at the 10th meeting, it would be most unrealistic to expect the States parties or the United Nations as a whole to provide investment capital for exploration and exploitation activities by the authority. There was no possibility for very many years, however, of the authority's having resources of its own adequate to support the enormous investment involved in direct exploitation. Any funds it obtained for that purpose would have to be repaid out of future revenues and would, for a very long time to come, constitute a crippling charge on those revenues. It was true that, if the Committee were to agree to recommend a trusteeship zone beginning at as shallow a depth as 200 metres, revenues might reasonably be expected to accrue to the authority at a much earlier stage of its existence than would otherwise be the case. Even on that basis, however, it would be very many years before any of the international community's money would be available for distribution to States parties.

His delegation also believed that the Committee and the conference would have much more difficulty in agreeing upon an organizational structure for the authority if it were to be given such powers. It would be difficult enough to produce a scheme which would accommodate all interests fairly, even if the authority's main task was to be that of licensing States. Moreover, if the authority were to be a commercial organization investing and controlling vast sums of the international community's money, it would surely develop into an enormous bureaucracy consuming far too large a part of the accruing revenue.

The other suggestion that the authority should engage in direct exploitation by the method of joint ventures with individual States would mean getting the worst of both worlds. The same problems of the financing, control and legal position of an international authority engaged in direct exploitation would arise, while on the other hand little would be done to solve the problem of the equitable participation

of all States parties in the exploitation of the area's resources. Only a restricted group of countries would possess the capital and organization to participate in joint ventures with the authority and many, indeed most, would be excluded.

As for the idea of service contracts, his delegation believed that it would be better for States to enter into such contracts individually rather than for the authority to do so. That would avoid problems concerning the legal and financial position of the authority and would allow of individual variations in the arrangements to suit local or regional circumstances. Most important of all, it would afford the developing States more direct and immediate access to technological knowledge and expertise.

Direct exploitation by the authority was not the only possible way in which to implement the principle that the international sea-bed was the common heritage of mankind. His own delegation's proposals were straightforward enough to permit the early conclusion of a comparatively simple convention which would enable the exploitation of the area to go forward smoothly under international auspices and with early benefits for all.

The central feature of the United Kingdom proposals was the allocation of quotas to all States parties on a fixed and fair basis. It would ensure that the technically advanced States could not obtain more than an agreed proportion of the licences and that every State party to the convention would be able to obtain a fair share.

Since his delegation did not want to see a sudden scramble in which the whole sea-bed was farmed out in a single operation, it proposed that the area should be opened for licensing in a series of stages stretching over a number of years. That would both provide for the orderly development of the area's resources and ensure that the rules and practices of the international community took due account of the experience progressively gained in that new and difficult field. States would not take up their full quotas at the outset. At regular intervals, the authority would invite all States to apply for licences covering a specific proportion of their total individual quotas. Such applications could be for one or more blocks anywhere in the international sea-bed area not already licensed, but the effect would be that only a certain proportion of the international area would be licensed at any one time. Consequently, States would not be forced to take a once-for-all decision as to the location of all the blocks to which they were entitled. Furthermore, they would be able to concentrate their available resources in turn on the exploration and the exploitation of each of the areas acquired.

In the earliest stages, it was to be expected that many countries would find it convenient to make use of the services of companies based in one of the advanced countries. By the time they came tc deal with the areas made available to them at a later stage, however, they would have had the opportunity to develop their own indigenous technology. States would be free to decide their own policy and, within the framework of certain technical requirements, would be able to issue sub-licences as they saw fit.

Some of the remarks which had been made about the undesirability of developing countries depending on foreign-based companies had been much exaggerated. A number of such countries had had relations with companies of that kind for the exploitation of hydrocarbons and other minerals in the shallower waters of the continental shelf. Such relations could be established in many ways and there were many ways in which States could ensure for themselves a just proportion of the income derived from exploitation. There was no reason why such countries, and many others, should not be able to do the same in the parts of the international sea-bed area for which they would obtain licences. By using their quotas in that way, all States parties would have a reasonable hope of early revenues from the international area, a prospect which would be remote under a direct exploitation scheme.

Another feature of the proposals was that States would not be tied to exploiting the areas allocated to them individually but would be able to pool all or part of their quotas with other States and apply jointly for their corresponding share of the licences available. That arrangement might be particularly attractive to some of the smaller States parties, particularly land-locked States and those which did not wish to create an indigenous marine technology.

Countries would not need to put up large sums of capital to obtain their due share of licences but would be able to obtain revenues and acquire expertise from the activities of the enterprises sub-licensed to exploit areas allocated to them. Since there would be a ceiling on the area available to each State party at any particular time, the countries possessed of large capital and technological resources would be unable to obtain more than their fair share of the international area.

His delegation believed that the fundamental principles he had expounded would make a comparatively straightforward convention possible and ensure access to the resources of the sea-bed area to every State party in conditions which would be fair to all. They would do so in a more practical way than could be hoped for through the interposition of an international machinery exploiting the resources on behalf of the international community.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE TWENTIETH MEETING

held on Friday, 13 August 1971, at 11 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. MONCAYO (Ecuador) said that the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof beyond the Limits of National Jurisdiction adopted by the General Assembly in resolution 2749 (XXV) was of fundamental importance; they marked the start of the complex process of establishing international law to govern the development and preservation of the marine environment. The Sub-Committee had the task of preparing a draft international régime to implement those principles. It was a difficult task with far-reaching political, legal and technical implications. The first step was to ascertain whether the necessary will existed to create new and just standards of law and reject an outdated legal system that had been established to protect the interests of the powerful States. The principle that the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction and their resources were the common heritage of mankind meant that the methods of the past were no longer appropriate.

The most complex factor involved in establishing the international régime was the gap between developed and developing countries and the consequent disparity in their capacity for benefiting from the common heritage. The régime should be of a type which would help to speed progress in the countries where it was most needed and thus diminish the gap.

In his delegation's view, the principle could not be implemented by means of the traditional system of licences and royalties, which would discriminate in favour of a few developed countries and their large enterprises. For the remainder, the concept of the common heritage would merely mean the hope of some financial benefit, directly or through international organs, derived solely from licences and royalties after deduction of operating costs. The licensing system had been presented as having the advantage of simplicity; but the complex problems involved in introducing an entirely new principle could not be resolved by that criterion. The system was based, moreover, on the false principle that

the most important aspect for the developing countries was the financial benefit to be obtained and distributed by the international authority, without regard to factors that those countries themselves considered far more important, such as technological competence, participation in productive activities in the international area, rational exploitation of its resources and avoidance of adverse effects for the countries producing hydrocarbons and minerals. The régime must not become another means of aggravating existing problems such as technological dependence.

Under the licensing system, only the few countries and enterprises which were equipped to make use of licences would have the necessary resources to pursue technological progress. Such progress was usually passed on to the developing countries in the costly and inadequate form of patents, proprietary goods and exports of capital goods which increased costs for the enterprises of those countries. The net result would be to exclude them from direct exploitation of the sea-bed resources beyond the limits of national jurisdiction. Moreover, under those conditions it would be very difficult for them to acquire the necessary competence to exploit the sea-bed resources under their national jurisdiction.

The enterprises obtaining licences, which would be eager to derive the greatest possible profit and had all the means at their disposal, would be able to embark on intensive exploitation of the sea-bed, which would be very difficult to control and would seriously harm the developing countries producing the primary commodities concerned. The suggestion made by one delegation that licences should be granted to all States in respect of specified areas of the sea-bed beyond national jurisdiction for them to use themselves or sub-licence to the enterprises of other States, would in his opinion be equivalent to parcelling out the international area and would thus violate the principles set forth in the Declaration of Principles.

For all those reasons, his delegation favoured the joint enterprise system described in the working paper on the régime for the sea-bed and the ocean floor and its subsoil beyond the limits of national jurisdiction presented by the representative of Trinidad and Tobago on behalf of a number of Latin American delegations, including his own (A/AC.138/49). The document was intended to

serve as a basis for a just and adequate régime in conformity with the Declaration of Principles. Under the system it proposed, the international authority would be given power to undertake scientific research, conservation, exploration and exploitation in the international area, either itself or through or in association with persons or bodies of all kinds by means of joint enterprises or service contracts, as the best means of ensuring that all countries shared in technical progress. The authority would organize rational exploitation of the resources and ensure the equitable distribution of financial and other benefits derived from resources beyond the limits of national jurisdiction.

The main interest of the developing countries in the initial stages would be to acquire the capacity to explore and exploit the resources under their national jurisdiction, with the greatest possible degree of direct participation. The necessary measures should be taken to prevent and combat pollution and the ultimate aim should be for them to develop the necessary capacity to undertake productive activities in the international area jointly with the authority in due course. To that end it was essential for active participation to start as soon as possible in the use of the area beyond national jurisdiction, through the machinery proposed in article 16 of the Latin American draft, namely: the employment of qualified personnel from developing countries in the activities carried out by the enterprise itself or through joint ventures or service contracts; the location of processing plants in the developing countries as a matter of priority; the establishment of regional oceanographic institutions; comprehensive technical assistance programmes; and the establishment of appropriate bodies in the developing countries to undertake joint ventures with the international authority as soon as possible.

Another important point in the Latin American proposal was that the authority should be given the power to organize and plan the use of the resources of the international area, as the most appropriate means of avoiding adverse effects for the developing producer countries of oil and minerals. The Secretary-General's excellent study on the possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment (A/AC.138/36) indicated that for technical and financial reasons resources obtained from the

sea-bed would for some time to come only be a supplement to those from other sources. But the statement in the study that no serious adverse consequences were anticipated for developing producer countries of oil, copper, nickel, cobalt and manganese would not be justified unless the volume of the exploitation was limited to what was essential to supplement other resources and to meet rising demand. That would call for regulation of the exploitation of the international area and of the marketing of the minerals by the international authority, rather than artificial methods of compensation which would in practice be very difficult to apply. The financial benefits were not the most important and would not depend on whether the operating costs of the international authority were marginally greater or smaller. For all those reasons, the volume of resources obtained from the international area could not be very great, at least for several decades, and the profits obtained by the international authority, no matter how small the cost, would be insignificant compared with the growing needs of the developing countries. For those countries progress would depend essentially on their own efforts and their capacity to apply new techniques and to incorporate new areas and new sources into their productive processes.

Nevertheless, the international authority's revenue could be greater under the joint enterprise system, than under the licensing system because it would not depend on one source alone. It would be derived at different stages of the process of research, conservation, exploration and exploitation and also from the remunerative prices it would obtain for its products if the prices of oil and minerals could be stabilized. With the licensing system, the authority's revenue would consist solely of payments by licensed enterprises which would tend to be small in order to leave them an adequate margin of profit and incentive, after covering costs of research and development for technology and possible differences in mining costs.

He accordingly considered that the cost of operating the international authority was not a crucial factor in the problem of benefits. He did not believe that the authority would become self-supporting very soon, even under the licensing system. There would certainly be a financial problem, which the Sub-Committee would have to deal with at the appropriate time; but he did not regard it as a serious objection to the Latin American proposal.

The proposed authority would have wide powers and be able to distribute financial and other benefits equitably among all the developing countries at every stage of the process. By diversifying the benefits it would be easier to find suitable ways of meeting the legitimate aspirations of the land-locked countries and give due consideration to the differences between developing countries.

The authority should be as universal as possible and its constituent bodies should be as broadly representative as was compatible with efficiency and flexibility. It should be essentially a productive body, provided with the best possible administrative and organizational facilities. By its very nature, it would not operate on one system only, nor operate in the same way in every area or in every case. The proposals were neither complete nor perfect: they were a basis for innovation and required universal support to be perfected.

His delegation considered that it was not the Sub-Committee's task to formulate recommendations on the limits of the international area because they were inseparable from the limits of national jurisdiction. As far as Ecuador was concerned, the international area of the sea-bed started at the 200-mile limit and any attempt to limit it by the depth criterion would be wholly unacceptable. A number of other delegations had adopted the same position.

The CHAIRMAN said that in response to requests by a number of delegations, he now proposed to invite a representative of UNCTAD to make a statement.

Mr. MAIZELS (United Nations Conference on Trade and Development) made a statement.1/

Mr. DEUSTUA (Peru) requested that the statement by the representative of UNCTAD should be issued as an official document of the Sub-Committee and that it should also be annexed to the Sub-Committee's report, along with the Secretary-General's report on mineral production (A/AC.138/36).

His delegation hoped that the subject would continue to be considered in UNCTAD as well as in the Sub-Committee and that UNCTAD would continue to participate in the Sub-Committee's work.

The CHAIRMAN pointed out that the Peruvian representative's request had financial implications and would therefore require a decision by the Sub-Committee.

1/ The complete text of the statement was subsequently distributed as document A/AC.138/SC.I/L.5.

Mr. PRIETO (Chile) supported the Peruvian representative's request.

Mr. LAPOINTE (Canada) said that the UNCTAD representative's statement, though very welcome, had essentially been a preliminary view of an extremely complex problem. The full text should be made available, but UNCTAD might be reluctant for it to become a permanent document of the Sub-Committee. Perhaps it could be made available to members without becoming an official document.

Mr. OLMEDO VIRREIRA (Bolivia) considered it most important that UNCTAD should closely follow all aspects of the exploitation of marine resources; the co-operation of other bodies was sometimes under-estimated. The UNCTAD representative's statement, though preliminary, should be included in the Sub-Committee's report.

Mr. STEVENSON (United States of America) asked whether the Secretary-General's report on the same topic would also be included in the Sub-Committee's report.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that there were two questions involved: the publication of the UNCTAD statement as a separate document and the inclusion of that document in the Sub-Committee's report. On the first, he understood the wish of previous speakers, that the Sub-Committee's documentation should fully reflect questions with economic implications, but it should be remembered that the General Assembly had adopted a number of decisions calling for limitation of documentation. On the second, he noted that it was normal practice in United Nations bodies when there were financial implications for the Secretariat to give an estimate of the figures involved. In any case, the suggestion that the statement should be annexed to the Sub-Committee's report was premature since the draft report did not yet exist.

He would suggest that the statement should be included in full in the summary record and that the question of annexing it to the report should be considered when the draft report came up for discussion.

Mr. ZEGERS (Chile) pointed out that operative paragraph 3 of General Assembly resolution 2750 A (XXV) requested the Secretary-General, in co-operation with UNCTAD, to keep the matter under constant review. Publication of the UNCTAD statement as an official document to be annexed to the Sub-Committee's report would simply be implementing that resolution. Obviously there were financial implications, but the General Assembly had authorized the Committee to spend up to a certain amount, so that there would be no need for a new allocation.

The CHAIRMAN suggested that the Sub-Committee should decide on the question of issuing the statement as a document and defer the question of its annexation to the report until later.

Mr. POLLARD (Guyana) said that the statement should be circulated as widely as possible for comment. He disagreed with the Ukrainian representative. The Committee had taken many decisions with financial implications and there was no reason to be particularly worried about financial implications in the present case. He supported the Peruvian representative's proposal that the UNCTAD statement should be published in full and annexed to the Sub-Committee's report along with the Secretary-General's report (A/AC.138/36).

Mr. RUIZ-MORALES (Spain) supported the proposal that the UNCTAD statement should be published in full as an official document of the Sub-Committee.

Mr. PAVICÉVIĆ (Yugoslavia) also supported the proposal. There were precedents for such a decision.

Mr. TUKURU (Nigeria) said that the UNCTAD statement was too important for its circulation to be restricted by financial considerations.

The CHAIRMAN, summing up, said that the Sub-Committee, having heard the statement by the UNCTAD representative, considered that it should be reproduced in full. Some considered that it should be reproduced in the summary record, others that it should be issued as an official document and others again that it should also be annexed to the Sub-Committee's report along with the Secretary-General's report. Reference had been made to the financial implications and to the need to reduce documentation. On balance, the majority view seemed to be in favour of publication as an official document, leaving the question of annexation to the report to be decided later.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that the question whether the statement should be published as an official document or not was of little importance in itself. Attention had rightly been drawn to the financial implications, however, and it was normal practice for the Secretariat to give a preliminary estimate in figures. So far, no sum had been mentioned. He did not necessarily intend to object to publication of the statement, but he did not want a precedent to be created for taking decisions without knowledge of the financial implications. He appealed to the representatives concerned not to press for an immediate decision but to give the Secretariat time to make a preliminary estimate of the financial implications, so that a decision could be taken later in full knowledge of the facts.

Mr. LEVY (Secretary of the Sub-Committee) said that publication of any document automatically had financial implications. In the present case, however, the document was a short one and the cost of reproducing it could probably be absorbed in the financial provision already made by the General Assembly. He could not at the moment state the exact cost of reproduction.

Mr. FONSECA (Colombia) supported the proposal of the other Latin American delegations. He did not understand the opposition to the proposal to annex the statement to the Sub-Committee's report, since it was short, there were no financial implications and the Secretary-General's report would be annexed in any case.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that he understood from what the Secretary had said that there would be no financial implications. His delegation would therefore not object to the publication of the statement as an official document of the Sub-Committee.

He suggested that the question of inclusion of the statement in the Sub-Committee's report should be considered when the draft report came up for discussion. The matter was not really urgent enough to need an immediate decision.

Mr. de SOTO (Peru) said that the Sub-Committee seemed to be agreed that the statement should be published as an official document. With regard to the question whether it should be annexed to the report, his delegation had made its proposal on the assumption that the Secretary-General's report was to be annexed. He would be prepared to leave the question until the Sub-Committee considered its draft report.

Mr. OXMAN (United States of America) said he hoped that the Rapporteur would keep in mind the importance of financial implications in preparing the report.

The CHAIRMAN asked if the Sub-Committee agreed that the statement of the UNCTAD representative should be published as an official document.

It was so decided.

Mr. JAGOTA (India) said that he wished to concentrate on two questions: the international régime for the sea-bed and its resources, including the structure and functions of the international machinery, and the delimitation of the international area.

With respect to the former question, the groundwork for the new law of the sea-bed had already been laid by the Declaration of Principles. It was no longer possible, therefore, to dispute the existence of the sea-bed area or to argue that it and its resources were res nullius or res communis and therefore open to all for exploration and exploitation on the basis of the freedom of the seas. Nor could it any longer be argued that exclusive title to the area or its resources could be lawfully acquired by discovery and occupation. The Declaration had described the area and its resources as the common heritage of mankind and had carefully spelt out the legal nature of that concept. In view of the virtually unanimous support it had received in the General Assembly, it should be regarded as constitutive of the new legal principles it contained.

The basic difficulty involved in setting up the international régime and establishing appropriate international machinery was that of delimiting the international area, which, seen from the other angle, meant defining the limits of national jurisdiction.

There was an existing legal régime on the continental shelf, but its outer limits were elastic. Consequently, States had proceeded to claim and exercise rights over areas of the sea-bed and their resources which were neither adjacent to the coast nor limited by any criterion of water depth or distance from the coast. It was necessary to find a fair and reasonable solution to the question of national limits, and until that was done, States were obliged to abide by the moratorium provided for in General Assembly resolution 2574 D (XXIV).

It was to be hoped that the 1973 conference on the law of the sea would be able to establish a generally acceptable international treaty of a universal character, embodying the new jus cogens, which would be binding on all States. The draft articles and other proposals put forward by a number of delegations were to be welcomed in that connexion. In particular, mention should be made of the proposal[2/] submitted by the representative of Malta, Mr. Pardo, the founding father of sea-bed law; his vision might appear to be a dream rather an a reality, but the Committee should endeavour to move reality as far as possible towards the dream.

2/ Subsequently distributed as document A/AC.138/53.

At the tenth meeting, the Canadian representative had dwelt at length on the question of how the principles of the Declaration should be embodied in the régime and whether modifications would be necessary to protect, for example, the interests of coastal States and to allow for the interconnexion between sea-bed activities and other uses of the sea. His valuable proposals should be considered by a working group which would then report tc the Sub-Committee.

His own delegation's tentative views concerning the structure and functions of the international sea-bed machinery were as follows. First, the machinery should be entitled the International Sea-Bed Authority, membership of which should be open to all States becoming parties to the convention on the sea-bed. All States should be eligible to participate in the 1973 conference and become parties to any conventions it adopted. Secondly, though the authority's powers and functions should be comprehensive, it should concentrate particularly on exploration of the international sea-bed area and exploitation of its resources, protection of the marine environment and prevention and control of pollution, scientific and technological research and peaceful uses of the sea-bed. Thirdly, its functions would have to be co-ordinated with those of other international organizations active in the various fields, although it might not be necessary or desirable for the authority to be organically linked with the United Nations or any other international organizations. Fourthly, the authority should have a simple, functional structure; a large and expensive secretariat should be avoided, particularly at the initial stages.

The chief function of the authority, which would be the trustee for mankind, would relate to the rational and orderly management of the sea-bed and its resources. The chief question that then arose was whether the authority should itself perform that function or whether it should leave it to States, persons and institutions having specialized skills, equipment and facilities for the purpose, which were able and willing to invest the capital required.

Under the first alternative, the authority would have to find investment capital and the operator, technician, consultant or supplier of equipment, skills or services would be the authority's servant, contractor or partner. Under the

second alternative, the authority would grant licences to operators and would lay down the terms and conditions governing them. Since it would not invest capital, it would not run any risks. Its revenue would come from the fees, rents and royalties paid but the profits would go to the licensees, who would also have to bear any losses.

The advocates of the former system emphasized the philosophy of the common heritage of mankind, of which that system appeared to them to be the necessary corollary. The proponents of the second approach emphasized the need to provide incentives for those qualified to engage in production and argued that increased production from sea-bed resources would both meet material needs and provide steadily growing revenue for the authority. The second proposal had also been defended on the grounds that at the present stage international relations were still based on the sovereign equality of States and that the idea of a world organization engaging in business with its own resources was still a premature one. There was also the fear that a supranational body of that kind would not function effectively: either it would be dominated by capitalist combines or there would be constant litigation between the authority and the operators.

At the national level, his own country had adopted a mixed approach to the exploration and exploitation of land minerals by establishing government-controlled corporations to enter into business in a specified area, while leaving other areas to private licensees or lessees. He wondered whether it might not be possible for the authority to adopt a similar approach in the initial stages of its work. It might reserve to itself the preliminary survey and exploration of the sea-bed, with the assistance of consultants and technical experts. It might then specify a particular area for detailed exploration and exploitation, divided into manageable sectors. A portion of the area might be reserved for direct exploitation by the authority itself, while the remainder would be made available to States or groups of States.

As far as possible, the authority should be careful to ensure unity of resources when issuing licences, so that conflicts between operators might be avoided. It should issue licences to its own business organization as well as to States and other operators, avoiding any discrimination. At the initial stage, care should also be taken to open up areas as far removed from the coasts of neighbouring States as possible, in order to minimize conflicts with coastal States, while ensuring the co-operation of the coastal States in the supply of services, equipment, personnel and so forth.

If that broad approach was adopted, the structure of the organization should consist of: (a) an assembly; (b) a council; (c) an economic and technical commission; (d) a sea-bed corporation; (e) a settlement tribunal; and (f) a secretariat.

The assembly, which would be composed of the representatives of all member States on a basis of equality, would be the principal organ of the authority, would exercise all the powers vested in the authority and perform all its functions. It would meet biennially, or even annually, to perform its organizational functions, approve the major decisions taken by the other organs of the authority and give general policy directives. The council would be a smaller body of, say, 35 members, three of which would be land-locked States. It would represent the principal geographical areas of the world on an equitable basis and would be continuously in session. It would take major decisions, supervise and control the subsidiary organs and, from time to time, report to the assembly. In fact, therefore the council would be in over-all charge of the functioning of the authority in all fields of its activity. It would devise its own rules of procedure and establish subsidiary organs or committees as necessary. In both the assembly and the council, decisions on substantive questions would be taken by a two-thirds majority.

For the exploration and exploitation of sea-bed resources and related matters, an economic and technical commission should be established. It would be an advisory body of experts consisting of 10 government representatives and would be authorized to co-opt up to 5 persons with a specialized knowledge and experience in the field of sea-bed technology and related matters. The 10 members could be elected by the assembly upon the recommendation of the council and would have a term of office of five years. It would be a full-time body in continuous session. The remuneration and other conditions of service of its members would be settled by the assembly, and recommendations of the council. No person with a pecuniary interest in any undertaking relating to the exploration of the area or the exploitation of its resources should be eligible for membership of the commission.

The function of the commission would be to aid and advise the council, by undertaking such special studies and reports as the council might request. It should inter alia, concern itself with the following: (a) rules and regulations for the exploration of the area and exploitation of its resources, (b) consideration of applications for licences, making recommendations to the council concerning the issue, modification or revocation of a licence; (c) recommendations on the criteria for distributing benefits arising from sea-bed activities, together with specific proposals in actual cases, (d) constant review of the conditions of supply and demand and the prices of raw materials from the sea-bed area in comparison with those obtained on land, making proposals regarding the storage, pricing and marketing of sea-bed production, with special regard to the particular interests of the developing countries; (e) developing both short-term and long-term plans concerning the sea-bed area and making specific recommendations concerning the area to be opened for exploration and the portion to be reserved to the authority for exploration and exploitation.

It could perform those various functions either itself or by establishing sub-commissions for specific aspects of the different activities.

For the direct exploration and exploitation of the portion of the sea-bed area and its resources reserved to the authority, there should be established a sea-bed corporation with a legal personality of its own, its own share capital and its own budget. Since the corporation would be an industrial, commercial and business organization, its composition, share capital, powers, methods of work and other related matters such as the composition of its board of directors would have to be given careful consideration. It would function in accordance with the general policies of the assembly and any special directives given from time to time by the council, on the advice of the economic and technical commission. The corporation would be the authority's manager for the reserved area and might function either directly or through its agents or in collaboration with member States or operators sponsored by them on a production-cum-profit-sharing basis or otherwise. It should thus be given the powers to design, develop, construct, establish, purchase, operate and maintain equipment and facilities necessary in connexion with the performance of its functions and should be empowered to enter

into contracts. It should make every effort to obtain equipment, services and facilities from as many and varied sources as possible so as to enable sea-bed technology to develop in all States and particularly in the developing countries. All consultants, suppliers or personnel would be its servants, contractors or partners and would, in all cases, serve the aims of the authority.

The authority would have to establish a procedure for the settlement of disputes but his delegation had not yet made up its mind as to the precise form it should take. It had been variously suggested that a special tribunal should be established with compulsory powers, that disputes should be referred to the International Court of Justice either for settlement or for an advisory opinion and that the function should be performed by the council itself. The various proposals would require careful consideration but, in any case, some type of procedure would be required to ensure that disputes were solved fairly and promptly.

The secretariat should be headed by a secretary-general elected by the assembly for a period of five years on the recommendation of the council. The secretariat should not be top-heavy and care should be taken to appoint staff who were committed to the aims of the authority.

The second crucial question was the definition of the sea-bed area or, alternatively, the limits of national jurisdiction. If no legal régime had existed in the area already, it might not have been absolutely necessary for the committee to define the limits of national jurisdiction, since the international régime for the sea-bed could have been established in much the same manner as the régime of the high seas, the freedom of fishing or freedom of navigation. In the case of the sea-bed, however, peculiar difficulties were encountered as a result of the complexity of the existing legal régime which, consequently, would have to be defined more precisely on a fair and equitable basis. The existing international legal régime, in part established by the 1958 Convention on the Continental Shelf[3/] and in part by general international law, was extremely elastic. In 1956, in the International Law Commission it had been deemed desirable to permit coastal States to exploit the resources of the continental

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3/ United Nations, Treaty Series, Vol.499, p.311.

shelf beyond the 200-metre depth, if that should become feasible in the future.[4] Since, according to the best estimates of the day, exploitation would not be feasible beyond a depth of 50 or 60 metres in the foreseeable future, the Commission's recommendation had been considered a safe one and the double criterion of depth and exploitability had ultimately been accepted by the 1958 United Nations Conference on the Law of the Sea and embodied in article 1 of the Convention on the Continental Shelf.

The rapid technological developments since 1958 had rendered the exploitability criterion extremely elastic and made the outer limits of the continental shelf a matter for dispute. When, in 1969, the International Court of Justice had delivered judgment on the North Sea Continental Shelf cases,[5] it had not pronounced upon the implications of adjacency for the outer limits of the continental shelf, and some international lawyers and States have taken the view that its remarks might be held to authorize coastal States to claim exclusive jurisdiction over the continental margins, including the continental shelf and slope, as being the natural prolongation of the continents.

The breadth of the continental shelf was not uniform for all continents or all countries and, if the entire continental margins were added to the natural prolongation of the continents, the variation would become greater still. It was for that reason that the representative of Tanzania had at the fifth meeting described the existing régime as inadequate, inequitable and out of date, and had suggested a new approach to the problem.

In general, the courses open to the Committee and to the 1973 conference on the law of the sea would be the following: to adopt a limit of national jurisidiction; to allow the position to be regulated by the present Convention on the Continental Shelf and general international law; or to allow the matter to be regulated by unilateral State proclamations. Either of the latter two alternatives would be a counsel of despair. All efforts should be concentrated on the first alternative, namely the adoption of a uniform, fair and viable limit of

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4/ See Yearbook of the International Law Commission 1956, Vol.I, pp 130 et seq.

5/ ICJ Reports 1969, p.3.

national jurisdiction, bearing in mind the interests of the States concerned and the rights already acquired by them under the existing legal régime. Various criteria could be adopted: a uniform depth criterion of 200 metres which would perpetuate the existing geological variations: a depth-cum-distance criterion, which would be difficult to adopt if the broader-shelf countries preserved the 200-metre depth for themselves and prescribed the average breadth of the shelf to the narrower-shelf States - the distance to be combined with depth would have to bear an equitable relation to the extent of the area covered under either system; and a straight distance criterion.

His Government tentatively preferred a uniform straight distance criterion. The precise distance, however, would be a matter for consultation within the international community. If it was too narrow, it would affect existing rights and if it was too broad it would be opposed by the land-locked countries and others. His delegation had been impressed by the arguments advanced by a number of representatives in favour of a uniform breadth of 200 miles measured from the appropriate coastal baselines. Such a breadth would ensure the continued enjoyment by coastal States of the resources of the continental shelf they were currently exploiting. It would also give other coastal States a similar and equal opportunity to look to sea-bed resources for their economic development.

Mr. ABDEL-HAMID (United Arab Republic) said that one of the main features of contemporary international relations was the proliferation of international organizations, the number of which by now probably exceeded the number of States Members of the United Nations. Consequently, increasing importance had to be attached to such organizations - both to their legal aspects and to their impact upon relations between States. Indeed, if the legal aspects were dealt with properly, the framework for political action by States would then clearly emerge as well.

His delegation's basic approach to the international régime to be established was determined by the fact that the General Assembly in its resolution 2749 (XXV) considered the sea-bed and the ocean floor beyond the limits of national jurisdiction and their resources to be the common heritage of mankind, which could not be claimed by individual States or groups of States. The prospects of exploiting those areas for peaceful purposes were no longer remote, owing to the

progress of science and technology. A body to act on behalf of the world community therefore had to be agreed upon. It should be given sufficient authority to cope with the problems inherent in multilateral co-operation, to secure an orderly development of the areas beyond national jurisdiction, to ensure that obligations voluntarily entered into by States were adhered to, and to ascertain that common objectives had been generally attained. In that connexion it had to be considered whether the objectives to be attained were similar to those of the specialized agencies or whether a more elaborate machinery also incorporating a political element should be set up. The question was particularly relevant with regard to the machinery and its regulatory authority, since States would be acting together to co-ordinate activities which, some years earlier, had been considered as falling exclusively within the domain of national jurisdiction. International organizations were now, in fact, expected to undertake international management activities.

Parallel to those management activities, international organizations had been empowered to undertake operational activities, whether directly or indirectly. That was a clear reflection of the interrelationship between the international sphere and domestic affairs, and showed that States could no longer afford to disregard the benefits accruing from international co-operation. The sea-bed could be used for both peaceful and military purposes, but the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-Bed and Ocean Floor and in the Subsoil Thereof (General Assembly resolution 2660 (XXV)) had recognized the common interest of mankind in the progress of the exploration and the use of the sea-bed and ocean floor for peaceful purposes. The question was, therefore, whether the Sub-Committee was in fact concerned with the internationalization of the area; if it was not, to describe the area beyond national jurisdiction as the common heritage of mankind would be meaningless.

His delegation wished to emphasize the relationship between the common heritage of mankind and the common interest of mankind referred to in the treaty; the latter might be a natural consequence of the former. Clearly, serious consideration should be given to how the common interest of mankind could best be achieved. There seemed to be three pre-requisites to be borne in mind: the

method used should uphold the common heritage concept; it should be impartial, provide equal opportunities for member States, and furnish a remedy for the economic imbalance between them; and it should be adequate to the task expected of it.

Those three pre-requisites could be achieved by internationalization, either in a modest form - control only - or in the more efficient form of both management and control. Internationalization was intended to exclude the sea-bed and the ocean floor and the subsoil thereof from national jurisdiction and to prevent their resources from being exploited in the interests of individual States. What was merely private or national would presumably be raised to the level of being international, and that entailed the idea of impartiality and common utility. Moderate internationalization meant that the international régime would be left to be implemented by member States or that the régime would be established and at the same time a machinery for control would be set up without the right of management.

Neither of the two forms of internationalization seemed to enjoy overwhelming support. The Committee was endorsing internationalization and the establishment of a machinery with adequate powers for management and control, but the extent of powers was still under consideration. Yet the international machinery, if it was to discharge its responsibilities satisfactorily, would have to have authority to resolve problems with economic and political implications. Indeed, the machinery would take on a different aspect when it was empowered to perform operational activities. However, that question had to be approached carefully because of its far-reaching consequences for the existing pattern of international organizations. In the present world, States were still the basic units, and any attempt to change that situation might lead to serious repercussions.

The objectives of the type of machinery concerned had to be defined in order to ascertain the scope of the powers to be granted to it and the extent of the area to be covered. The definition of objectives therefore deserved priority treatment, and in that connexion the Declaration of Principles was an excellent basis.

In due course the areas beyond national jurisdiction would have to be delimited. The depth criterion had been widely criticized and the distance criterion seemed to enjoy more favour. Undue attention should not be paid to

legal considerations, since geography and geology were also important. The endeavours of past generations should not be disregarded. While it was desirable to have a universal régime, the importance of regional arrangements should not be minimized, since they could provide the incentive for a beneficial exploitation of the sea-bed and ocean floor. Indeed, they should serve as an additional factor in promoting closer relations among the States concerned.

The overriding considerations in the adoption of viable regional arrangements were: that they should be the product of the States concerned; that their form should vary according to the circumstances, that they should emanate from within and not be imported; that the views of the States involved should be respected by the rest of the world community, and that they should form the nucleus of an international régime designed to satisfy the States concerned and to achieve the aims of the world community.

The idea of regional arrangements had been stressed because there was a tendency to over-simplify the problems connected with the establishment of an international régime and machinery. The over-simplification could be misleading, since the problems involved were neither purely technical nor purely economic, but a unique combination of both, with underlying political and military implications. Those countries which were struggling to enhance their political independence and which, at the same time, had to satisfy the legitimate desire for progress and for a higher standard of living, were conscious of the threat posed to them by the creation of artificial islands with advanced technical installations near their shores.

Such an approach should not be construed as an attempt to by-pass the international régime, since the regional arrangements should be worked out within the scope of an international régime and devised solely to realize its aims. They were not intended to evade the régime or to undermine its authority.

The régime envisaged should be elaborated on a democratic basis in which States large and small would enjoy equal rights. Any deviation from that principle would serve to accentuate the breach between developed and developing countries. The principle of "one State, one vote" was enshrined in the United Nations Charter, and in a subsidiary organ of the General Assembly, his delegation could not be a party to any attempt to undermine the authority of the Charter by suggesting a different method of voting.

Before the close of the session, agreement should be reached on the future programme of work. That would enable the General Assembly to assess the pace at which the Committee's mandate would be fulfilled and would help Governments to prepare the necessary instructions.

Mr. FEKETE (Hungary) said that, although the very useful working papers, draft articles and other proposals submitted by a number of members were most welcome, his delegation regretted that they had been distributed so late in the session, thereby holding up the work of preparing draft treaty articles for the international régime, including international machinery, in accordance with the Declaration of Principles.

The initial step must be to define clearly the area which the régime was supposed to cover. In his delegation's view, it should be as broad as possible. In order to do that, however, it was first necessary to establish, in an international instrument, the limits of territorial seas.

Some people maintained that there was no need for that, since the limits of territorial seas had already been established or would later be established by the coastal States. But the General Assembly in resolution 2750 B (XXV) had reaffirmed that the exploration of the area lying beyond the limits of national jurisdiction and the exploitation of its resources must be carried out for the benefit of all mankind, taking into account the special interests and needs of the developing countries, including the particular needs and problems of those which were land-locked. The representatives of the land-locked countries were not taking part in the meetings of the enlarged Committee merely in order to hear special claims to such areas by some coastal States. The areas concerned must form part of the international area; otherwise the concept of the common heritage, to which land-locked countries, too had a claim, would lose much of its meaning.

Throughout history, peoples, customary law and international law had considered the seas as international territory. Naturally, certain rights of the coastal States over their territorial seas were acknowledged, but unreasonable and exaggerated claims by certain States to extensive areas - perhaps the richest - of the international territory could not be accepted. The land-locked

and shelf-locked countries and those with short coastlines were not in a position to undertake unilateral action of that kind. Thus the majority of States would find themselves very disadvantageously placed if such claims were accepted.

His delegation held the view that a territorial sea of 12 miles was not only suitable for the majority of States but was also necessary for the developing countries if they were to utilize the riches of the seas for the benefit of their peoples. The exclusion, by unilateral measures, of the great resources of vast areas from the competence of the international régime would harm the international community very considerably, especially the developing countries. Also, it was to be feared that certain States, in pursuance of their particular economic interests, wished to leave extensive and important resources unexploited. The functions and powers of the régime should be so established as to promote the prosperity of mankind as a whole, through the wise exploitation of marine resources.

In the drafts submitted so far, it was generally agreed that land-locked States must be represented in the sea-bed authority to be established. In the working paper prepared by Malta, States were divided into groups. States in Group C - the land-locked countries - would have 5 seats in the Council; unfortunately the document did not state how many seats the States in Groups A and B would have. According to the plan presented by the United States,[6/] land-locked and shelf-locked States together would have only 2 seats out of 24. The draft statute for an international sea-bed authority submitted by Tanzania (A/AC.138/33) gave the land-locked States 3 seats out of 18. Land-locked States must have their own representation in any sea-bed authority, and in that respect the proposal for the composition of the Council contained in the USSR draft articles (A/AC.138/43) was fair and reasonable.

At present, the developing countries looked forward to sharing the potential benefits to be derived from the exploitation of the sea-bed. Only a short time before a great number of countries then subject to colonial régime had not been able to enjoy the possibilities afforded by the freedom of the high seas, which

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6/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), Annex V.

his delegation emphatically hoped the future régime would ensure. There were currently more than a hundred important international bays which were used by all States without limitation and without creating any danger to the coastal States. If the right of free access to bays which would fall under national jurisdiction was not established in an international instrument, and if the coastal States were allowed to determine the conditions of access to such bays, there would be no assurance that friction could be avoided between States, since it would be the sovereign right of the coastal State to introduce discriminatory measures against other States. Any limitation of the freedom of navigation would be detrimental to the developing countries.

The meeting rose at 1.40 p.m.

SUMMARY RECORD OF THE TWENTY-FIRST MEETING

held on Monday, 16 August 1971, at 3.30 p.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. LIVERMORE (Australia) said that he would like to make some brief observations on the next stage of the Sub-Committee's work, which should lead to the preparation of draft treaty articles for the 1973 conference. The stage had now been reached when certain aspects of the régime for the sea-bed beyond national jurisdiction and of the necessary international machinery should be given more detailed study.

During the general debate, delegations had spoken more frankly about their preoccupations and problems than they had ever done in the past. That had given the Sub-Committee a clearer insight into the interests that individual member States would want to protect both during the preparatory stage and, eventually, at the conference. It had been assisted in that respect by the working papers submitted by a number of delegations. More proposals would probably be made, but the debate that had taken place and the documents before the Sub-Committee, had already helped to clarify the main problems to be settled before final agreement could be reached on the régime and machinery.

His delegation believed that the Sub-Committee was now in a position to identify certain matters upon which thinking was comparatively well advanced. In its view, the Sub-Committee should address itself to that task so that it might be ready to examine specific subjects in detail at its next session. That process of identification would have the advantage of enabling Governments to focus their attention on certain specific aspects of the problem and to prepare their positions on them. In that regard, his delegation supported the Lebanese representative's proposal that the Secretariat should prepare a comparative table of the various proposals submitted to the Sub-Committee and of the relevant articles of the 1958 Conventions.

Although equal progress had not been made with the study of all issues, it would appear that thinking on some of them had advanced to the point where they could be temporarily singled out for close and detailed consideration. To do that, however, the Sub-Committee would have to agree on two substantial questions, the first being what subjects were appropriate for immediate detailed attention and the second, how consideration of those subjects should be organized.

With regard to the subjects for closer attention, it was obvious that views in the Sub-Committee would differ considerably, given the varying interests represented there. His delegation felt, however, that two criteria should be applied in identifying individual subjects for closer study; first, the subject in question should be generally accepted as one that would benefit from detailed attention; secondly, it should be defined in such a manner as to enable the Sub-Committee to focus exclusively upon it, and not to become involved with issues peripheral to its work.

To identify the subjects ready for detailed study, it would seem necessary to examine the framework of the sort of régime that might be appropriate for the sea-bed beyond national jurisdiction. This might have seven main components: first, basic principles such as the concept of the common heritage of mankind, the utilization of the area by all States, the peaceful use of the area, non-interference with activities in the high seas and the airspace above them, etc.; second, the nature of the international machinery to regulate the exploration and exploitation of the sea-bed; third, the rules and practices relating to activities of exploration and exploitation; fourth, the economic implications of the production of minerals and hydrocarbons from the sea-bed for the land-based production of those substances; fifth, the distribution of benefits accruing from the exploitation of the international area; sixth, the arrangements to be made to take account of the situation of land-locked States, and seventh, the definition of the area to which the régime should apply. That list was not exhaustive and some delegations would probably have further ideas to contribute, but, his delegation believed that, at the least, the Committee would have to deal with those seven topics in one way or another in due course.

They were obviously not all ripe for detailed study in the Sub-Committee. Some had attracted more attention in debate than others. Some had been dealt with in detailed reports by the Secretary-General that would require further study in the Sub-Committee. His delegation considered, however, that the Sub-Committee could take up the first three topics in detail at the beginning of its first session in 1972.

So far as the organization of work was concerned, the Sub-Committee might start with a discussion directed specifically to the subject under consideration, and then, on the basis of proposals submitted by delegations, try to work out some

general principles which might be reflected in an eventual treaty. A small ad hoc drafting group might be established, which would try to set out those principles in the form of draft articles or recommendations. Where it did not prove possible to reconcile proposals, alternative draft articles should be prepared. It should not be the task of a drafting group or of the Sub-Committee to delete or amend proposals against the wishes of their authors. Every effort should be made to attain a concensus, but if that was not possible, all differing views should be fully recorded. His delegation considered that there should be no voting on proposals at that stage.

It might not be possible to reach agreement on all those points, but his delegation attached real importance to the Sub-Committee's rounding off its present session, at which valuable exchanges of views had taken place, with an agreement - even if tentative - on an outline of the programme of work for its first session in 1972. That matter had apparently already been discussed by the Sub-Committee's officers and, in that connexion, his delegation supported the proposal made by the representative of the United Arab Republic at the twentieth meeting that the Sub-Committee's Chairman and officers should, after holding the appropriate consultations, submit to the Sub-Committee a provisional programme of work for its first session in 1972, setting out a series of specific items upon which Governments could reflect in the intervening period and which could be taken up by the Sub-Committee when it met again. If the Chairman was in a position to submit such a programme, it could perhaps - if the Sub-Committee agreed - be annexed to the Sub-Committee's report.

The CHAIRMAN said that he was at present holding consultations and hoped to be able to submit a note shortly, containing suggestions about the Sub-Committee's programme of work for its next session.

The meeting rose at 3.55 p.m.

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

held on Tuesday, 17 August 1971, at 11.20 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

GENERAL DEBATE (continued)

Mr. CUDJOE (Ghana) said that two of the most important questions before the Sub-Committee were the area of national jurisdiction over the resources of the sea and the sea-bed and the economic jurisdiction of coastal States in the areas outside their territorial waters, particularly over fisheries. Both those matters had been left unresolved by the 1958 and 1960 Geneva Conferences on the Law of the Sea.[1/] His country attached particular importance to them because of its own interest in marine resources.

Ghana had a fishing industry and a merchant marine, and there was a strong possibility that oil in commercial quantities might be found off its shores. It was both a distant-water and a coastal fishing State. On the problem of fisheries jurisdiction, therefore, it would naturally seek a solution which would be satisfactory for both aspects of its fishing industry. Similar considerations of national interest would influence its attitude to such matters as the limits of the territorial sea, the precise definition of the continental shelf, and the establishment of a régime for the sea-bed beyond the limits of national jurisdiction.

Several criteria for determining the limits of national jurisdiction had been advanced and pertinent arguments had been advanced for and against them. In particular, advocates of the distance criterion had stated that if the depth criterion was used, it would be to the advantage of countries in Europe, Asia and North America, which had wide continental shelves extending to about 200 miles, and to the disadvantage of countries in Africa and Latin America, which had relatively narrow shelves. They contended that a uniform distance criterion would not only be equitable, but also easy to apply. Other delegations sought a compromise by advocating a combination of the depth and distance criteria. There

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1/ United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.: 58.V.4, vol. I-VII) and Second United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.: 60.V.6).

was yet another group which envisaged that, in addition to the area to be administered by the international authority, there should be an intermediate or trusteeship zone in which rights, interests, responsibilities and benefits would be shared between the adjacent coastal State and the international community.

Ghana, which had adopted a 12-mile territorial limit, had not yet declared its final position on the criteria to be used in determining the limits of national jurisdiction. For the time being, however, it favoured the distance criterion, on the grounds that a simple depth criterion might be unfair to States with narrow continental shelves. Whatever criterion or figure it ultimately arrived at would depend on considerations of equity and a variety of other factors such as the nature of the proposed international machinery.

An increasing number of delegations had supported the idea of economic zones, which could be the key to the success of the Sub-Committee's work. Although at present there were conflicting claims as to the extent of the territorial sea, ranging from 3 to 200 miles, agreement might be reached if the focus of attention was shifted from the traditional distinction between territorial waters and high seas to the practical needs of countries, which were the main cause of the conflict. If the idea of the economic sea could be accepted, it would open the way for a broad measure of agreement on a number of points. First, there would be a zone of territorial waters, limited to 12 miles, under a system equivalent or similar to the existing one; in that connexion a very wide measure of agreement seemed to be emerging already. Secondly, contiguous to the territorial waters there would be an economic zone, the extent of which would be determined in due course but should not in any case exceed 200 miles from the coast. In that zone coastal States would have exclusive rights to utilize all living and other marine resources, including those in the superjacent waters, on the sea-bed and in the subsoil. Jurisdiction would be strictly limited to the exploration, exploitation and protection of those resources, while freedom of navigation and overflight would be maintained on equivalent or similar conditions to those now governing the high seas. The economic zone idea would not completely discard the continental shelf. Continental shelves extending for more than 200 miles at a depth not exceeding 200 metres would continue to be under the sovereignty of the respective coastal States, as was the case at present. It would be unreasonable to expect such States - which, incidentally, were few in number - to give up a considerable part of what was now indisputably their domain. The entire area seaward of the economic zone would constitute the international zone, under the system to be approved.

An important feature of the proposed economic zone was that States which so desired could set up, through regional agreements, systems or areas for common use within the economic zone to which they would be entitled, or enter into bilateral or multilateral agreements through which they would grant each other reciprocal rights to utilize the resources of their respective economic zones. Also welcome was the provision that, in order to avoid under-utilization by developing countries which at present lacked the technological know-how, capital or equipment to engage in full exploration and exploitation of their economic zone, bilateral arrangements could be made with technologically advanced countries for exploitation of the resources concerned, under conditions to be stipulated by the coastal State. It should be possible to accommodate most of the major provisions of the United States draft articles (A/AC.138/SC.II/L.4) within the proposed regional system which should form part of the wider international system. His country, as both a coastal and a distant-water-fishing State, would be prepared to consider any proposals relating to the economic zone which would protect both aspects of its fishing industry.

Mr. FONSECA (Colombia) said that he had a few preliminary comments to make on the various sets of draft articles which had been submitted for the Sub-Committee's consideration. Though disappointing in some respects, they gave reason to hope that it would be possible to achieve an objective of capital importance for the international community, namely, the establishment of an international régime and machinery, in accordance with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction adopted by the General Assembly in its resolution 2749 (XXV). The Sub-Committee should consider the various drafts in the light of the Declaration, to see how far they embodied the principles already accepted by the General Assembly.

All the drafts except those submitted by Tanzania (A/AC.138/33), the United States[2/] and Mr. Pardo on behalf of the Government of Malta (A/AC.138/53) contained some articles which had not been completely worked out although it was understood that the sponsors would make additions to their texts in due course.

2/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), annex V.

His delegation had already discussed the United States draft twice in some detail (see A/AC.138/SR.59 and 64), so he would confine himself mainly to the other drafts, comparing them with the Latin American working paper (A/AC.138/49), of which his delegation was a sponsor.

In preparing that working paper, the sponsors had never lost sight of the principle that the area was the common heritage of makind and that the exploration and explcitation of its resources should be carried out for the benefit of all States, irrespective of their geographical location, taking into particular consideration the interests and needs of the developing countries.

It was somewhat disappointing, therefore, to note that some countries were still adopting an egoistic attitude and had even gone so far as to maintain that the international régime should not be based solely on the Declaration of Principles but also on other considerations, including the domestic law of individual States. His delegation could not accept any suggestion that a declaration solemnly adopted by the United Nations, with the support of all Member States, was nothing more than an academic exercise.

The Latin American countries had attempted to outline an institution that would represent a realistic and positive development of international law and have a structure which would guarantee efficiency and the equitable distribution of resources. It was intended to inaugurate a new period of co-operation and justice in relations between peoples. It did not resemble other institutions which had recently proliferated because a new factor was involved: a common heritage which had to be administered for the benefit of all. The working paper therefore proposed the establishment of an authority which would exercise exclusive jurisdiction over the area and administer its resources in the name of all mankind. Unlike the other sets of draft articles, it proposed the establishment of an enterprise to act as the organ of the authority responsible for carrying out all technical, industrial or commercial activities, either by itself or in joint ventures with juridical persons duly sponsored by States.

The Tanzanian draft articles contained many points which either tallied with or were complementary to the Latin American working paper. It should be perfectly feasible to integrate the two proposals, provided that the system of direct administration by the authority was accepted. The open door left in the Tanzanian draft in that respect by the licensing system was incompatible with the principles behind the Latin American working paper.

His delegation also welcomed the provisions in section I.3 of the Polish draft (A/AC.138/44) regarding the advisability of having a transitional period before the organization was able to become financially self-supporting on reaching the appropriate level of commercial exploitation.

His delegation shared the opinion that it would be a mistake to establish a supranational organization with a highly bureaucratic structure. It would have no objection to specifying that both the secretariat of the authority and the international enterprise should, at the outset, operate at the minimum level compatible with the need to ensure co-operation, provided that could be done without detriment to the future growth of the system. Nevertheless, the organization should be given ample powers from the beginning so that it would be able, within a reasonable lapse of time to undertake full-scale industrial and commercial activities, as well as the technical activities of exploration and exploitation of resources.

Up to a certain point, it was understandable that some delegations, such as the United Kingdom, should have been impressed by the French representative's arguments against the system of direct exploitation and in favour of the licensing system (see A/AC.138/SC.I/SR.9). Such countries found it quite normal that the only method of participation open to the developing countries should be to enter into contracts with the big corporations which had so far had a monopoly by reason of their financial and technical capacity. Yet, it was precisely because of past injustices due to differences in capacity that the Committee was attempting to establish an international authority in which the Committee countries would be equitably represented and through which they could be guaranteed the opportunity of taking part in every stage of the exploration and exploitation process.

During the initial stage, the enterprise would be able to perform the role necessary to ensure that negotiations between the big corporations, those sponsored by the developing countries and those same countries, led to equity in the terms of contracts, the distribution of benefits, the training of technical personnel and access to know-how.

The delegation of the Ukrainian SSR had stated at the nineteenth meeting that it found the system of direct exploitation an unsuitable one and had asked whether a world system would operate on a communist or capitalist basis. The Colombian delegation did not think it would necessarily do either. The authority would be entitled to enter into contracts with States to establish undertakings or joint

ventures, each of them with appropriate features agreed upon with the State concerned and, when the corresponding share of the benefits was received from the authority, each undertaking would be able to use or distribute them in accordance with its own philosophy.

The argument most used by the delegations opposing the system of direct exploitation was the high initial costs of the operation. But those costs would occur in any case and could not be eliminated or reduced simply by not having an international body, which would be set up precisely in order to stimulate investment and to ensure that all activities were in keeping with the new régime. From the outset, of course, a substantial portion of such investment would have to be channelled through the authority to enable the international enterprise to be set up but, once that had been done, it would generate its own dynamism and become a self-sufficient entity.

The Secretary-General's study on the question of establishing international machinery[3/] had mentioned the system of joint ventures as a means by which technology and financial resources might be provided for such operations. The Latin American countries had taken up the idea and developed it in their working paper, since many of them had had very satisfactory experience of that type of association in their own territory, mainly for the exploitation of hydrocarbons. Such associations of States or State corporations with large foreign companies took risks jointly. It was a system that had opened the road to co-operation between interests which had, in the past, seemed irreconcilable. The States contributed the hydrocarbons, while the large foreign companies contributed their technical and financial capacity.

If the system had proved fruitful in relations between developing countries and foreign companies, a similar procedure could well be utilized in the administration of the common heritage of mankind, to ensure that in the process of exploiting resources which belonged to all, the present economic gaps between nations would not be widened still further.

3/ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No.22 (A/7622 and Corr.1), annex II, para.71.

The great majority of delegations had been emphatic in rejecting any system including the veto. It was therefore surprising to find that the proposals put forward by Poland, the Soviet Union, the United States and other delegations included provisions that, in one way or another, offended against the principle of the equality of States. His delegation hoped that a final solution would be reached in which neither the power of a few States nor the sole weight of a majority would be imposed. It should be possible to find formulas which would be acceptable and satisfactory to all, without advantages for any single State or group of States. What was to be avoided at all costs was a mediocre solution: an international treaty couched in ambiguous language and insufficient in scope to meet the urgent problems of the day since that could produce nothing but confusion and dismay.

It was possible that the system of direct administration might at first give the industrial Powers the impression that it did not offer incentives and that their major companies would have to face a challenge from the international authority, but he wished to make it plain that the intent of the Latin American working paper was not to establish competition, but rather joint ventures.

The extraordinarily elaborate system of licences provided for in the United States draft convention was unacceptable for the simple reason that it would help to increase the gap between the industrial and developing countries.

It was necessary to speak frankly if understanding was to be reached.

Mr. GORALCZYK (Poland), commenting on the question of territorial limits, said that his delegation was in favour of a range of different limits for different purposes. That solution had been accepted in modern international law and had been confirmed in the Geneva Conventions of 1958[4/] and in the legislation of the great majority of States.

As the law of the sea had evolved, the traditional division into territorial seas and high seas had been supplemented by the idea of contiguous zones, fishing zones and the continental shelf. That development had been influenced, or even dictated, by the requirements of international relations and by the divergent interests and needs of coastal States, on the one hand, and all other States, on the other. The division into coastal States and other States was, of course, an

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4/ United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.: 58.V.4, vol.II), pp.132 et seq.

over-simplification, because every State, except land-locked States, was a coastal State in relation to its own territorial sea and a non-coastal State in relation to the territorial seas of other States. Thus every State was, to a greater or lesser extent, interested in protecting both coastal and non-coastal interests.

The idea of a range of different coastal zones reflected the different rights and needs of coastal States and was based on realities of international life which could not be disregarded. The establishment of one single limit for all purposes, and particularly for the territorial sea, the fishing zone and the continental shelf, was an attractive idea, but it was not viable, since the divergent and even conflicting interests involved were too complicated to be reconciled in such a simple way.

Some delegations had advocated the adoption of distance as the sole criterion for the delimitation of the rights of coastal States over the sea-bed and its sub-soil, while others had proposed the combined criteria of both depth and distance, as his own delegation had done in its working paper. However, if the distance criterion was accepted, either alone or in combination with depth, it would be valid only for the delimitation of the rights of coastal States over the sea-bed and its subsoil and not for rights over the superjacent waters. The limits so calculated would not coincide with the limits of territorial seas and other coastal zones.

The view that the international machinery to be set up should have direct operational powers was unacceptable to his delegation. Some States were advocating the establishment of an organization with comprehensive powers, including the right to explore and exploit the resources of the international area. There were even States in favour of the organization having sole jurisdiction over the area and sole power to administer its resources, to the exclusion of individual States. It was held that the system of granting licenses or concessions for the exploitation of the resources of the sea-bed and ocean floor would be contrary to the very idea of the common heritage of mankind set forth in the Declaration of Principles adopted by the General Assembly at its twenty-fifth session.

His delegation could not agree with such views. On the contrary, by recognizing the area to be the common heritage of mankind, the Declaration had, at the same time, recognized the existing rights of all States to exploit it. That conclusion was based on the wording of the Declaration, and in particular of paragraphs 11, 12 and 14. Consequently, any attempt to exclude individual States or groups

of States from operating in the area was contrary to the Declaration of Principles and to the whole body of existing international law.

Mr. PALACIOS (Mexico) said that the Declaration of Principles embodied the philosophy which should shape the international régime to be established for the sea-bed and the ocean floor beyond the limits of national jurisdiction. The two most important of those principles were: that the sea-bed and the ocean floor were the common heritage of mankind; and that their resources should be exploited for the benefit of mankind as a whole, in accordance with a legal régime which would include international machinery to administer it, taking into particular consideration the interests and needs of the developing countries.

For the Committee to fulfil its task, those principles would have to be interpreted correctly. They consituted the recognition for the first time of the international community as a subject of international law and envisaged its embodiment in an organization which would represent mankind as a whole. The General Assembly had conferred a heritage upon the international community and had recommended the establishment of a political organization which would co-ordinate the activities of its members and assign rights and obligations in the common interest. The principles adopted by the General Assembly had made the international community aware of its existence in positive law.

Long before the adoption of the principles, Spanish law had recognized the freedom of the seas, on behalf of that same international community, on the basis of jus communicationis. That which belonged to no one, being common property, belonged to all.

The only way in which the principles adopted by the General Assembly could be implemented in full was by the creation of an organization which would be responsible for direct exploration and exploitation of the resources of the sea-bed and for their marketing. The organization would need wide powers in order to manage those resources on behalf of the international community and new legal rules would have to be drawn up to enable it to do so.

In that connexion, the working paper submitted by his own and other Latin American delegations contained proposals which merited consideration.

The establishment of an international régime and international machinery involved technical, organizational, financial and other problems. The technical and organizational problems, which arose basically from the participation of countries with differing technical and financial capacity were not insuperable. They should be tackled jointly forthwith: otherwise they would have to be tackled later when they might be more serious.

An organization which would exploit the sea-bed resources directly was also the only kind of organization which would be financially viable. The vast funds required would be obtained only if all countries, great and small, contributed on an equitable basis. In the event of failure, losses could easily be absorbed; but such an eventuality was unlikely since the countries whose delegations had indicated their readiness to engage in exploitation themselves would not attempt it without some assurance of success.

He did not agree with the United Kingdom proposal for a régime which would entail parcelling out the sea-bed so that the technically advanced countries could exploit their portions themselves, while those which were unable to do so would grant licences on their portions to the advanced countries' enterprises.5/ It was claimed that that proposal would offer equitable opportunities to all countries; in his opinion, it would result in injustice, since the licensed enterprises would take the major part of the profits.

The Latin American draft proposed that all countries should participate actively in the régime. It envisaged technical as well as economic participation as the only means of promoting over-all development.

It would obviously be very difficult for the organization to engage in direct exploitation, particularly in the early stages, and the Latin American draft accordingly proposed a joint-venture system under which the area beyond national jurisdiction would be exploited jointly by the régime and any enterprise equipped to do so. The régime would act as a partner and not merely as a licensing body as proposed in the United States' draft and would thus be better able to control exploitation and to acquire the necessary experience to enable it to engage in direct exploitation later on. It would then be able to give special consideration to the needs and interests of the developing countries.

ORGANIZATION OF WORK

The CHAIRMAN drew attention to document A/AC.138/SC.I/L.6 containing suggestions on how the Sub-Committee should proceed now that it had come to the end of the general debate, the first of the three broad stages suggested in his previous note (A/AC.138/SC.I/L.4).

5/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No.21 (A/8021), annex VI.

Mr. SIMPSON (United Kingdom) agreed with the Rapporteur that a thorough recasting of the report, such as various delegations had requested despite the consultations that had been held prior to drafting, was a serious decision to take at that stage in the proceedings. It would therefore be preferable, in his opinion, to give members of the Sub-Committee time to consider what kind of report they wished to submit to the General Assembly, and to postpone any decision on the matter until the twenty-fifth meeting, the following Monday.

Mr. YANKOV (Bulgaria) supported the remarks made by the United Kingdom representative. His delegation had taken part in the discussions of the Contact Group and in the meetings of the bureau. During one of the meetings of the bureau, the Rapporteur had provided a general outline of the structure of the report he was going to write. At that time, agreement had been reached on an intermediate solution, to the effect that the report should be neither too detailed nor too succinct. The need now was to be practical. Given the short time available to the Sub-Committee, it was impossible to make any radical changes in the report. Efforts should be concentrated mainly on paragraph 13, with a view to supplementing the list of subjects therein. Representatives could put forward suggestions in that respect, and the Rapporteur could add some substance to the report without going into details. It would be desirable for the part consisting of paragraphs 17 to 23 to be shortened, together with the paragraph dealing with the problems particular to land-locked countries. Paragraph 29 deserved particular attention and in that respect he agreed with the Note by the Chairman that had been distributed (A/AC.138/SC.I/L.6) and with the suggestions put forward by the Indian representative. Instead of leaving the end of that paragraph open, the representatives' proposals might be indicated.

The CHAIRMAN said that if delegations wanted to submit suggestions in writing concerning the list of subjects and issues to be added to paragraph 13, the text of such suggestions, if submitted before 10.30 a.m. on Monday morning, could be ready by 3 p.m., in English only.

Mr. ABDEL-HAMID (United Arab Republic) agreed with the representative of the United Kingdom and Bulgaria. It was impossible at that stage to decide to make radical changes in the report's presentation. The only practical solution was to ask delegations to submit amendments if they so desired.

Mr. POLLARD (Guyana) also supported the suggestion made by the United Kingdom representative. He did not think it would serve any purpose to add substance to the report, since the latter was merely to serve as a basis for future work.

Mr. MENDOZA (Philippines) said that more attention should be given to paragraphs 8 and 9 of General Assembly resolution 2750 C (XXV) which intimated that the Sub-Committee's report should reflect what had taken place during the debate. It would be useful to indicate the different positions adopted by delegations with regard to the subjects and issues listed in paragraph 13 of the report. With regard to sub-paragraph (d), it should also be pointed out that some delegations had proposed that the international machinery should grant licences, while others felt that it should be directly responsible for exploitation.

Mr. ZEGERS (Chile) said that his delegation, as a member of the bureau, had been present at a meeting in which the presentation of the report had been discussed and where the majority had been in favour of a fairly detailed text. In its current form, the report did not mention the Committee's mandate which was laid down in paragraph 6 of General Assembly resolution 2750 C (XXV). In any case, the report should give a brief description of the discussions arising from the subjects listed in paragraph 13 and indicate the broad trends emerging from an examination of each of those subjects. He asked the Rapporteur to submit a text at the twenty-fifth meeting, describing the substance of the discussions on the issues examined.

Mr. STEVENSON (United States of America) did not think that the report should be completely recast; nor was there a case for asking every delegation to submit written amendments. What was essential was for the report to identify the divergent views on the various issues.

Mr. MOTT (Australia) supported the comments of the representatives of the United Kingdom, Bulgaria, the United Arab Republic and Guyana. He was afraid that by trying to add substance to the report, a very different text would emerge, on which it would be difficult to obtain agreement. Paragraph 13 might be developed somewhat and the text of paragraphs 17 to 26 might be shortened by asking the Rapporteur and the delegations to put forward proposals to that effect. In any case, he would prefer the Sub-Committee to wait until the twenty-fifth meeting, on Monday, before taking a decision; meanwhile, delegations should be encouraged to submit written proposals by that same meeting.

Mr. ROMANOV (Union of Soviet Socialist Republics) agreed with the comments made by those representatives who had stressed the quality of the report. With regard to paragraph 13, he said that document A/AC.138/41, which contained an analytical summary of proposals and suggestions made during the general debates of the March 1971 session of the Committee, comprised 27 pages in the English text. If the Secretary of the Sub-Committee could say how much time it had taken the Secretariat to draw up that document, they would then have an idea of the time the Rapporteur would require to try to summarize, even by cutting them down by half, the discussions that had been held during the current session.

He shared the point of view that the report had to reflect the essence of the opinions expressed during the general debate. The Soviet delegation would probably ask for some extra subjects to be included in the list given in paragraph 13 and the Rapporteur would most likely have to summarize the views expressed in respect of those subjects. However, if the Rapporteur's summary was going to give rise to long discussions, the Sub-Committee might find itself unable to submit a report to the full Committee. That was why, while sharing the opinion of those delegations that had requested that the report should reflect the substance of the discussions, he supported the suggestion that it should be left to the Rapporteur to settle the matter.

Mr. PARDO (Malta) also thought that it was impossible at that stage in the proceedings to recast the report completely. A compromise solution might be to invite those delegations who so desired to submit proposals in writing for consideration by the Rapporteur in adding substance to the report.

Mr. BEESLEY (Canada) said that all delegations had agreed that there was an imbalance in the report. Sub-paragraphs (a) and (b) of paragraph 6, sub-paragraphs (i) and (j) of paragraph 13, sub-paragraphs (a) and (b) of paragraph 16 and paragraphs 17 to 28 dealt with two questions only, while paragraph 13 listed all the topics that had been examined. The text of that last paragraph had to be supplemented by permitting delegations to add those subjects which they felt should be included. It was difficult to recast the report completely, but it was also undesirable to take a decision by default, so to speak. The Rapporteur should confine himself to recasting paragraph 13, without including an analytical summary but taking into account the proposals that some delegations might submit with regard to the subjects they wanted to see included in that paragraph.

Mr. RUIZ-MORALES (Spain) said that it was unrealistic to ask every delegation to submit amendments to the report. It would be sufficient to leave it to the Rapporteur to make a summary of the essential points.

Mr. HAZAR (Turkey) urged members of the Sub-Committee to take into account the suggestions made by the United Kingdom representative so as to make it possible to come to a decision.

Mr. LEVY (Secretary of the Sub-Committee), replying to a question put by the representative of the Soviet Union, said that it had taken the Secretariat roughly seven weeks to draw up the analytical summary of proposals and suggestions.

Mr. PROHASKA (Austria), Rapporteur, said that as he understood it, the Sub-Committee wanted to balance the report by expanding paragraph 13, taking into account the proposals of some delegations, and by deleting other paragraphs. Consequently, he would describe the changes to be made to draft report A/AC.138/SC.I/L.7 in an addendum that he would submit at the twenty-fifth meeting, on the following Monday, in the form of a working paper.

Mr. SHIPSON (United Kingdom) thought that the Sub-Committee should be able to take a decision at the twenty-fifth meeting, after examining the revised text of paragraph 13 to be submitted by the Rapporteur. He pointed out that given the current state of work, it was unwise to be too ambitious. Changes to the text should be kept to a minimum.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

held on Monday, 23 August, 1971, at 3.30 p.m.

Chairman: Mr. SEATON United Republic of Tanzania

CONSIDERATION OF THE DRAFT REPORT OF THE SUB-COMMITTEE (continued)

The CHAIRMAN invited the Sub-Committee to consider the draft report contained in document A/AC.138/SC.I/L.7 and the revised version submitted by the Rapporteur in a Conference room paper without a symbol.

Mr. PROHASKA (Austria), Rapporteur, explained that the revised version that he had prepared of the draft report began with paragraph 6. Apart from the suggestions included in that text, he had received proposals concerning the annex containing the index of summary records. Canada and Sweden had asked to be listed as having taken part in the general debate, and not as having exercised their right of reply. In addition, several countries, namely, Barbados, Burma, China and Ireland, had expressed the wish to be listed among the observers in paragraph 3.

He suggested that the draft report should be considered paragraph by paragraph.

Mr. ZEGERS (Chile) said that some delegations had made proposals of a general nature. He requested that, during the consideration of the relevant paragraphs, account should be taken of those proposals and, in particular, the one by Chile concerning the international machinery. With that reservation, he would be in agreement with the procedure suggested by the Rapporteur.

It was so decided.

Document A/AC.138/SC.I/L.7

Paragraph 1

Paragraph 1 was approved.

Paragraph 2

Paragraph 2 was approved.

Paragraph 3

The CHAIRMAN said that, as indicated by the Rapporteur, Barbados, Burma, China and Ireland should be added to the list of observers in paragraph 3.

Paragraph 3, as amended, was approved.

Paragraph 4

Paragraph 4 was approved, with the reservation that the number and date of the meeting at which the report was adopted would be specified later.

Paragraph 5

Paragraph 5 was approved.

Revised version of document A/AC.138/SC.I/L.7

The CHAIRMAN asked the Rapporteur to read out the various paragraphs since the English version had not been translated into the other working languages.

Paragraph 6

Mr. PROHASKA (Austria), Rapporteur, read out paragraph 6.

Mr. BOINNICK (Jamaica) said that paragraph 6 should indicate the thinking behind the various drafts and working papers that were listed and requested that each text mentioned should be followed by a summary of the proposals. That would be useful to the delegations of countries that were not members of the Committee.

Mr. PROHASKA (Austria), Rapporteur, thought that would be a useful addition to the report and proposed that the sponsors should summarize, in a paragraph or two, the basic ideas behind their texts. If that suggestion was approved, the summary could be prepared quickly and accurately.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) considered that the sponsors of the drafts and documents listed in paragraph 6 would be able to summarize them, but doubted whether the essence of drafts such as the Tanzanian proposal (A/AC.138/33) could be summarized in one paragraph. That draft, like others, was very detailed and complex, and he hoped that the representative of Jamaica would not press for a summary of it.

Mr. HARRY (Australia) supported the Jamaican representative's proposal. He suggested that the summary should follow immediately after each proposal. First would come the title and symbol of the document, then the meeting at which it had been introduced, and finally a brief summary.

Mr. DEJAMMET (France) said that he had no definite opinion on the matter. As the Rapporteur had said, it would be better to leave the task of summarizing the proposals to the sponsors. That would be much less easy for the more complex documents than for some of the others. If the representative of Jamaica pressed his proposal, it would be necessary to take a decision on the Rapporteur's

suggestion. The task of summarizing would also have to be undertaken by the sponsors of the drafts prepared in 1970. Thus, the United States and France, which had submitted drafts in 1970, would have to provide a summary as well as the countries which had submitted drafts during the current session.

If the Sub-Committee would be content with the information given by the Rapporteur in his revised version, the French delegation would not insist on providing a summary of its own working paper.

Mr. OXMAN (United States of America) would like to know the relation between the comparative table of all proposals, which was to be prepared for the Committee and Sub-Committee I as requested by the Lebanese delegation at the sixty-third meeting of the Committee, and the proposed summary. In addition, he wished to have some guidelines for the length of the summary, in view of the fact that so many proposals had been submitted.

Mr. YANKOV (Bulgaria) wondered how useful a summary would be in view of the fact that the documents in question were to be annexed to the report and that a complete comparative table of the proposals was to be prepared. It would in any case be extremely difficult to summarize the ideas behind the texts. The report would no longer be the report of the Rapporteur, but rather, a report by the sponsors of the drafts and working papers, and would hardly be of any practical use. The Sub-Committee was liable, moreover, to get involved in a long discussion on the length of the summaries.

Mr. BONNICK (Jamaica) explained that he was not asking for a summary of all the documents that had been submitted in the report, but rather for an indication of the basic principles behind them. The comparative table mentioned by the United States representative would not serve the same purpose.

In reply to the United States representative, the CHAIRMAN pointed out that, according to paragraph 8 of the revised version of the document under consideration, the drafts and working papers submitted in 1971 were to be annexed to the report. In addition, a comparative table would be prepared, giving the various written proposals, including those submitted before 1971. The comparative table and the annexed documents were different from the proposed summary, which would describe the ideas behind the texts.

He would suggest that the summaries prepared by the sponsors of the drafts and texts should be as brief as possible. In his opinion, such summaries could be inserted in paragraph 6 without doing any harm to the report and could be drafted by each of the sponsors.

To sum up, paragraph 6 would be amended as indicated by the representative of Jamaica, the sponsors being invited to submit their texts by noon the following day.

It was so decided.

Paragraph 7

Mr. PROHASKA (Austria), Rapporteur, read out paragraph 7.

Mr. VELLA (Malta) suggested that the second sentence should be placed at the end of the paragraph and that the following phrase should be added: "to which several speakers referred".

Mr. KOCHURENKO (Ukrainian Soviet Socialist Republic) pointed out that the words "drafts and" should be added before the words "working papers" in the second line.

Paragraph 7, as amended, was approved.

Paragraph 8

Mr. PROHASKA (Austria), Rapporteur, read out paragraph 8.

The CHAIRMAN observed that the first sentence was based on the assumption that the report would be adopted by the Plenary Committee.

Mr. RANGANATHAN (India) suggested that, in the second sentence, after the words "relating to the international sea-bed régime", the following phrase should be added: "which may be submitted by Member States as a document of the Committee by 31 October 1971".

Mr. K. CHURENKO (Ukrainian Soviet Socialist Republic) wished to know what the "additional written proposals" referred to in the second sentence were. The list in question could not be prepared as long as the proposals had not been submitted.

Mr. POLLARD (Guyana) proposed that paragraph 8 should be made a footnote, with the amendment proposed by the representative of India.

Mr. PROHASKA (Austria), Rapporteur, thought that the Committee should set a deadline for the submission of proposals so that the comparative table could be prepared.

The CHAIRMAN, summarizing the discussion, said that the amendment suggested by the representative of India did in fact set a deadline and asked whether the Sub-Committee wished to make paragraph 8 a footnote.

Mr. BEESLEY (Canada) said that he would like the Rapporteur to specify whether the comparative table would list oral propcsals.

Mr. PROHASKA (Austria), Rapporteur, pointed out that oral suggestions were referred to in paragraph 9 of the revised version. In that paragraph, the Secretariat was requested to revise the analytical summary of proposals and suggestions, in order to take into account the oral proposals made during the session.

Mr. YANKOV (Bulgaria) noted that paragraph 8 contained two ideas. The first was a decision concerning a comparative table. He would like that decision to be included in the actual text of the report. The second idea concerned additional written proposals, which might be the subject of a footnote. If the representative of Guyana agreed, the first four lines of paragraph 8 could be kept in the body of the report and the rest could become a footnote.

Mr. RANGANATHAN (India) thought that the aim was to give the additional proposals some status and would therefore like the sentence in question to remain as part of the text of the report itself. The second sentence of paragraph 8 should not be cut in two.

Mr. POLLARD (Guyana) proposed that the first and the last sentences should become a footnote and that paragraph 8 should consist just of the second sentence of the present text.

The CHAIRMAN asked members whether they were prepared to accept the proposal of the representative of Guyana, as amended, since the representative of India was very much opposed to a division of the second sentence and since the other members of the Sub-Committee had no strong feelings on the subject.

If there were no objections, he would consider that paragraph 8 should consist of the second sentence of the revised version, as amended by the representative of India, and that the first and the last sentences of the present text should become a footnote.

Paragraph 8, as amended, was approved.

Paragraph 9

Mr. PROHASKA (Austria), Rapporteur, read out paragraph 9.

Mr. RUIZ-MORALES (Spain) said that paragraph 15 of document A/AC.138/SC.I/L.7 stated that the Secretariat had been asked to "up-date, expand and revise the 'Analytical summary of proposals and suggestions' (A/AC.138/41) ... so as to take account also of subsequent discussions at the July/August session". Similar wording had been used in the revised version of document A/AC.138/SC.I/L.7. His delegation did not know whether or not that request had been approved by the Committee. In any case, the Secretariat was being asked to do something that was virtually impossible. To do what was asked would take about 22 weeks, would involve high costs and would mean an excessive workload for the Secretariat staff. Consequently the Secretariat would be physically unable to meet the request made in the last 11 lines of paragraph 9 of the revised document.

Furthermore, the Secretariat was an administrative organ, and it could not and should not have delegated to it functions of an essentially political nature which lay exclusively within the Committee's competence. The Secretariat could be asked to make extracts, summaries or tables of statements made, but there could be no question of asking it to make analytical summaries or value judgements on such statements. There was a serious danger that the Committee might find itself submitting to the General Assembly a very thin report having very little substance itself but referring specifically to a "parallel report" which the Committee would not be able to approve and would therefore have no control over.

His delegation accordingly proposed that the last 11 lines of paragraph 9 of the revised document submitted by the Rapporteur should be deleted. In any case, the analytical summary they referred to had been criticized by many delegations, including his own.

Mr. BEESLEY (Canada) asked what had happened with regard to the request referred to in the last sentence of the paragraph.

Mr. LEVY (Secretary of the Sub-Committee) said that no formal decision had been taken but that the question would be discussed in plenary.

Mr. GOWLAND (Argentina) thought that if more than half paragraph 9 was devoted to the analytical summary, it was liable to become an official document, whereas it had only been meant to be an informal working paper. His delegation agreed with the criticisms which had been made of the analytical summary, in

which the views of some delegations were either omitted or misrepresented. His delegation shared the Spanish delegation's view that the summary should not be mentioned in paragraph 9.

Mr. THOMPSON-FLORES (Brazil) also thought that in view of the criticisms which had been made, the analytical summary did not deserve the official status which would be conferred upon it by the reference in paragraph 9. His delegation was in favour of the deletion of the second part of paragraph 9, from the third sentence onwards.

Mr. BEESLEY (Canada) thought that his delegation would agree to the proposed deletion, provided it could have some assurance that the proposals which it had made orally would be taken into consideration.

Mr. ZEGERS (Chile) thought that Canada would perhaps be satisfied if the oral statement it had made was summarized in the comparative table referred to in paragraph 8. His delegation supported the proposal by the representative of Spain to cut paragraph 9 down to the first two sentences.

Mr. BEESLEY (Canada) said he understood that his delegation had until 31 October to submit the proposals it had made orally in writing.

The CHAIRMAN confirmed that statement.

Mr. STEVENSON (United States of America) wondered whether it would not be advisable to wait until the question had been discussed in plenary.

Mr. JAGOTA (India) supported that suggestion.

Mr. MONCAYO (Ecuador) proposed that the sentences which some delegations wished to delete should be included as footnotes.

Mr. BALLAH (Trinidad and Tobago) noted that the passages in question simply reported events which had in fact taken place. His delegation did not see how the Sub-Committee could decide to make no mention of them at all.

Mr. JAGOTA (India) proposed that the decision should be left to the plenary Committee.

Mr. BONNICK (Jamaica) would prefer that no reference be made to the revised document.

The CHAIRMAN suggested that the Sub-Committee might, as a compromise, put brackets round the end of paragraph 9, from the third sentence on.

Mr. RUIZ-MORALES (Spain) repeated his proposal for the total deletion of the end of paragraph 9 from the third sentence onwards.

Mr. ESPINOSA (Colombia) did not think that the Sub-Committee could surrender its power of decision to the plenary Committee. His delegation was also in favour of the total deletion of the end of paragraph 9.

Mr. YANKOV (Bulgaria) thought that the Sub-Committee could hardly make no mention at all of the analytical summary.

Mr. BEESLEY (Canada) agreed with that view.

The CHAIRMAN asked if the Sub-Committee would be prepared to accept the proposal made by the representative of Ecuador to include the passages in question as footnotes.

Mr. ITURRIAGA (Spain) maintained his delegation's proposal for the complete deletion of the end of paragraph 9 from the third sentence onwards.

Mr. MONCAYO (Ecuador) proposed mentioning the analytical summary and adding a statement to the effect that it had not been examined, but that a number of comments had been made by various delegations during the July-August session concerning the form and substance of the document. That statement could appear as a footnote.

Mr. YANKOV (Bulgaria) proposed that the Sub-Committee should postpone taking a decision and pass on to paragraph 10.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) supported the Bulgarian proposal.

Mr. NJENGA (Kenya) supported the proposal made by the representative of Ecuador.

Mr. YANKOV (Bulgaria) withdrew his proposal and supported the representative of Ecuador.

Mr. HARRY (Australia) proposed that, until the text of the proposal by the representative of Ecuador was translated and circulated, the Sub-Committee should go on with the other paragraphs of the draft report.

It was so decided.

Paragraph 10

Mr. PROHASKA (Austria), Rapporteur, read out paragraph 10, which corresponded to paragraph 12 of the original draft report, amended in the light of the discussion at the twenty-fourth meeting.

Paragraph 10 was approved.

Paragraph 11

Mr. PROHASKA (Austria), Rapporteur, read out paragraph 11, which corresponded to paragraph 13 of the original, amended in the light of the discussion on that paragraph.

In reply to a question by Mr. THOMPSON-FLORES (Brazil) concerning the second half of the first sentence of the paragraph, he said that the Sub-Committee had completed the first phase of its work and the consideration of the various questions before it, which meant that the general debate was largely completed; however, the Sub-Committee still had various questions before it which it had discussed and would discuss again in the next phase of its work.

Mr. THOMPSON-FLORES (Brazil) said he was satisfied with that explanation, particularly since the Sub-Committee had not yet decided how it was going to tackle the second stage of its work. The important thing was that the plenary committee should be able to have another discussion on the questions dealt with by the Sub-Committee.

Mr. MALINTOPPI (Italy) said he thought it would be better to revert to the original text for the first sentence of paragraph 11.

Mr. ARCHER (United Kingdom) said his delegation too had doubts as to the meaning of the first sentence of the paragraph. The sentence referred to a question which was dealt with more fully in the new paragraph 22 before the Sub-Committee. Without wishing to oppose the suggestion by the Italian representative, he thought it would be better for the Sub-Committee to deal first with that paragraph and then return to the controversial sentence and amend it if necessary.

Mr. THOMPSON-FLORES (Brazil) said his delegation could support the Italian representative's suggestion on the understanding that if the second stage of the work was to be undertaken in working groups, delegations not members of such groups would have the opportunity of making their views known to the Committee.

Mr. ZEGERS (Chile) said he supported the proposal of the United Kingdom representative.

Like the representative of Brazil, he considered that all delegations should have the opportunity of stating their views both on specific points and on general questions.

Mr. PROHASKA (Austria), Rapporteur, said that the proposed new paragraph 21 gave a summary of work accomplished in 1971 and the new paragraph 22 a broad outline of the work it was intended to undertake in the future. In the circumstances, the first sentence of paragraph 11 could be deleted.

Mr. POLLARD (Guyana) proposed replacing the first sentence of paragraph 11 by the following: "Sub-Committee I completed the first stage of its work as outlined above".

Mr. MALINTOPPI (Italy) supported the Rapporteur's proposal.

Mr. HARRY (Australia) also supported the Rapporteur's proposal, pointing out that if it was accepted, the word "thus" in the second sentence of paragraph 11 as at present drafted should be deleted.

Mr. JAGOTA (India) remarked that there was little difference between the Rapporteur's proposal and the proposal by the representative of Guyana. However, it would perhaps be better to start the paragraph with a short sentence along the lines suggested by the latter.

Mr. THOMPSON-FLORES (Brazil) said he would be prepared to support the Guyanian representative's proposal on condition that the word "largely" was kept before the word "completed".

Mr. JAGOTA (India) said he would like the sentence to be more categorical. The first stage of the Sub-Committee's work was completed; the general debate should not be resumed at the next session.

Mr. ARIAS SCHREIBER (Peru), referring to the Indian representative's comments, asked what would be the position of delegations which had not participated in the general debate but wished to make a statement.

The CHAIRMAN said that the Sub-Committee would take a decision on that matter in connexion with paragraph 22, which dealt with the organization and programme of work of the next session.

Mr. ARIAS SCHREIBER (Peru) said he thought that to avoid any ambiguity, the best thing to do would be to delete the first sentence of paragraph 11, as the Rapporteur had proposed.

Mr. THOMPSON-FLORES (Brazil) pointed out that in addition to the case mentioned by the Peruvian representative, any delegations which submitted new drafts should also have the opportunity of making an explanatory statement to the Sub-Committee. That was a further reason for being as flexible as possible.

Mr. POLLARD (Guyana) said that the report must accurately reflect what had taken place in the Sub-Committee. The first stage of the Sub-Committee's work was finished, and that fact should therefore be stated. That would not mean that the Sub-Committee could not reopen the general debate so as to enable delegations which had not yet made statements to make their views known.

He would press for the adoption of his proposal without change.

The CHAIRMAN suggested that, in view of the lack of agreement on paragraph 11 and the number of written amendments to paragraph 12 which had been submitted to the Secretariat, the Sub-Committee should take up those paragraphs again at the following meeting, which would allow time for the amendments to be circulated.

It was so agreed.

Mr. ITURRIAGA (Spain) and Mr. KOVALEVSKY (Union of Soviet Socialist Republics) said they hoped that the two paragraphs in question and the amendments would be distributed in all working languages.

Mr. LEVY (Secretary of the Sub-Committee) said that the Secretariat would do its utmost to see that translations of the original English texts would be ready in time.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

held on Tuesday, 24 August 1971, at 3.40 p.m.

Chairman: Mr. SEATON United Republic of Tanzania

ORGANIZATION OF WORK

The CHAIRMAN said he had received a letter from the Chairman of the Committee requesting him to ensure that the Sub-Committee's work was finished by midday on 26 August, so that the Committee could begin discussing the report.

Mr. LEVY (Secretary of the Sub-Committee) pointed out that, in the absence of any change in the programme of meetings drawn up at the beginning of the session, the Sub-Committee had only two meetings in which to finish its work within the time limit set by the Chairman.

CONSIDERATION OF THE DRAFT REPORT OF THE SUB-COMMITTEE (continued)

Mr. BEESLEY (Canada) said that in view of the discussion at the preceding meeting, his delegation had prepared a working paper[1/] which was to be distributed shortly concerning the revised version of paragraph 7 of the draft report (A/AC.138/SC.I/L.7). He then read out a text explaining the philosophy underlying the working paper.

His delegation would like the working paper to be mentioned in an additional sub-paragraph (g) to be inserted in paragraph 6, as already adopted, and the statement he had read out to be treated in the same way as similar statements by other delegations.

The CHAIRMAN said that the request made by the Canadian representative would be met.

He suggested that the Sub-Committee should proceed to discuss paragraph 12 of the revised text submitted by the Rapporteur and the amendments to that paragraph the texts of which had been distributed in English, and on completing its work on paragraph 12, revert to paragraph 11, which had been left in abeyance.

It was so decided.

The CHAIRMAN suggested that the Sub-Committee should discuss the sub-paragraphs of paragraph 12 one by one. The Rapporteur would first read out his revised draft text in English. The amendments would then be introduced after which

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1/ Subsequently distributed as document A/AC.138/59.

members of the Sub-Committee could state their views and, if necessary, propose amendments orally. Finally the Sub-Committee would take a decision in the light of the statements made.

It was so decided.

Paragraph 12 (A) (a)

Mr. PROHASKA (Austria), Rapporteur, read out the introductory section and sub-paragraph (a) of his revised version of paragraph 12.

Mr. BONNICK (Jamaica) said that his delegation had submitted amendments to the text of paragraphs 12 and 13 because, in its view, the Rapporteur's revised draft did not accurately reflect the discussion in the Sub-Committee.

With regard to paragraph 12 (A) his delegation considered that the question of the international régime should be linked up with that of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof, beyond the limits of National Jurisdiction (General Assembly resolution 2749 (XXV)). It therefore proposed that the title suggested by the Rapporteur should be replaced by: "The international régime, and Declaration of Principles".

His delegation also proposed that the introductory section of paragraph 12 should be replaced by a new text, which he read out in English.

It also thought that the adoption of the Rapporteur's text for sub-paragraph (a) might give rise to difficulties, as it was too vague and delegations would doubtless ask for their views to be more fully explained. He therefore proposed that the Rapporteur's text for that sub-paragraph should be replaced by sub-paragraph (a) of the Jamaican amendment, which was in fact an amended version of the Rapporteur's sub-paragraph (b).

Mr. ZEGERS (Chile) said that the amendments submitted by his delegation referred to the initial draft report submitted by the Rappotteur (A/AC.138/SC.I/L.7) and not to the revised version of that document, which already included some of the amendments requested by his country. In order to avoid delaying the Sub-Committee's work, he was prepared to study the new text proposed by the Rapporteur and to submit amendments orally if he considered that further changes were needed in the text.

Mr. JAGOTA (India) said that the relation between the Declaration of Principles and the international régime was settled in principle by operative paragraph 9 of that resolution, of which he recalled the substance.

His delegation had drafted a new version of sub-paragraph 12 (A) (a), which he read out. The Indian version was based on the text proposed by the Rapporteur, amended so as to give a more accurate picture of the Sub-Committee's discussion, which he had submitted for the same reason as the Jamaican delegation.

He requested, however, that the Jamaican delegation's proposal should be discussed first. If it were adopted, his own delegation's amendment would be automatically withdrawn.

Mr. THOMPSON-FLORES (Brazil) pointed out that, in the Rapporteur's text for paragraph 12 (A) (a), the relation between the Declaration of Principles and the international régime was presented as one of the questions under discussion. But, as the representative of India had said, that relationship had already been settled by the General Assembly. The only outstanding questions were those referred to in sub-paragraphs 12 (A) (b) to (f) in the Rapporteur's text. His delegation therefore supported the amendments proposed by the representative of Jamaica.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) considered that it would be incorrect to say that the Declaration of Principles settled all issues relating to the proposed international régime. In fact the 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 Sub-Soil Thereof (General Assembly resolution 2660(XXV), annex) was at present open to accession by States and that Treaty also had a relationship to the régime which was to be established for the sea-bed and the ocean floor.

Mr. STEVENSON (United States of America) considered that the text proposed by the representative of Jamaica was an improvement on the Rapporteur's draft. It would be preferable, however, to replace the word "on" before the phrase "the nature of this relationship" in the penultimate sentence of the introductory section of the new Jamaican text by the words "as to".

Mr. JEANNEL (France), referring to the last sentence of the Jamaican delegation's text for sub-paragraph (a), said he did not think it was correct to say that the discussion had revealed the existence of two main schools of thought among the participants, one in favour of a régime with "strong central control" and the other in favour of a régime with "more limited control". In fact, the discussion had related to the specific powers to be vested in the international machinery with regard to exploration and exploitation activities.

Mr. HARRY (Australia) said he was prepared to accept the Jamaican delegation's amendments. He would, however, like the words "in this connexion" in the last sentence of the introductory section to be deleted, as they gave the false impression that the debate had been restricted to the question of the relationship between the international régime and the Declaration of Principles. The Sub-Committee had in fact dealt with substantive matters concerning the proposed international régime.

Mr. RONNICK (Jamaica) accepted the sub-amendment proposed by the United States representative.

The Australian sub-amendment referred to wording taken from the draft submitted by the Rapporteur. His delegation would be prepared to accept it provided the members of the Committee had no objection.

Mr. STEVENSON (United States of America) supported the Australian sub-amendment.

The last sentence of the introductory section of paragraph 12(a) proposed by the Jamaican delegation, as amended, was adopted.

The Jamaican amendment to paragraph 12(A) (a) of the text proposed by the Rapporteur, as amended, was adopted.

Paragraph 12(A) (b)

The CHAIRMAN said that, as a result of the decision just taken, paragraph 12(A) (a) submitted by the Rapporteur was deleted and former sub-paragraph (b) now became sub-paragraph (a).

Mr. PROHASKA (Austria), Rapporteur, read out the text of the new sub-paragraph (a) entitled: "Scope and nature of the international régime".

The CHAIRMAN said that amendments to that text had already been submitted by the Canadian and Jamaican delegations.

Mr. BEESLEY (Canada) said that the Canadian amendment related to the original text submitted by the Rapporteur and had therefore been superseded to the extent that the revised text included various points which the Canadian delegation had wished to see incorporated in it.

Mr. RONNICK (Jamaica) read out the text which his delegation proposed in place of the Rapporteur's text for the new sub-paragraph (a). His delegation's aim had again been to make the account of the Sub-Committee's discussion balanced and to take all the views which had been expressed into consideration.

For the benefit of Spanish-speaking delegations, he explained the meaning to be attached to the word "control" in the English text.

The CHAIRMAN thought that there was no real contradiction between the Rapporteur's text and the Jamaican amendment. The main difference was that the former text laid less emphasis on the extent of the authority to be granted to the international régime.

The French representative, however, had appeared to doubt whether the Jamaican delegation's text was sufficiently flexible to cover the whole range of the discussion.

The question therefore arose of whether the Jamaican amendment should replace the Rapporteur's text or be added to it.

Mr. BONNICK (Jamaica) requested that the text of former sub-paragraph (b) in the Rapporteur's draft should be replaced by the new sub-paragraph (a) in his delegation's amendment.

Mr. JEANNEL (France) said he did not believe that the Jamaican amendment could replace the revised text submitted by the Rapporteur. In his view, it was not a real summary accurately reflecting the course of the debate. Where so complex a matter was concerned, it could not be said that there were two main schools of thought. The problem had in fact a great many facets.

His delegation considered that two questions demanded a reply, which would not necessarily be the same, namely, the extent of the control and the nature of that control. The Jamaican amendment had the disadvantage of exaggerating the rigidity of the positions adopted by some delegations, which were less categorical than it indicated. Consequently, his delegation greatly preferred the Rapporteur's text, which seemed to reflect more faithfully the views expressed by many delegations. Moreover, the revised version was a considerable improvement on the original. Adoption of the Jamaican amendment would be a retrograde step and France would prefer to retain the Rapporteur's text.

Mr. STEVENSON (United States of America) considered that the sub-paragraph dealt with two different questions: the scope of the régime and the extent of the control to be exercised through the international machinery. He could accept the first sentence of the Rapporteur's revised version relating to the scope of the régime and hoped that it would be retained. The second sentence could be replaced by a text on the following lines: "A related aspect of this problem concerns the extent of the control to be exercised by the international machinery - See para. 13 (B) (b) below."

The CHAIRMAN noted that the Sub-Committee now had three proposals before it: the Rapporteur's revised version, the Jamaican amendment which was a new text, and the version suggested by the United States representative in which the Rapporteur's text would be only partly replaced.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) thought that paragraph 12 (a) of the Rapporteur's revised text reflected what had been said during the debate and should be retained.

Mr. BONNICK (Jamaica) said that the work had been expressly divided between the sub-committees and the Committee itself. His delegation could not agree that Sub-Committee I should consider only the scope of the international régime. The whole basis of the working documents which had been submitted concerned the forms of control to be exercised by the international machinery over the international sea-bed area. His delegation would find it difficult to agree that control of sea-bed resources should not be discussed. Consequently it would have to be presented with convincing arguments before it could alter its position and bring it into line with the Rapporteur's text in which the emphasis placed on the concepts involved seemed to differ from that placed on them in the discussion.

Mr. JAGOTA (India) thought that two points were involved: first, the range of activities, and second, the extent of control. Varying views had been expressed on those two points. The first sentence of the revised version of document A/AC.138/SC.I/L.7 could be retained and the rest replaced by the Jamaican amendment. The question of the extent of control was dealt with in paragraph 13 (b) and the Sub-Committee could revert to the matter in due course.

Mr. BEESLEY (Canada) said he was anxious that paragraph 13 (b) should include a reference to the elements and objectives of the sea-bed resources management system.

Mr. BONNICK (Jamaica) said that, to facilitate the Sub-Committee's work, his delegation was willing to accept the Indian proposal, with the addition of the Canadian suggestion. Sub-paragraph (b) would therefore be drafted as recommended by the Indian representative, a sentence being added to take the Canadian representative's comment into account.

Mr. STEVENSON (United States of America) asked the Indian and Jamaican representatives if they could agree to the term "international régime" in the second sentence being replaced by "international machinery".

Mr. BONNICK (Jamaica) replied that the term "machinery" could be added to "régime".

Mr. STEVENSON (United States of America) accepted that proposal.

Mr. ZARROUG (Sudan), supported by Mr. GREKOV (Byelorussian Soviet Socialist Republic), requested that the amended text of the sub-paragraph should be read out.

The CHAIRMAN invited the Canadian representative to read out the text of his proposed addition to the sub-paragraph.

Mr. BEESLEY (Canada) read out the following text: "Some delegations stressed the importance of the sea-bed resources management system in the attainment of the objectives of the régime".

The CHAIRMAN read out sub-paragraph (b) as a whole, as amended:

> "with regard to the scope of the international régime, the issues raised during the debate included the question of the range of activities to be regulated by the international régime: whether the scope of the régime should include all uses of the sea-bed beyond national jurisdiction or regulate activities only in respect of exploration and exploitation. Another crucial issue was the question of the degree of control by the international régime and machinery over the range of activities pertaining to the uses of the sea-bed beyond national jurisdiction. A number of delegations favoured a strong central control over all activities in the area while others favoured more limited control over some or all activities".

The addition proposed by the Canadian representative would follow that text.

Paragraph 12 (A) (c)

Mr. PROHASKA (Austria), Rapporteur, read out paragraph 12 (A) (c).

Mr. MENDOZA (Philippines) considered it incorrect to state that it was generally accepted that the international régime should be established by an international treaty (or treaties) based on the principle of universality, since some delegations, including his own, had not expressed any views on the matter. That did not, however, mean that his delegation took a contrary view. Although General Assembly resolution 2750 (XXV) on the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor urged that the international machinery should be established by a universal treaty, there was, as yet, too little evidence to justify an assertion that that principle was generally accepted. He therefore requested that the opening words "It was generally accepted ..." should be amended to read: "It was proposed by the States which dealt with this matter that the international régime should ...".

Mr. JAGOTA (India) proposed that sub-paragraph (c) should state in substance that it was generally accepted that the international régime should be established by an international treaty of a universal character, generally agreed upon.

After an exchange of views, paragraph 12 (A) (c) was approved in the form proposed by India.

Paragraph 12 (A) (d)

Mr. ZEGERS (Chile) proposed that the paragraph should be drafted on the following lines:

> "Most speakers mentioned the matter of a closer definition of the international area. It was generally felt that the criterion depth was insufficient to determine the limit and that it would be essential to consider the distance criterion. In that respect, a number of delegations representing various regions had proposed a distance of 200 miles. Some delegations had, however, said that they could not accept that limit and suggested other solutions. Several delegations stressed the fact that the rights acquired under the international law in force had to be taken into account. Other delegations suggested the possibility of resolving the problem of limits by adopting regional criteria."

The CHAIRMAN suggested that, having regard to the lateness of the hour and the difficulty of reconciling all the amendments to sub-paragraph 12 (A) (d), all the sponsors of amendments should meet with a view to submitting a text acceptable to the Sub-Committee at the next meeting. That working group would, of course, be open to all delegations wishing to take part in it.

Mr. THOMPSON-FLORES (Brazil) supported the Chairman's proposal and suggested that the Sub-Committee should continue its examination of the report.

Mr. BONNICK (Jamaica) introduced his delegation's amendment, which consisted mainly of deleting the second, third and fourth sentences of the Rapporteur's text and recasting the remainder. He thought that the divergence of views among the sponsors of amendments was too great for agreement to be easily reached.

Mr. HARRY (Australia) said that although his delegation found the structure of the Rapporteur's text generally acceptable, it would like greater emphasis to be laid on international law.

Mr. STEVENSON (United States of America) thought that the Rapporteur's text faithfully reflected the course of the debate. His delegation would find it hard to accept the Kenyan amendment.

Mr. NJENGA (Kenya) said that most delegations from the various parts of the world had declared themselves in favour of the distance criterion and the majority of them had maintained that a 200-mile limit was both reasonable and appropriate. His delegation would like to see that fact reflected in the text of the report.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) thought that the report should refer to all the criteria discussed and particularly to the 200-metre depth criterion and the criteria proposed by the advocates of a distance of 40, 48 and 100 nautical miles respectively.

Mr. ZARROUG (Sudan) considered that the statement proposed by the Chilean delegation gave a correct picture of the debate.

Mr. ZEGERS (Chile) thought that the Sub-Committee had a duty to inform the General Assembly and thus to submit a report giving a faithful account of the course of the debate. In order to be objective, the report must indicate not only the criteria proposed but also the amount of support they had received from delegations.

Mr. JAGOTA (India) said that all the participants recognized that the general debate was closed and that the report must effectively reflect that discussion. Many divergent opinions had been expressed and the main trends had to be identified. That was why the various suggestions made called for more thorough examination by the Sub-Committee.

The latter seemed to be divided on some basic issues, in particular, on the limits of the international area. As the representative of Chile had so rightly said, many delegations had spoken on that point (26 in all). The discussion must therefore be summarized and adequately reported. Diverging opinions had been expressed on the connexion between the limits of that area and economic questions; the views expressed must therefore be recorded without disturbing the balance of the report and without over-emphasizing minority opinions. Account must also be taken of the various proposals, such as the Chilean proposal relating to the protection of acquired rights and the Kenyan proposal concerning land-locked countries.

In his delegation's opinion, the sub-paragraph would faithfully reflect the discussion if the Rapporteur's revised text were amended as follows:

"(d) ...

The existence of a relationship between the international régime for the sea-bed and the limits of the area to which it should apply was acknowledged. The view was generally expressed that the international area and its resources being the common heritage of mankind, it should be so defined as to be of economic importance to the world community as a whole ..."

Other amendments he wished to suggest were that the words "Some delegations" in line 11 should be replaced by "A number of delegations", the words "whereas others advocated" in line 12 by "whereas some others", the words "several delegations submitted" in line 14 by "several delegations from various regions submitted", and the words "while other delegations" in line 15 by "while some other delegations". The second part of sub-paragraph (d) might begin as follows: "Proposals were also made by some delegations for ...".

Mr. LAPOINTE (Canada) explained that the amendment proposed by his delegation had related to the original text, but the underlying ideas were still applicable to the revised version submitted by the Rapporteur.

With regard to sub-paragraph (d) of paragraph 12(A), in particular, his delegation considered that reference should be made to the geomorphological criterion for defining the jurisdiction of coastal States over the sea-bed. It attached more importance to the concept itself than to the language used. Since the sponsors of amendments were to hold a meeting, that concept, which had been in use for many years, could be introduced into the sub-paragraph.

Mr. CIESZKA (Poland) said that the delimitation of the international area was a matter of great importance, since the working of the system would depend on the extent of the area to which it was applied. In its working paper (A/AC.138/44), Poland had proposed that the demarcation line should be defined by reference to one of the following criteria: the standard depth criterion or the combined criterion of depth and distance from the base-line. That solution enabled any coastal State to choose its boundary line according to the configuration of the sea-bed adjacent to its coast.

Mr. ARIAS SCHREIBER (Peru) pointed out that some delegations had totally rejected the intermediate zone concept, which, in their view, would only exacerbate inequalities. In that respect, his delegation entirely shared the views of the delegations of Kenya and Chile. Regarding the 200-mile limit, the report should mention that a great many delegations from all continents acknowledged that criterion to be reasonable, even if their country had not yet adopted it. The report must reflect the large body of support that criterion had received.

Mrs. GUIBOURG (Argentina) said that her delegation was anxious that the report should mention the geomorphological criterion as a means of determining the extent of the continental shelf and should also mention the acquired rights of coastal States.

Mr. CHAO (Singapore) said that his delegation regarded Kenya's first amendment as unacceptable.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that the report should mention all the criteria that had been suggested together with the proposals submitted, with a view to protecting the interests of land-locked countries. He supported the proposal made by the Chairman, and asked all delegations taking part in drafting the text to maintain a strict balance between the proposals.

Mr. TRAORE (Republic of Ivory Coast) suggested that members of the drafting group should take the Rapporteur's text, as amended by India, as a basis for its work.

Mr. ORIBE (Uruguay) thought the report should make it clear that the question had been examined by Sub-Committee I, Sub-Committee II and the plenary Committee.

Mr. MONCAYO (Ecuador) said that an absolutely objective account should be given of that part of the debate.

Mr. RAZAKANAIVO RABAVAZAHA (Madagascar) pointed out that, if the report was to be really objective, it must state that not only had some delegations acknowledged the 200-mile limit to be reasonable and others criticized it, but that some delegations had not taken a position on the matter.

The CHAIRMAN requested the delegation of Australia, Canada, India, Poland, Kenya, Jamaica and Chile, together with any others wishing to join them, to prepare a draft text of sub-paragraph 12(A) (d) that might be accepted by the Sub-Committee.

It was so decided.

The meeting rose at 7 p.m.

SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

held on Wednesday, 25 August 1971, at 10.35 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

CONSIDERATION OF DRAFT REPORT OF THE SUB-COMMITTEE (continued)

The CHAIRMAN invited the Sub-Committee to continue its consideration of the revised version of paragraphs 6 and following submitted by the Rapporteur as a conference room paper without a symbol.

Paragraphs 12 and 13

Mr. ZEGERS (Chile) said that the Working Group set up to draft a generally acceptable text for paragraph 12 (d) had not yet completed its work. He suggested that the Sub-Committee might postpone its consideration of the remainder of paragraph 12 and paragraph 13, so that delegations serving on the Working Group could be present when they were discussed.

It was so agreed.

Paragraph 14

Mr. PROHASKA (Austria), Rapporteur, read out the following revised version of paragraph 14, which he had prepared in the light of the discussions in the Sub-Committee at its 24th meeting:

"14. (C) Sharing by all States in the Benefits to be Derived from the Development of the Resources of the Area

"It was generally agreed, in accordance with the principle of common heritage, that all States should share in the benefits to be derived from the development of the area, with particular regard being given to the special problems and needs of developing countries. The suggestion was made in this context that particular consideration should be given to the least developed among such countries. The need to provide training facilities for nationals of developing countries was also stressed. The importance of direct participation in sea-bed exploration and exploitation as a means which would enable those countries to share to the maximum extent possible in the full range of benefits which sea-bed exploitation might provide was equally emphasized. Delegates noted with appreciation the study prepared by the Secretary-General (Possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from the exploitation of the resources of the area beyond the limits of national jurisdiction) (A/AC.138/38 and Corr.1)."

Mr. ARCHER (United Kingdom) said he found the fourth sentence somewhat ambiguous. The words "direct participation" had been used in two different senses in the discussion, first, with reference to participation by the international authority and secondly, with reference to participation by countries themselves. It was in the latter sense that they were used in the fourth sentence, which reflected certain views expressed by his own delegation among others. In order to clarify the text, he suggested it should read:

> "The importance of direct participation by all countries in sea-bed exploration and exploitation as a means which would enable developing countries to share to the maximum extent possible in the full range of benefits which sea-bed exploitation might provide was equally emphasized."

Mr. MONCAYO (Ecuador) said that he had some doubts about the amendment which the United Kingdom representative had just proposed. In the discussion, most representatives of developing countries had expressed the hope that they would be able to participate directly in the exploration and exploitation of the resources of the area so that they could share in both the financial and all other types of benefits. They had stated that a licensing system would not enable them to participate directly in those activities. Paragraphs 13 and 14 both referred to the ways in which developing countries could do so. He thus considered that the fourth sentence of paragraph 14 set out a principle which the representatives of many developing countries had mentioned, and would prefer that no change should be made in it. A subsequent reference could be made to the view of developed countries which were in favour of a licensing system.

Mr. PALACIOS (Mexico) said that he could not support the United Kingdom amendment either. Two distinct schools of thought had been in evidence during the discussion, one holding that the international machinery should engage directly in exploration and exploitation activities and the other that it should not. Both views should be reflected in paragraph 14.

Mr. THOMPSON-FLORES (Brazil) said that he could accept the United Kingdom proposal provided that an additional sentence was inserted immediately after it, which might read: "On the other hand, it was also emphasized that such participation would be ensured through joint ventures with the international authority". That would restore the balance of the paragraph.

Mr. ARCHER (United Kingdom) said that he was prepared to accept that amendment.

Mr. MALINTOPPI (Italy) said that it would be more appropriate if the word "authority" in the Brazilian amendment were replaced by the word "machinery".

It was so agreed.

The United Kingdom and Brazilian amendments were adopted.

Mr. OXMAN (United States of America) said that there was no specific reference in paragraph 14 to benefit sharing in payments made to the machinery as a result of resource development. He would therefore suggest that the words "In addition to sharing in payments made to the machinery resulting from resource development" should be inserted at the beginning of the third sentence.

Mr. MONCAYO (Ecuador) said that some delegations had in fact referred in the course of the discussion to the importance of providing developing countries with opportunities to equip themselves technically and financially so that they would be able to participate in the exploitation of resources. The amendment suggested by the representative of the United States, on the other hand, did not reflect what had actually been said. Moreover, the fourth sentence already contained an implicit reference to financial benefits.

Mr. BONNICK (Jamaica) said that he was puzzled by the suggestion which the United States representative had made, since it seemed to lay undue emphasis on earnings from licences. If there was to be a specific reference in the paragraph to the sharing of financial benefits, it should be to financial benefits in general. The United States suggestion was therefore not acceptable to him.

Mr. THOMPSON-FLORES (Brazil) said that the United States suggestion in its present form was not acceptable to him either. It gave the impression that there was an order of priority in the benefits to be derived from the exploitation of the area.

Mr. HARRY (Australia) said that the study by the Secretary-General (A/AC.138/38 and Corr.1), which was referred to in the last sentence of the paragraph, used the words "proceeds and other benefits". That wording led him to suggest that the matter might be dealt with by inserting the words "financial and other" before the word "benefits" in the first sentence.

Mr. BONNICK (Jamaica) said that he supported the wording suggested by the representative of Australia, which made for a more balanced text.

Mr. THOMPSON-FLORES (Brazil) said that he could support the Australian wording, provided the word "all" was inserted before the word "other".

Mr. HARRY (Australia) accepted the Brazilian sub-amendment to his text.

Mr. OXMAN (United States of America) said that it had not been his intention to prejudge the question of the system of resource exploitation. He was quite prepared to withdraw his suggestion in favour of the Australian suggestion, as amended by the representative of Brazil.

The Australian amendment, as amended by Brazil, was adopted.

Paragraph 14, as amended, was approved.

Paragraph 15

Mr. de SOTO (Peru), referring to the second sentence of the paragraph, said that a number of delegations including his own had expressed the view that the preliminary conclusions in the Secretary-General's report on the possible import of sea-bed mineral production on world markets (A/AC.138/36) were premature and over-optimistic, particularly with regard to the interests of the countries exporting minerals obtained from dry land. He suggested that the Rapporteur should be asked to draft an additional sentence to reflect that view, basing it on the Peruvian delegation's statement as it appeared in the summary record of the Sub-Committee's 7th meeting: "The Secretariat had perhaps been a little hasty in its conclusion that mineral production would not have an adverse effect on the interests of the inland developing producer countries."

Mr. OXMAN (United States of America) said that his delegation had made a detailed statement supporting the Secretary-General's conclusions. If, therefore, the Peruvian amendment were accepted, he would propose the insertion of a further sentence on the following lines: "Other detailed analyses were presented supporting the general conclusions of the Secretary-General."

Mr. de SOTO (Peru) said that the United States view was already covered by the second sentence. What he was trying to point out was that some delegations thought the Secretary-General had been too optimistic.

Mr. OLMEDA VILLERIA (Bolivia) and Mr. PRIETO (Chile) supported the Peruvian representative's proposal.

Mr. PROHASKA (Austria), Rapporteur, suggested that the point raised by the Peruvian representative might be met by the insertion, after the second sentence, of a sentence on the following lines: "Some delegations also suggested, however, that the conclusions of the Secretary-General's report were too favourable as regards the possible effects of marine mineral production on the interests of developing countries producing those same minerals from dry land." The following sentence would then start: "Consequently it was felt that ...".

Mr. OXMAN (United States of America) said that the second sentence did not really reflect the detailed statements made particularly by his own delegation in support of the conclusions in the Secretary-General's report. Those statements amounted to something more than appreciation. He would prefer his original amendment, which stated what had happened, but would be satisfied if the beginning of the second sentence were amended to read as follows: "A number of speakers expressed their concurrence with the Secretary-General's report ...".

Mr. HARRY (Australia) said that there were really three ideas that should be expressed in the paragraph: first, that a number of speakers had expressed their appreciation of the Secretary-General's report; secondly, the views expressed in the sentence proposed by the Rapporteur; and thirdly, a brief indication that other delegations had agreed with the Secretary-General's conclusions - which was different from expressing appreciation.

He accordingly proposed the insertion after the second sentence of a new text on the following lines: "Some delegations suggested that the report was too favourable and had underestimated the possible effects of production of sea-bed minerals on the interests of developing countries producing the same minerals from dry land. Others agreed with the Secretary-General's conclusions."

The following sentence would begin with the words "It was agreed that ..."

Mr. PARDO (Malta) proposed the deletion of the words "A number of" at the beginning of the second sentence.

The Australian and Maltese amendments were adopted.

Mr. de SOTO (Peru) proposed the addition of a sentence on the following lines at the end of the paragraph: "A number of delegations emphasized the role falling to UNCTAD because of its particular competence and suitability in this field."

Mr. OXMAN (United States of America) suggested that the amendment would be more appropriate in paragraph 16 or paragraph 17, both of which contained a reference to UNCTAD.

Mr. de SOTO (Peru) said that he particularly wished his amendment to appear at the end of paragraph 15, which referred to the studies being undertaken by other United Nations organizations. Many delegations, including his own, had stressed that UNCTAD had a special importance and was not on the same footing as the other United Nations agencies.

The amendment was adopted.

Paragraph 15, as amended, was approved.

Paragraph 17

Mr. de SOTO (Peru) said that, after the representative of the Secretary-General of UNCTAD had addressed the Sub-Committee, the Peruvian delegation had submitted a dual proposal. The Sub-Committee had decided in favour of the first half of the proposal, namely, that the statement should be reproduced as an official document of the Sub-Committee, but had apparently felt that the time was not appropriate to consider the second half of the proposal. Consequently, his delegation wished formally to propose that the statement by the representative of the Secretary-General of UNCTAD (A/AC.138/SC.I/L.5) should be annexed to the Sub-Committee's report.

Mr. ARCHER (United Kingdom) appealed to the representative of Peru not to press his proposal, since to annex a single statement to the report would be a most unusual step and would create an undesirable precedent. The UNCTAD statement was already freely available as a document.

Mr. PRIETO (Chile) said that the General Assembly, in resolution 2750 A (XXV), had instructed the Committee to pay special attention to UNCTAD in its work. The UNCTAD representative had thus not been merely an observer but the bearer of a special report which was important to the work of the Committee.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) reminded the representative of Chile that the resolution to which he had referred instructed the Secretary-General to submit information to the Committee, in co-operation with UNCTAD, the specialized agencies, etc. Since there was no reason to suppose that the Secretary-General would deviate from those instructions, it could be taken for granted that the opinion of UNCTAD would be reflected in the Secretary-General's various reports.

Mr. de SOTO (Peru) said he thought he was expressing the view of the majority of the Sub-Committee in emphasizing the need to highlight the role of UNCTAD in a special way. A precedent, whether or not a desirable one, had already been created when a UNESCO statement had been annexed to a General Assembly document. The UNCTAD statement was indeed available to the members of the Sub-Committee but, unless it was annexed to the report, it would not be so readily available to the forty or so other delegations represented in the General Assembly but not in the Committee.

The CHAIRMAN suggested that a summary of the UNCTAD statement might be included in the report.

Mr. de SOTO (Peru) said that the statement would be reduced to nothing if it was summarized.

Mr. WILLIAMS (United Kingdom) said that his delegation withdrew its objection to the Peruvian proposal.

Mr. STEVENSON (United States of America) said that if the Peruvian proposal was accepted, a statement by the representative of UNCTAD would be given greater prominence than the Secretary-General's report on the possible impact of sea-bed mineral production on world markets. At very least, the two should be given similar treatment. If the representative of Peru insisted that the UNCTAD statement should be annexed to the Sub-Committee's report, his own delegation would then propose that the Secretary-General's report should be annexed too.

Mr. HARRY (Australia) said he agreed with the representative of the United States that it would be rather difficult to give the UNCTAD statement a higher status than a report prepared by the Secretary-General in accordance with a specific request by the General Assembly. The Peruvian representative might, perhaps, be satisfied if the UNCTAD statement were made an official document of the plenary Committee. It would then have the same status as the Secretary-General's report.

Mr. PARDO (Malta) said that there seemed much merit in the Chairman's suggestion that the UNCTAD statement should be summarized in the report.

Mr. de SOTO (Peru) said that as a compromise he would withdraw his proposal provided that the UNCTAD statement was both made an official document of the Committee and summarized in the report.

Mr. STEVENSON (United States of America) said that he was still concerned lest a statement by UNCTAD should be given a higher status than a report by the Secretary-General. If the statement was to be summarized in the report, the Secretary-General's report should be summarized too, the two summaries being given equal treatment.

Mr. PRCHASKA (Austria), Rapporteur, said that it would be quite easy to obtain a summary of the UNCTAD statement from the representative of UNCTAD himself, but that it would be more difficult to summarize the voluminous report of the Secretary-General.

Mr. de SOTO (Peru) said that the representative of UNCTAD had made a statement to the Sub-Committee. The representative of the Secretary-General had also made a statement, introducing the report of the Secretary-General. The fairest solution would surely be to annex both those statements to the report.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that there was a good short summary of the Secretary-General's report in the original paragraph 19 of the Rapporteur's draft report (A/AC.138/SC.I/L.7).

Mr. STEVENSON (United States of America) said that pages 8 to 10 of the Secretary-General's report gave a summary of the report as a whole. It would be easy to reproduce those three pages as one annex and the three pages of the UNCTAD statement as another.

Mr. de SOTO (Peru) said he accepted that suggestion.

It was so decided.

Mr. LEVY (Secretary of the Sub-Committee) said that it would then be necessary to insert appropriate references in the report to the effect that, in view of their importance, a summary of the Secretary-General's report (A/AC.138/36) and a statement by the representative of UNCTAD had been annexed.

It was so decided.

Paragraph 17, as amended, was approved.

The meeting rose at 1.5 p.m.

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

held on Thursday, 26 August 1971, at 10.20 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

CONSIDERATION OF THE DRAFT REPORT OF THE SUB-COMMITTEE (continued)

The CHAIRMAN invited the Sub-Committee to continue its consideration of the revised version of paragraph 6 and following of the draft report, submitted by the Rapporteur in a conference room paper without a symbol.

Paragraph 18

Mr. PROHASKA (Austria), Rapporteur, suggested that the words "ıor submission to the General Assembly" in the second and third lines should de deleted, since the Sub-Committee could not make recommendations direct to the General Assembly.

It was so agreed.

Paragraph 18, as amended, was approved.

Paragraph 19

Mr. LIVERMORE (Australia) proposed that a footnote should be added to the paragraph indicating what was understood by a shelf-locked country.

Mr. ITURRIAGA (Spain) proposed that the last sentence of the paragraph should be redrafted to read: "The representatives of the 'shelf-locked' countries pointed out that the interests of their countries were similar to those of the land-locked countries". In the Spanish text the word "shelf-locked" in English should be inserted in brackets after the Spanish term. That would be in conformity with Sub-Committee II's action. "Shelf-locked" was not a Spanish term and did not exist in law.

Mr. ZARROUG (Sudan) proposed that the words "and shelf-locked" should be inserted before the word "Countries" in the heading to the paragraph.

Mr. BEESLEY (Canada) asked whether the inclusion of the word "shelf-locked" in the heading to the paragraph would be consistent with the Secretary-General's report on the question of the special problems of land-locked countries (A/AC.138/37 and Corr.1 and 2).

Mr. LEVY (Secretary of the Sub-Committee) said that the Secretary-General's report had been prepared strictly in accordance with operative paragraph 1 of General Assembly resolution 2750 B (XXV).

Mr. MENDOZA (Philippines) agreed that it would be desirable to define shelf-locked countries, but in the light of the discussion that had taken place in Sub-Committee II he felt that it would be an impossible task at the present late stage. He therefore proposed that the words "shelf-locked countries" should be left in inverted commas.

Regarding the proposal to amend the heading of the paragraph, he felt that it might be inappropriate, since General Assembly resolution 2750 B (XXV) referred only to land-locked countries. The last sentence of the paragraph merely drew attention to certain views which had been expressed.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that he agreed with the representative of the Philippines on the undesirability of amending the paragraph heading. In the body of the text, the word "shelf-locked" should be left in quotation marks, unless some better formulation could be found.

Mr. ZARROUG (Sudan) said that he would not insist on his amendment to the heading of the paragraph provided the sentence concerning shelf-locked countries was placed in a separate paragraph.

Mr. ZEGERS (Chile) said that he fully appreciated the problems of the shelf-locked countries, but that paragraph 19 was concerned with the special problems of the land-locked countries, in accordance with General Assembly resolution 2750 B (XXV), and should reflect what delegations had said on that subject. He was not at all sure, moreover, that the problems of the shelf-locked countries really were the same as those of the land-locked countries. He was not in favour of putting the sentence on shelf-locked countries in a separate paragraph. It would be better to put the word "shelf-locked" in inverted commas and leave it to be clarified at a later stage.

Mr. ZARROUG (Sudan) said that it would be wrong to omit all reference to the shelf-locked countries, since several delegations had mentioned them.

Mr. ZEGERS (Chile) said that he was not opposed to the inclusion of a sentence on shelf-locked countries, but to its inclusion as a separate paragraph, which would destroy the whole logic of the report.

Mr. CHAO (Singapore), referring to the Australian proposal for a footnote to the paragraph concerning the meaning of "shelf-locked", said that the report was merely an account of what had taken place in the Sub-Committee. It would not be appropriate at the present stage to attempt a definition which might require considerable thought. He proposed that the footnote should indicate that the term had yet to be defined.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) supported the proposal by the representative of Singapore concerning the footnote. Any attempt to define shelf-locked countries would mean reopening substantive questions.

Mr. LIVERMORE (Australia) said that he could accept the proposal by the representative of Singapore.

Mr. BEESLEY (Canada) also supported that proposal.

It was important for the purposes of the Convention to reach a decision on the question of the definition of the term "shelf-locked". Unlike "land-locked" and "coastal" it had no legal status. It was causing dissension, confusion and waste of time in all the Sub-Committees. He urged that the delegations which attached importance to the term should either define it or abandon it.

The CHAIRMAN asked if the Sub-Committee agreed to the Australian proposal, as modified by the representative of Singapore, that a footnote should be added to paragraph 19 indicating that the meaning attached to the term "shelf-locked" had still to be settled.

The amendment was adopted.

The CHAIRMAN asked if the Sub-Committee agreed to the Spanish proposal that the last sentence should be amended to read "The representatives of the 'shelf-locked' countries pointed out that the interests of their countries were similar to those of the land-locked countries".

The Spanish amendment was adopted.

The CHAIRMAN asked if the Committee would agree that the amended sentence should be placed in a separate paragraph.

Mr. ZEGERS (Chile) said that in deference to the States which called themselves shelf-locked, his delegation would agree to the proposal.

It was agreed that the last sentence of paragraph 19, as amended, should be placed in a separate paragraph.

The CHAIRMAN drew attention to a proposal by Kenya that the following sentence should be inserted before the last sentence of paragraph 19: "In this connexion it was emphasized by some delegations that the most feasible method of solving the problem of the land-locked countries would be through accommodation within regional arrangements." In view of the decision just taken the proposed sentence would come at the end of the paragraph.

Mr. MBOTE (Kenya), referring to his delegation's statement at the eighth meeting that the interests of land-locked countries could be taken care of by regional or bilateral arrangements between States within a region, said that little progress would be made unless States recognized their responsibility for giving special rights of access to the sea to their land-locked neighbours. A number of arrangements on those lines were working very well in East Africa. He believed that that was the best method of solving the problems of the land-locked countries without detriment to the sovereignty of coastal countries.

Mr. FARHANG (Afghanistan) proposed that a sentence on the following lines should be added at the end of paragraph 19: "A preliminary working paper was submitted by several land-locked and shelf-locked countries with respect to a number of specific matters to be regulated in an international sea-bed convention."

Referring to the decision at the twenty-seventh meeting, in connexion with paragraph 17, to annex to the Sub-Committee's report summaries of the Secretary-General's report (A/AC.138/36) and of the statement by the representative of UNCTAD (A/AC.138/SC.I/L.5), he proposed that a summary of the Secretary-General's report on the problems of land-locked countries (A/AC.138/37 and Corr. 1 and 2) should also be annexed to the Sub-Committee's report.

With regard to the amendment proposed by the representative of Kenya, he agreed that regional arrangements were sometimes the best solutions for some countries, but he was not sure that they were the most feasible solutions for all countries and all regions. He therefore proposed that the words "most feasible" should be replaced by the words "one possible".

Mr. MBOTE (Kenya) said that he could not accept the Afghan representative's sub-amendment, because the words "most feasible" had actually been used in the debate. However, he would not object to the addition of a sentence referring to other possible methods of solving the problem of the land-locked countries.

Mr. OLMEDA VIRREIRA (Bolivia) said he agreed that the amendement suggested by the representative of Kenya was necessary. It was also a fact, however, that a single solution would not solve the problems of all land-locked countries. He therefore supported the Afghan sub-amendment.

He also agreed that, for the sake of uniformity, a summary of the Secretary-General's report on the problems of land-locked countries should be annexed to the report.

Mr. RIPHAGEN (Netherlands) said that he supported the proposal by the representative of Afghanistan that a sentence should be added to the paragraph referring to the submission of a working paper (A/AC.138/55) by a number of land-locked and shelf-locked countries.

With regard to the amendment submitted by the representative of Kenya, he said he thought it should be made clear that the delegations mentioned were delegations representing coastal and not land-locked States.

Mr. RANGANATHAN (India) said that paragraph 6 (h) of the revised text referred to the working paper which the representative of Afghanistan had mentioned, although there was nothing to indicate that the authors were land-locked or shelf-locked States. He saw no need to insert the text proposed by the representative of Afghanistan in paragraph 19, since paragraph 6 (h) summarized the philosophy of the proposal, and the Afghan text merely reflected the approach adopted in the working paper.

Mr. CHAO (Singapore) said that he supported the Afghan amendment to the Kenyan amendment. If the representative of Kenya insisted on the retention of his wording, then the other point of view should also be reflected in the paragraph. A number of land-locked and shelf-locked countries certainly considered that the best way to deal with their problems was by an international treaty.

He did not agree with the Indian representative that the sentence which the Afghan representative wished to insert in the paragraph reflected the views expressed in the working paper. It was a purely factual statement.

Mr. BONNICK (Jamaica) asked the representative of Afghanistan not to insist on the insertion of that sentence in paragraph 19; if he did, the Jamaican delegation would be obliged to ask for amendments to be made to a number of sections of the report which had already been approved.

Mr. ARIAS SCHREIBER (Peru) said that it was essential to keep to what had actually been stated during the discussion. If any delegation had said that it did not consider that the most feasible method of solving the problem of the land-locked countries would be through accommodation within regional arrangements, it would be legitimate to amend the Kenyan text but not otherwise.

Mr. VAN DER ESSEN (Belgium) said that his delegation supported the Afghan sub-amendment. The first reference in the report to land-locked and shelf-locked countries was in paragraph 19 and some of them had submitted a joint working paper. That fact should be reflected in the report.

The CHAIRMAN suggested that the representatives of Kenya and Afghanistan, assisted by the representative of Australia, should work out an acceptable text and submit it to the Committee.

It was so agreed.

Paragraph 20

Mr. PROHASKA (Austria), Rapporteur, said that the revised version of paragraph 20 read as follows:

> "20. Having regard both to the general nature of its debate and the broad terms of the request made by the General Assembly in resolution 2750 B (XXV) that appropriate measures be evolved within the framework of the law of the sea, to resolve the problems of land-locked countries, the Sub-Committee considered that it would not be desirable to attempt to formulate specific proposals at the present stage as regards the problems of land-locked countries with respect to exploration and exploitation of sea-bed resources beyond the limits of national jurisdiction. The Sub-Committee was however of the opinion that the matters referred to in the Secretary-General's report should remain under constant consideration, so that appropriate measures might be prepared in due course, as the future régime, including machinery, is elaborated."

Mr. MALINTOPPI (Italy) suggested that the words "as regards the problems of land-locked countries" in the first sentence, which were redundant, should be deleted.

It was so agreed.

Paragraph 20, as amended, was approved.

Paragraph 12 (d) - New paragraph 12 (c)

The CHAIRMAN invited the representative of Canada to introduce the new text prepared by a drafting group in place of paragraph 12 (d) of the revised version of the draft report. The new text read as follows:

> "New 12(c) The question of the precise definition of the area
>
> "In discussing a precise definition of the area beyond the limits of national jurisdiction there was general agreement that the definition should take into account the interests of coastal States and their rights under existing international law and the interests of the international community as a whole. Many delegations proposed a distance criterion. Others considered that there should be a combination of depth and distance. Others preferred either the geomorphological criterion of the continental margin alone or in combination

with the distance criterion, or all the criteria used by customary and conventional international law. As regards the figures proposed, a significant number of delegations from different regions submitted that 200 miles was reasonable and appropriate; other delegations favoured substantially smaller limits generally varying between 40 and 100 miles; of those who spoke of depth criterion many referred to the 200-metres isobath while others referred to depths down to 2,500 metres. Regional arrangements were also suggested.

"References were made to several types of intermediate zones. The Sub-Committee discussed proposals for the creation of intermediate or trusteeship zones adjacent to areas of exclusively coastal jurisdiction in which the coastal State would exercise powers and responsibilities defined in the treaty establishing the international régime. A number of delegations, however, rejected the trusteeship-type zone which, in their view, would only accentuate inequalities.

"The relationship between the nature of the international régime and the definition of the international area of the sea-bed and ocean floor on the one hand and of possible economic significance of such a régime on the other was stressed by several delegations. Some thought that the fundamental objective was an international régime applying to the area and its resources with comprehensive powers entrusted to an international agency which would form an integral part of such a régime. Others stressed that a maximum international area should be preserved in order to improve economic propects. Some other delegations related the powers of the régime to the definition of the area.

"Some delegations stressed the relationship between the limits of national jurisdiction and the international area as well as the relationship between limits of the different ocean spaces, while other delegations stressed the differences in the legal status of the various categories of ocean space. It was noted that in other sub-committees and the main Committee, in accordance with their mandates, the question of a more precise definition of the international area of the sea-bed and ocean floor had been examined."

Mr. BEESLEY (Canada), speaking on behalf of the drafting group, said that the group had comprised the representatives of Australia, Canada, Chile, India, Jamaica, Kenya and Poland as the sponsors of amendments to the Rapporteur's text. In their attempt to merge their various amendments and different viewpoints, they had also tried to reflect accurately the trend of the debate, but of course the text did not reflect the position of each delegation on every issue. A separate issue was dealt with in each paragraph and he suggested that it might be well to discuss the text paragraph by paragraph. He hoped that, if any delegations wished to suggest amendments, they would bear in mind that the draft had been very carefully negotiated and confine their amendments as far as possible to additions stating their positions rather than to substantive deletions.

New paragraph 12(c) - first paragraph

Mr. FARHANG (Afghanistan) suggested that the statement concerning the views of those delegations which favoured limits between 40 and 100 miles should read "Other delegations from various regions favoured limits between 40 and 100 miles, stressing that substantially smaller limits would be more compatible with the real meaning of the common heritage of mankind". That wording reflected the position of the countries concerned.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) noted that in the debate many delegations had adopted the position that a broad limit of national jurisdiction would be detrimental to the interests of the international régime. He therefore suggested that in the last sentence the semi-colon after the words "was reasonable and appropriate" should be replaced by a comma and that the following phrase should then be inserted: "at the same time, a considerable number of delegations also from different regions maintained that the establishment of such limits would deprive the international régime of reasonable economic prospects for the foreseeable future;". The word "other" at the beginning of the next phrase would then be replaced by the word "these". He considered that his amendment made the text more balanced and reflected the views of States as expressed in the discussion and in the working papers.

Mr. STEVENSON (United States of America) said that the treatment of the proposals referred to in the first paragraph differed from that of the proposal referred to in the second. If the Sub-Committee was to produce a fair and reasonable report, the treatment must be consistent. In the first paragraph, there was no indication of the opposition expressed to the proposals in question or the grounds for that opposition. He had no objection to that procedure as such, but in the second paragraph there was a reference to the opposition to the proposal in question and the reasons for it. Furthermore, two oral proposals had just been made to include in the first paragraph some of the reasons for which certain delegations objected to the idea of a 200-mile limit. There were, however, so many reasons which could be indicated that he thought it would be simpler not to mention any of them. The same applied to the second paragraph; reasons other than those indicated had been given for rejecting the trusteeship-type zone.

Mr. BOZHILOV (Bulgaria) said that the statements made by the representatives of Afghanistan and the Soviet Union reflected the debate which had taken place in the Sub-Committee and he could support either of them, feeling that they did not differ greatly. They were necessary, because the drafting group's text gave undue weight to the views of delegations which favoured a 200-mile limit.

Mr. ARIAS SCHREIBER (Peru) said that he agreed with the representative of the United States. It was impossible to go into the reasons for which any particular delegation was in favour of one limit or another. He himself could put forward many reasons in favour of the 200-mile limit, but if they were included the balance of the text would be upset. He therefore supported the recommendation that no reasons should be mentioned in connexion with any proposal.

Mr. PARDO (Malta) suggested that, in the fourth sentence the words "the geomorphological criterion of the continental margin" should be replaced by the words "the geomorphological criteria of the continental shelf or the continental margin".

In the last sentence but one, he suggested that the words "other delegations favoured substantially smaller limits" should be replaced by: "a significant number of other delegations, also from different regions, favoured substantially narrower limits".

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) proposed that the reference to the 200-mile limit as reasonable and appropriate should be deleted from the fourth sentence.

Mr. FARHANG (Afghanistan) said he could accept the Maltese proposal, as a compromise, but that he still thought that the two texts were unbalanced.

Mr. PARDO (Malta) said he would be reluctant to accept the USSR proposal. Perhaps the same effect might be achieved by adding the words "as equally reasonable and appropriate" after the words "between 40 and 100 miles".

It was do decided.

The first paragraph, as amended, was approved.

New paragraph 12(c) - second paragraph

Mr. STEVENSON (United States of America) proposed that the last sentence in the paragraph should be deleted, since it had been decided that the report should not give reasons for delegations' positions. The sentence could be replaced by the last sentence of paragraph 12(d) of the Rapporteur's revised version of his report.

Mr. NJENGA (Kenya) said that the United States amendment would give a seriously distorted picture of the discussion. If there was to be any reference to the trusteeship zone, then it was essential to indicate the fact that some delegations had totally rejected the concept.

Mr. ORIBE (Uruguay) said that the existing text would give the impression that the Sub-Committee had been working on an entirely new problem. He thought there should be some reference to the 1958 Convention on the Continental Shelf,[1/] which defined the continental shelf and the rights of States under international law.

After some further discussion, in which Mr. THOMPSON-FLORES (Brazil), Mr. ARIAS SCHREIBER (Peru), Mr. WILLIAMS (United Kingdom) and Mr. BONNICK (Jamaica) took part, the CHAIRMAN suggested that interested delegations should hold consultations in order to produce an agreed text.

New paragraph 12(c) - third paragraph

Mr. FARHANG (Afghanistan) proposed that, in the third sentence of the paragraph, the words "in order to improve economic prospects" should be replaced by the words: "in order to ensure that the regime would apply over an area which would offer reasonable economic prospects".

Mr. ORIBE (Uruguay) suggested that the third sentence should be deleted since it had very little connexion with the sentences before and after it.

Mr. THOMPSON-FLORES (Brazil) agreed with the representative of Uruguay that the sentence was rather out of place in the paragraph. If it was retained, and modified as suggested by the representative of Afghanistan, then it would be necessary to insert another sentence to restore the balance.

Mr. ZEGERS (Chile) said that the best solution would be to ask the representatives of Afghanistan and Brazil to consult together and prepare two appropriate sentences.

Mr. OXMAN (United States of America) considered that the sentence to be drafted by the representative of Brazil should refer to coastal States in general and not distinguish between them.

Mr. PARDO (Malta) said that there was no mention in the paragraph, or anywhere else in the draft report for that matter, of the agreement in the Sub-Committee that an international machinery was necessary.

The meeting rose at 1.5 p.m.

1/ United Nations, Treaty Series, vol. 499, p.311.

SUMMARY RECORD OF THE TWENTY-NINTH MEETING

held on Thursday, 26 August 1971, at 2.35 p.m.

Chairman: Mr. SEATON United Republic of Tanzania

CONSIDERATION OF THE DRAFT REPORT OF THE SUB-COMMITTEE (continued)

Paragraph 19 E

The CHAIRMAN reminded the Sub-Committee that a working group consisting of the representatives of Afghanistan, Australia and Kenya had been asked to find a compromise solution with respect to paragraph 19 E, concerning the special problems of land-locked countries.

Mr. LIVERMORE (Australia) said that, to take account of the proposal by the representative of Kenya, the working group would suggest adding the following sentence at the end of paragraph 19 E: "In this connexion it was emphasized by some delegations that the most feasible method of solving the problem of the land-locked countries would be through accommodation within regional arrangements". It was also suggested that a further sentence be added after it to read: "Other delegations stressed the importance of arrangements on an international basis".

Mr. FARHANG (Afghanistan) pointed out that his delegation had proposed that a summary of the Secretary-General's report on the problems of land-locked countries (A/AC.138/37 and Corr.1 and 2) should be annexed to the report.

It was so decided.

The CHAIRMAN suggested that paragraph 19 E be adopted, with the two additional sentences which the Australian representative had read out.

Paragraph 19 E, thus amended, was approved.

Paragraph 12 (c), third sub-paragraph

The CHAIRMAN reminded the Sub-Committee that a working party consisting of the representatives of Afghanistan and Brazil had been established to seek a compromise solution on the sub-paragraph.

Mr. THOMPSON-FLORES (Brazil) said that the Afghan and Brazilian delegations had agreed that immediately after the sentence ending in "an integral part of such a régime" the following words should be inserted: "Others stressed the rights of coastal States to avail themselves of the resources of a reasonable area of the sea-bed adjacent to their coasts for their economic development. Others stressed that the maximum international area should be preserved in order to assure that the régime would apply over an area which would offer reasonable

economic prospects. The need to attain an adequate balance between these interests and those of coastal States was acknowledged".

Mr. de SOTO (Peru) said he had no objection to the text which the Brazilian representative had just read out. He would only suggest that in the second sentence, the word "preserved" should be replaced by the word "recognized".

Mr. FARHANG (Afghanistan) said the paragraph had been very difficult to draft and that it was impossible to amend its language without upsetting the balance of the text.

Mr. de SOTO (Peru) said he would not press his suggestion.

The CHAIRMAN said that the compromise text submitted by the delegations of Afghanistan and Brazil seemed to be acceptable to the Sub-Committee.

The third sub-paragraph of paragraph 12 (c) was approved.

Paragraph 12 (c), second sub-paragraph

The CHAIRMAN reminded the Sub-Committee that a working party consisting of the delegations of Brazil, Canada, Jamaica, Kenya, Peru, the United Kingdom, United States, Uruguay and Yugoslavia had been set up to consider the sub-paragraph.

Mr. BEESLEY (Canada) said that the compromise text on which those delegations had reached agreement was based on the proposal put forward by the representative of Jamaica. The text would read: "Reference was made to proposals for the creation of intermediate or trusteeship zones adjacent to areas of exclusive coastal jurisdiction, including different suggestions regarding the limits of such a zone, and the rights and duties which the coastal States would exercise within the zone, and the rights of the international community within it. A number of delegations, however, could not support the concept of the intermediate-trusteeship zone".

Mr. LIVERMORE (Australia) said that his delegation was prepared to accept that text, on the understanding that the rights and duties exercised by the coastal State were those to be defined in the treaty.

The CHAIRMAN suggested that the compromise text be accepted.

The second sub-paragraph of paragraph 12 (c) was approved.

Paragraph 12 (c), fourth sub-paragraph

Mr. MALINTOPPI (Italy) said he could not make out the meaning of the first sentence in the sub-paragraph. It would, perhaps, be advisable to add the expression "the régime of" between the word "and" and the words "the international area" in the second line.

Mr. THOMPSON-FLORES (Brazil) said he agreed with the Italian representative. The meaning of the sentence was unclear. He did not think, however, that the sponsors had intended to establish a connexion between the limits of national jurisdiction and the régime of the international area, since that question had already been dealt with in the last sentence of the previous paragraph. The idea was a new one.

Mr. BEESLEY (Canada) said he thought that the sentence would be intelligible if the word "of" was inserted between the word "and" and the words "the international area".

Mr. MALINTOPPI (Italy) said that that was no improvement. The existence of a relation between one system of limits and another was simply a physical fact.

Mr. de SOTO (Peru) said that the limits of national jurisdiction and the limits of one part of ocean space could not be dissociated from the limits of other ocean spaces. There was a physical and legal connexion between all ocean spaces.

Mr. BEESLEY (Canada) said that the last word in the second line should be "interrelationship" and not "relationship".

Mr. LIVERMORE (Australia) said he wondered whether, to make the text easier to understand, the word "relationship" in the first line could not be replaced by the words "direct connexion".

Mr. THOMPSON-FLORES (Brazil) said that the sentence would be clearer if it read: "Some delegations stressed the relationship between the limits of national jurisdiction in the different ocean spaces and those of the international area."

Mr. JAGOTA (India) suggested that the amendment proposed by Brazil might take the following form: "Some delegations stressed the relationship between the limits of national jurisdiction in respect of the international area and the limits of the different ocean spaces".

Mr. YANKOV (Bulgaria) said he thought that, in attempting to make the meaning of the text more precise, the Sub-Committee was making it more confused and moving further and further away from the original text. He was in favour of adopting the Canadian amendment, with the sub-amendment proposed by Australia.

Mr. BEESLEY (Canada) said he accepted the version proposed by the Australian representative. The beginning of the paragraph would thus read: "Some

delegations stressed the direct connexion between the limits of national jurisdiction and of the international area, as well as the interrelationship between limits of the different ocean spaces";

The fourth sub-paragraph of paragraph 12 (c), thus amended, was approved.

Mr. ORIBE (Uruguay) pointed out that the Sub-Committee had not discussed the second sentence of the paragraph. In his view, the words "in other sub-committees" in that sentence should be replaced by the words "in Sub-Committee II". The question did not appear to have been considered by Sub-Committee III.

The CHAIRMAN pointed out that the paragraph had already been approved. He suggested that the representative of Uruguay should submit his proposal in the plenary.

Paragraph 12 (d)

Mr. BONNICK (Jamaica) said that he had requested the insertion of a new paragraph after paragraph 12 (c) which had just been approved to read:

"Orderly development of the marine environment

"A number of delegations supported the idea of establishing reserve areas within the international sea-bed area in order to promote the orderly development and preservation of the marine environment."

Mr. PARDO (Malta) supported the proposal made by the Jamaican representative, which he thought very constructive.

The text was adopted.

Mr. BEESLEY (Canada) said that his delegation would like to see a sentence in the Sub-Committee's report referring to voluntary contributions by coastal States to the international community, a question which had been commented upon by various delegations during the debate. He was not asking for the sentence to be included in paragraph 12 (d) but would, at a later stage, request that it should be made a separate paragraph.

Paragraph 12 (e)

The CHAIRMAN invited the Sub-Committee to consider paragraph 12 (e), which was contained in the revised version of the report submitted by the Rapporteur. The Jamaican delegation had submitted an amendment to that paragraph.

Mr. BONNICK (Jamaica) said that the purpose of his amendment was, first, to delete from the report the details mentioned in the last sentence of the Rapporteur's text and, secondly, to introduce the ideas of prior consultation with and notification of the coastal State. Its effect was thus to shorten the last sentence and to include in it two new ideas.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said he could not approve of the method followed in submitting the amendments, which he thought unusual and complicated.

The CHAIRMAN proposed that the Sub-Committee should adopt the text of paragraph 12 (e) submitted by Jamaica.

The text was approved.

Paragraph 12 (f)

The CHAIRMAN invited the Sub-Committee to consider paragraph 12 (f) in the revised version of the report submitted by the Rapporteur.

Mr. ARCHER (United Kingdom) pointed out that the words "These latter issues", at the beginning of paragraph 12 (f) referred to the issues listed in the previous paragraph, i.e. paragraph 12 (e), which had just been amended. It would seem, therefore, that a correction was required.

Mr. PROHASKA (Austria), Rapporteur, proposed that the word "latter" should be deleted, so that the sentence would begin with the words "These issues".

It was so decided.

Mr. THOMPSON-FLORES (Brazil), supported by Mr. de SOTO (Peru), proposed that the words "the freedom of scientific research" should be replaced by "the question of scientific research".

Mr. YANKOV (Bulgaria) said he would have no objection to the expression "the question of freedom of scientific research", but thought it vital to keep the word "freedom" in. What was at stake was not scientific research as an activity but "freedom of scientific research", the point on which the whole discussion had hinged.

Mr. de SOTO (Peru) said he could accept the Bulgarian sub-amendment.

Mr. THOMPSON-FLORES (Brazil) said that he too could accept it if the Sub-Committee would insert after the words "scientific research" the words "and the possible need for its regulation".

Mr. YANKOV (Bulgaria) said that the report should reflect the views expressed by the various delegations. Many speakers had referred to the relation between the traditional use of ocean spaces and the freedom of the high seas, including the freedom of scientific research. The Brazilian proposal was too far

removed from the positions adopted by delegations. His own delegation would not be opposed to the conclusion of an agreement to regulate activities in ocean space. It was obvious that the freedom of scientific research had as its corollary certain rights and duties and should be regulated, but he did not see the point of mentioning the fact in the present paragraph. He asked the Brazilian representative not to press his amendment.

The CHAIRMAN said that the hall in which the Sub-Committee was meeting was no longer available and that it would therefore have to suspend its consideration of the report.

The meeting rose at 3.45 p.m.

SUMMARY RECORD OF THE THIRTIETH MEETING

held on Thursday, 26 August 1971, at 9.10 p.m.

Chairman: Mr. SEATON United Republic of Tanzania

CONSIDERATION OF THE DRAFT REPORT OF THE SUB-COMMITTEE (continued)

The CHAIRMAN invited the Sub-Committee to resume its consideration of the revised version of the draft report, circulated in English in a conference room paper without a symbol, dated 23 August 1971.

Paragraph 12 (f)

Mr. THOMPSON-FLORES (Brazil) said that when the Sub-Committee had discussed paragraph 12(f) at the twenty-ninth meeting, his delegation had proposed that in the first sentence, reading "These issues, including the freedom of scientific research ..." the word "freedom" should be replaced by the word "question". The delegation of Bulgaria had then suggested that the passage should read "including the question of freedom of scientific research". He had accepted that suggestion, provided that, immediately after those words, a reference was added to the need for the regulation of that freedom.

Mr. PARDO (Malta) said that his delegation would be prepared to accept the formula just suggested by the representative of Brazil, provided that the reference was to "non-discriminatory and general regulation". The matter was one of considerable importance to his delegation.

Mr. PROHASKA (Austria), Rapporteur, said that he had received a note from the Italian representative, who was absent from the meeting, to point out that Sub-Committee II had agreed that the freedom of scientific research could not be made subject to regulation, but that conditions could be imposed on the exercise of that freedom.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) urged that due consideration should be given to the point mentioned by the Italian delegation.

Mr. THOMPSON-FLORES (Brazil) proposed that the words "including the freedom of scientific research" should be shortened to "including scientific research", thus eliminating all mention of either "freedom" or "question". There would then be no reference to the regulation of scientific freedom.

The CHAIRMAN said that, if there was no objection, he would consider that the Sub-Committee approved paragraph 12(f) with that amendment.

It was so agreed.

Paragraphs 13 (a), (b) and (c)

Mr. BONNICK (Jamaica) introduced his delegation's proposal to delete paragraph 13 (a) and to reword paragraphs 13 (b) and (c), circulated in English in a conference room paper without a symbol. Paragraph 13 (a), entitled "Relationship of the international machinery to the international régime", would only be necessary if it were possible to accept the idea, put forward by certain delegations, that machinery might in fact be established that was at variance with the type of régime which the Sea-bed Committee expected to see introduced. His delegation firmly believed that the machinery should be in conformity with the régime and therefore proposed the total deletion of paragraph 13 (a).

With regard to paragraph 13 (b), he believed that the wording proposed by his delegation reflected the discussion which had taken place in the Sub-Committee in a more balanced manner than the text proposed by the Rapporteur.

In paragraph 13 (c), his delegation proposed that the Rapporteur's wording "There was broad agreement ... that the international machinery should contain three principal organs ..." should be replaced by the more neutral language: "... several delegations made proposals on machinery which, taken together, would include up to five principal organs ...".

Mr. OXMAN (United States of America) said that his delegation accepted the Jamaican proposal to delete paragraph 13 (a) and to reword paragraph 13 (c), but proposed the following new wording for paragraph 13 (b):

> "Different types of international machinery were proposed. The machinery envisaged ranged from various kinds of arrangements and machinery with varying degrees of control over activities in the area to machinery with substantial central control over all activities in the area. With respect to commercial exploration and exploitation, the functions envisaged ranged from the granting of licences to States or commercial entities, individually or in combination, to direct exploration and exploitation (including production processing and marketing) of resources by the authority itself, whether exclusively or only in the area of the sea bed reserved to it. It was also suggested that the latter type of international machinery might act using service contracts or operate a system of joint ventures

Mr. PARDO (Malta) said that there was a serious gap in the wordings proposed by the two previous speakers. It was essential to retain somewhere in paragraph 13 a reference to the fact that everyone had accepted that some form of international machinery was required. That general agreement represented a substantial achievement by the Sub-Committee at the present session and a reference to it should be included either at the beginning of paragraph 13 or in a general summary at the end of that paragraph.

Mr. PERISIC (Yugoslavia) supported the view expressed by the Maltese delegation. He suggested that paragraph 13(a) should be retained without the present title and take the form of an introductory passage worded on the following lines:

> "It was accepted that some form of international machinery would be required in connexion with the international régime and that its task would be to ensure the implementation of that régime".

Mr. BEESLEY (Canada) also supported the view that the report should reflect the substantial progress which had been made by the Sub-Committee. He urged the delegations of Jamaica and the United States to accept the Yugoslav suggestion for an introductory passage.

Mr. ARCHER (United Kingdom) suggested that the problem should be solved by introducing a new sentence at the beginning of paragraph 13(b), to read: "It was accepted by all that a form of international machinery should be established". That sentence should serve to introduce the proposed paragraph 13(b), which under the United States proposal would become paragraph 13(a).

In reply to a question by Mr. KACHURENKO (Ukrainian Soviet Socialist Republic), Mr. OXMAN (United States of America) explained that the United States proposal incorporated all the essential elements of the Jamaican proposal but introduced a clause which had been put forward by the Indian delegation during the discussion of paragraph 13 at the twenty-sixth meeting.

Mr. JAGOTA (India) fully agreed with the Maltese delegation on the need to retain paragraph 13(a) in order to reflect the Sub-Committee's achievement at the present session. Another reason for doing so was that in the Declaration of Principles Governing the Sea-Bed and the Ocean-Floor (General Assembly resolution 2749 (XXV), the intimate relationship between international régime and international machinery was already visualized. Operative paragraph 9 of that

resolution called for the establishment of an international régime applying to the area and its resources "and including appropriate international machinery to give effect to its provisions". That language established an organic link between the international régime and the international machinery, a link which had been stressed during the discussions in the Sub-Committee.

For those reasons, his delegation urged the retention of paragraph 13(a) with its sub-title "Relationship of the international machinery to the international régime". The second sentence of paragraph 13(a) could, however, be dropped because the idea contained in it was already expressed in the first sentence of paragraph 13(b) as proposed by the United States.

In the United States' present rewording of paragraph 13(b); an attempt had been made to cover the Indian amendment to the original text of the draft report (A/AC.138/SC.I/L.7). That had been done in a fairly comprehensive and well-balanced manner and he could agree to the text with minor drafting amendments.

Lastly, he was not altogether satisfied with the reference in the opening words of the third sentence to "commercial" exploration and exploitation. The USSR delegation had suggested the adjective "industrial" in order to draw a distinction with scientific exploration. He would, however, be prepared to accept the text proposed by the United States for paragraph 13(b) as a whole.

Mr. PERIC (Yugoslavia) said that it was essential to drop the sub-title "Relationship of the international machinery to the international régime" so that the present paragraph 13(a) could become an introductory paragraph to the revised paragraphs 13(b) and 13(c).

So far as the wording was concerned, he proposed that the words "in connexion with international régime" should be dropped so that the sentence would simply state: "It was accepted that some form of international machinery would be required and that its task would be to ensure the implementation of the provisions of the régime".

Mr. LIVERMORE (Australia) said that in the proposed paragraph 13(b), his delegation wished to keep the opening words, "Depending on the nature of the régime envisaged", which reflected the link between the type of authority (or machinery) and the type of régime envisaged. That was particularly necessary if paragraph 13(a), dealing with the relation between the machinery and the régime, was to be completely dropped.

Mr. ARCHER (United Kingdom) said that the rewording proposed by the Yugoslav delegation was on the whole acceptable but was perhaps unduly narrow. He therefore suggested the following broader and more flexible language:

> "It was accepted that a form of international machinery would have a wide range of tasks in relation to the implementation of the provisions of the régime".

Mr. EVENSEN (Norway) said that the Rapporteur had admirably condensed into a few lines the purport of some eighty statements made during the discussion. He therefore appealed to the Sub-Committee to accept the Rapporteur's wording for paragraphs 13(a), (b) and (c), while introducing in paragraph 13(a) the word "generally" in the first sentence, which would thus read: "It was generally accepted ....".

Mr. ZEGERS (Chile) strongly supported the position of the Maltese delegation that it was essential to record the agreement by all on the need for an international agency.

With regard to paragraph 13(a), he would be prepared to accept the last wording suggested by the United Kingdom delegation but urged that the paragraph should make it clear that the international machinery formed part of the international régime.

With regard to paragraph 13(b), he accepted the United States revised wording provided that the word "all" was deleted from the concluding words of the second sentence "over all activities in the area".

With regard to paragraph 13(c), he strongly supported the Jamaican proposal which recorded the proposal for the establishment of an enterprise.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republics) strongly supported the Norwegian representative. His delegation could not possibly accept the Jamaican proposal for paragraph 13(c), which was much too close to the Latin American proposal for the international machinery, a proposal with which the Jamaican delegation had been associated. It was necessary to draft a balanced text which would take into account the fact that other proposals had also been made, such as those made by a number of delegations for the establishment of a tripartite body. Since there was no time left in which to formulate paragraph 13(c) so as to cover all the various proposals that had been made, the only satisfactory solution was to accept the text of paragraph 13(c) proposed by the Rapporteur.

Mr. OLSZOWSKA (Poland) proposed the insertion at the end of paragraph 13(b) as proposed by the United States of an additional sentence on the following lines: "The opinion was also expressed that the functions of the international machinery should develop with the progress of technology and the resulting increase of activity in the international sea-bed area". The idea contained in that sentence had already been explained by his delegation at the twelth meeting.

Mr. BONNICK (Jamaica) said that the wording put forward by the United Kingdom delegation was not acceptable to his delegation, whose basic concern was that the language of paragraph 13 should ensure that the international machinery had some direct connexion with the international régime.

Mr. PERISIC (Yugoslavia) said that he had consulted the delegations of the United Kingdom and Chile and now proposed that the sub-title of paragraph 13(a) should be dropped and that the introductory paragraph of paragraph 13 should read:

> "It was accepted that the international machinery, as an integral part of the international régime, should have a wide range of tasks in relation to the implementation of the provisions of the international régime".

Mr. PARDO (Malta) said that he would be prepared to accept that proposal, provided that the words "by all" were introduced after the opening words "It was accepted".

The CHAIRMAN suggested that discussion on paragraphs 13(a), (b) and (c) should be suspended in order to provide an opportunity for consultations between the various delegations which had put forward suggestions regarding the wording of those sub-paragraphs.

It was so agreed.

Paragraphs 13(d) and (e)

The CHAIRMAN said that, if there were no comments, he would take it that the Sub-Committee approved paragraphs 13(d) and (e) in the revised version of the draft report.

It was so agreed.

Paragraph 13(f)

Mr. BEESLEY) (Canada) introduced a text for paragraph 13(f) which related to the Canadian proposal for transitional arrangements.

Mr. BLIX (Sweden) suggested that a sentence should be introduced to state that some delegations had not supported the idea contained in the Canadian proposal.

Mrs. de GUIBOURG (Argentina) suggested that the text should begin "Some delegations" instead of "One delegation".

Mr. BEESLEY (Canada) said that in their comments, delegations had drawn a distinction between the three parts of the Canadian proposal. Some delegations had opposed the first part, but only one had opposed the second part on the simultaneous establishment of transitional skeletal international machinery.

In view of the comments just made, he proposed that paragraph 13(f), with the sub-title "Transitional Arrangements", should read as follows:

> "Some delegations suggested a definition of the non-contentious area of the sea-bed beyond the limits of national jurisdiction as soon as possible. Some other delegations could not support this idea. One delegation suggested the simultaneous establishment of transitional skeletal international machinery and that immediate revenues from such machinery should be provided through voluntary contributions from coastal States based upon a fixed percentage of the revenues derived from mineral resource exploitation within their limits of national jurisdiction".

Mr. JAGOTA (India) pointed out the need to adjust the style of the second part of the third sentence beginning with the words "and that immediate revenues ...".

The CHAIRMAN said that, if there was no objection, he would consider that the Sub-Committee approved paragraph 13(f) in the form proposed by the Canadian representative, on the understanding that the Rapporteur would deal with the point raised by the Indian representative.

It was so agreed.

Paragraph 9

The CHAIRMAN said that, when the Sub-Committee had suspended its discussion on paragraph 9 at its twenty-fifth meeting, it had had before it a Spanish proposal to delete the last three sentences of paragraph 9.

If there was no objection, he would consider that the Sub-Committee approved paragraph 9 with the deletion of those three sentences.

It was so agreed.

Paragraphs 11, 21 and 22

The CHAIRMAN said that the Sub-Committee had postponed its decision on paragraph 11 because of the difficulties arising from the statement in the first sentence of the paragraph that the Sub-Committee had "largely completed" the first stage of its work. Since there was a connexion between that statement and the contents of paragraph 21, he suggested that the Sub-Committee should now discuss paragraphs 21 and 22, for which it had before it a revised text proposed by the Rapporteur, reading as follows:

"General Summary

21. During its sessions in 1971, Sub-Committee I has undertaken and concluded a comprehensive debate on the matters referred to it. In the course of this debate and as a result of it a number of specific proposals regarding a treaty establishing an international régime - including an international machinery - for the area and the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction, were made, both orally and in the form of working papers. The formulations and proposals submitted will be further examined at the sessions of the Sub-Committee to be held in 1972, as the Sub-Committee proceeds to the next stages of its work. It was considered that during its sessions in 1971 the Sub-Committee has made progress towards the preparation of draft treaty articles embodying the international régime - including an international machinery - for the area and its resources, as requested from the Committee by General Assembly resolution 2750 C (XXV).

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

Perhaps the Sub-Committee would wish to add a concluding paragraph opening with the words "The Sub-Committee agreed further that the following issues should be the subject of these special debates:" and followed by a list of issues.

Mr. THOMPSON -FLORES (Brazil) proposed the insertion in the first sentence of the word "largely" before the word "concluded", so as to bring paragraph 21 into line with the first sentence of paragraph 11.

Mr. LIVERMORE (Australia) said that he could agree with that proposal.

Mr. BONNICK (Jamaica) proposed, by way of amendment of a proposal by the delegation of Australia, the inclusion of the following list of issues in the concluding paragraph read out by the Chairman:

"1. Scope and basic provisions of the régime, based on the Declaration of Principles (General Assembly resolution 2749 (XXV)).

2. Scope, functions and powers of the international machinery in relation to:

(a) organs of the international machinery, including composition, procedures and dispute settlement;

(b) rules and practices relating to activities for the explcration and exploitation of the resources of the area;

(c) the equitable sharing in the benefits to be derived from the area, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked;

(d) the economic considerations and implications relating to the exploitation of the resources of the area;

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

(f) relationship of the international machinery to the United Nations system".

That list would be followed by a proviso on the following lines:

"It is understood that although discussion would be centred on one item at a time, reference may be made as necessary to other related items".

The question of the limits of the area, which had been included by the Australian delegation in its text, had been omitted from the list because it had been agreed in the plenary Committee that it should be discussed in Sub-Committee II.

Mr. MONCAYO (Ecuador) supported the Brazilian amendment and suggested further that the word "general" should be inserted in the first sentence of paragraph 21 between the words "comprehensive" and "debate".

He proposed that the Committee should now confine its discussion to paragraph 21 and the related issue on the first sentence of paragraph 11, and postpone the discussion of paragraph 22 and on the proposals by Australia and Jamaica relating to that paragraph.

It was so agreed.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) proposed that the concluding words of the second sentence of paragraph 21 "and in the form of working papers" should be amended to read "and in the form of drafts and working papers".

Mr. OXMAN (United States of America), speaking on the issue arising from the use of the word "largely" in paragraph 11, an issue which was connected with the contents of the first sentence of paragraph 21, said that the question was whether any delegation had intimated its desire to participate in a general debate at the next session. If not, the Sub-Committee could indeed decide that the general debate had been concluded, on the understanding that it could be reopened if, at a later stage, some delegation felt that it had a particularly important general statement to make. The same would be true if the General Assembly, at its forthcoming session, were to decide to expand the membership of the Committee; the new members of the Committee might naturally wish to make general statements.

Mr. THOMPSON-FLORES (Brazil) said that he had several reasons for wishing to retain the word "largely" in the first sentence of paragraph 11 and to introduce that same word in the first sentence of paragraph 21. The first was that, out of the 85 delegations which were members of the Committee, only 68 had actually made general statements; the others might still wish to do so, quite apart from any new members that might be appointed by the General Assembly. The second was that at the sixty-third meeting of the Committee the Secretariat had been requested to prepare a comparative table of the proposals relating to the régime; there were at least two new proposals which would be put forward after the end of the session and would be included in that study, and delegations would be entitled to make general comments on those proposals.

Another reason was that in paragraph 10 of the report, which the Sub-Committee had approved at the twenty-fifth meeting, the penultimate sentence stated that the second stage in the Sub-Committee's work would consist in the "discussion of particular issues which had been distinguished, either by holding meetings devoted to the separate discussion of such issues or possibly through the establishment of appropriate working groups". Working groups of that type would undoubtedly have a restricted membership and delegations not participating in them would therefore wish to express their views on certain issues in the Sub-Committee.

Mr. MONCAYO (Ecuador) said that it was essential to introduce into the first sentence of paragraph 21 the idea of a "general" debate; if reference were made only to a "comprehensive" debate, the reader might get the impression that the next session would be exclusively concerned with the drafting of articles.

Mrs. de GUIBOURG (Argentina) supported the Brazilian proposal. The Argentine delegation had not taken part in the general debate at the present session and wished to reserve its right to do so at a future session.

Mr. OXMAN (United States of America) proposed a compromise solution. First, the word "largely" would be deleted from the first sentence of paragraph 11. Secondly, the word "largely" would not be introduced into the first sentence of paragraph 21. Thirdly, the following qualifying phrase would be introduced at the end of both sentences:

> "without prejudice to the rights of delegations to address the plenary of the Committee at any time on the whole range of issues within its mandate".

The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Committee agreed to approve paragraphs 11 and 21 in the form proposed by the United States representative, subject to the introduction, as requested by the Ecuadorian delegation, of the word "general" before the words "comprehensive debate" in the first sentence of paragraph 21 and of the words "drafts and" into the concluding phrase of the second sentence, as proposed by the Ukrainian delegation.

It was so agreed.

The CHAIRMAN invited the Sub-Committee to consider paragraph 22 and the proposals by Australia and Jamaica relating to that paragraph.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) said that experience in Sub-Committee II had shown that a discussion on a list of topics could last a very long time. He therefore proposed that only the first sentence of the Rapporteur s revised paragraph 22 should be retained and that it should be followed by two other sentences on the following lines:

> "In the course of the discussion thereon, the opinion was expressed that, at its next session, the Sub-Committee should consider specific issues and in particular the suggestions contained in the Chairman's note (A/AC.138/SC.I/L.6). In that process, consideration should also be given, wherever possible, to the text of the draft articles of the proposed agreement on the régime of the sea-bed".

Mr. JAGOTA (India) said that it was desirable to indicate in paragraph 22 some of the more important subjects that would be taken up by the Sub-Committee at the next session, so that delegations could prepare to discuss them. For that purpose he preferred a formula like that put forward by the Chairman (A/AC.138/SC.I/L.6, para. 3) to the unduly extensive lists proposed by the delegations of Australia and Jamaica. The three main issues indicated by the Chairman, however, should be reworded on the following lines:

"(1) International régime for the exploration and exploitation of the sea-bed and its resources;

(2) International machinery: structure, functions and powers;

(3) Economic implications of the exploration and exploitation of the sea-bed and its resources".

That list would not be exhaustive; other issues could of course be raised at the forthcoming session.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that the proposals made by Jamaica, Australia and India raised issues of substance which it was not possible to settle in connexion with the adoption of the report. The report was simply a description of the proceedings that had taken place. The issues in question had not been settled either at the March 1971 session or at the present session and, if the Sub-Committee were to consider them at present, it would, as a matter of procedure, have to suspend the consideration of its draft report. If and when it settled the issues of substance, it could proceed to consider how it could reflect in the report the proceedings relating to them.

The CHAIRMAN noted that the Committee had started discussing his note (A/AC.138/SC.I/L.6) at its twenty-second meeting but that a number of questions had been raised and at the twenty-third meeting it had been agreed to defer a decision on the suggestions contained in the note until the Sub-Committee examined its draft report. The Sub-Committee could not therefore do otherwise than consider his suggestions at the present stage. If it were to suspend its discussion of the draft report and examine those suggestions in substance, it would in fact be doing something very similar.

Mr. PARDO (Malta) said that his delegation had certain reservations regarding the concluding sentence of the formulation suggested by the USSR

delegation. It also found it difficult to accept the various sub-paragraphs of paragraph 2 of the text proposed by Jamaica. He found the Indian suggestion rather attractive. Perhaps it could be combined with the main clauses of paragraphs 1 and 2 of the text proposed by Jamaica and the introductory sentence of the USSR proposal. A short sentence might then be added referring to the scope and basic provisions of the régime and its implications for the present law of the sea.

Mr. BONNICK (Jamaica) said that his delegation would not be prepared to accept vague compromise formulas at that stage. The Committee had been meeting for nearly three years and it should be able to identify specific topics and their relation to issues of interest to the developing countries.

Mr. BLEESLEY (Canada) said that it would be very difficult for the Sub-Committee to take a decision at that stage on what were in fact substantive issues. His delegation would in any case welcome an opportunity to discuss those issues at the forthcoming session of the General Assembly.

Mr. YANKOV (Bulgaria) said that the question which had arisen related more to substance than to the drafting of the report. In paragraph 21 of the report, as just approved by the Sub-Committee, it was stated that the Sub-Committee had "concluded a general and comprehensive debate" on the matters referred to it. The present discussion would seem to indicate not only that the general debate had been concluded, but that the Sub-Committee was already moving on to formulate a list of issues relating to the whole international machinery and international régime.

His delegation was unable to accept the Indian suggestion to mention three general questions because those questions were not clearly defined. Besides, very few delegations would be prepared to agree that only those three general questions had been discussed in the Sub-Committee. In any case, it was very difficult to determine which questions were in fact the more important ones. He did not believe that in the present instance it was desirable to adopt a rigid framework and he was therefore inclined to accept the broad headings suggested by the Indian delegation.

Mr. BONNICK (Jamaica) said that he still felt that the Committee should at that stage discuss a precise programme of work for 1972. His delegation's

views on the matter had been made clear at the twenty-third meeting very early in the discussion of the Chairman's note. No useful purpose would be served by considering suggestions of a general character, such as that by the Indian delegation, nor did he feel that the proposed consultations would prove fruitful. The Sub-Committee, as it approached the next stage of its work, needed a definite programme.

Mr. OXMAN (United States of America) said that the whole purpose of preparing a list of issues - whether long or short - was to enable Governments and representatives to make adequate preparations for the 1972 Spring session. Even a list drawn up in general terms, such as that suggested by the Indian representative, would give an idea not only of the actual subjects to be discussed, but also of the approximate time at which they would be taken up during the 1972 Spring session. An expert on a particular topic would thus be able to forecast the week or weeks when his attendance at the session would be necessary.

The Sub-Committee appeared, however, to be in danger of drifting into a decision of a totally different nature, the result of which might well be to absorb two or three weeks of its valuable time at the beginning of the 1972 Spring session in a fruitless discussion on a list of issues.

He was therefore prepared to support any appropriate list that might be agreed at present, whether on the lines suggested by India or on those proposed by Jamaica and Australia, but provided that the list was clearly understood to constitute a very flexible general guideline to assist delegations in preparing for the 1972 Spring session. Any such list should be prepared and distributed to Governments well in advance of that session.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) said that he was prepared to accept the Indian list as a compromise formula. If, however, it was proposed to adopt a list such as that put forward by Australia, he would have to make further comments, because he could not accept some of the items on it.

Mr. BONNICK (Jamaica) said that his delegation found the present Indian suggestion completely unacceptable for the same reasons that had prevented his accepting the Chairman's note. The list it gave was much too vague and general.

He noted that during the discussion no criticism had been expressed of the contents of the list of issues which his delegation had proposed or of the list submitted by the Australian delegation to which it constituted an amendment.

Mr. MONCAYO (Ecuador) proposed that the report should simply record the fact that the Sub-Committee had not been able to agree on a complete list of issues but that it considered such a list necessary for the organization of its work at the 1972 Spring session and therefore requested the Committee to approve one. A working group could be established to examine the various lists put forward by Australia, Jamaica and India and submit an agreed list to the plenary for its approval. Thus, at the conclusion of the session, the delegations would have an agreed programme of work for the March 1972 session of the Sub-Committee.

Mr. PARDO (Malta) supported the general framework suggested by the Indian delegation provided that the following wording was added: "taking into account the subjects and issues discussed in other Sub-Committees".

Mrs. de GUIBOURG (Argentina) and Mr. OXMAN (United States of America) supported the Ecuadorian proposal.

Mr. BONNICK (Jamaica) said that he was not satisfied with the Ecuadorian proposal. If a formula of that type were to be adopted, it would be essential to indicate the positions taken by the various individual delegations and, in particular, to record the fact that the Jamaican delegation had rejected the Chairman's note and had gone on to suggest the approach he had outlined at the twenty-third meeting.

The meeting rose at 12.40 a.m.

SUMMARY RECORD OF THE THIRTY-FIRST MEETING

held on Friday, 27 August 1971, at 11.25 a.m.

Chairman: Mr. SEATON United Republic of Tanzania

ADOPTION OF THE REPORT OF THE SUB-COMMITTEE

Paragraph 22 (continued)

The CHAIRMAN invited the Sub-Committee to resume its consideration of paragraph 22 of the revised version of the draft report, circulated in a conference room paper without a symbol.

Mr. HARRY (Australia) said that the Australian and Jamaican delegations had agreed to sponsor jointly the text suggested by Australia for inclusion at the end of paragraph 22, as amended by Jamaica at the previous meeting, with one change. Since the question of the limits of the area had been deleted from the list of issues, the explanatory note at the end of the text had been amended to read: "It is understood that although discussions will be concentrated on one item at a time from among those set out above, reference may be made as necessary to other related matters, including the question of the limits of the international area".

He hoped it would be possible for the Sub-Committee to reach agreement on the list of issues set out in the joint text, which should be the subject of specific debates at the Committee's 1972 Spring session.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) said that the question of a list of issues was a very serious one and that the Sub-Committee did not have time to give it the detailed consideration it deserved at the present session. His delegation was not prepared to accept the list set out in the Australian and Jamaican joint text. It considered that the proposal which the Indian representative had made at the thirtieth meeting was both serious and constructive and it would support it. His delegation accordingly withdrew the proposal it had made at the previous meeting. It suggested that the three questions to which the Indian representative had referred should be inserted at the end of paragraph 22 followed by the words: "and also other specific questions concerning the terms of reference of the Committee which the Committee deems it necessary to examine".

His delegation was ready to co-operate with a view to finding a generally acceptable formula for paragraph 22. If some delegations did not wish to reach a compromise, the only course open to the Sub-Committee would be to inform the Committee that it had not been able to agree on a text for the paragraph.

Mr. HARRY (Australia) said that at all events Australia and Jamaica wished to have their joint text issued as a Committee or Sub-Committee document so that it would be before the Committee at its 1972 Spring session.

The CHAIRMAN said that some delegations wanted to have a detailed list of issues appended to paragraph 22 and others a short list of broad subjects. He hoped it would be possible to adopt a middle course. It would be unfortunate if the Sub-Committee had to delete the last part of paragraph 22 because it could not agree on a compromise text.

Mr. BEESLEY (Canada) said the position in the Sub-Committee seemed to be such that the last part would have to be deleted. He asked whether the delegation of the Soviet Union and other delegations which had difficulty in accepting the Australian and Jamaican proposal thought that consultations with the Australian and Jamaican delegations would lead to an acceptable compromise.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) said he did not think there was enough time to meet and discuss the substance of the list in the Australian and Jamaican proposal. He would not object if no list were given in paragraph 22.

Mr. OXMAN (United States of America) said that he would have had no real difficulty in accepting the list in the Australian and Jamaican text.

There were a number of procedures which the Sub-Committee could adopt. It could decide to delete the whole of paragraph 22, or the last part, or it might ask the Chairman to arrange for consultations with a view to completing the list by the end of the twenty-sixth session of the General Assembly, so that Governments could have specific issues to consider, well in advance of the Committee's 1972 Spring session. The Australian and Jamaican proposal would of course play an important part in the consultations.

Mr. LEGNANI (Uruguay) said he did not think it was desirable to delete the whole of paragraph 22. He hoped it would be possible to formulate a text which would reflect the two positions adopted in the Sub-Committee.

Mr. BEESLEY (Canada) said that, as a matter of principle, it was essential that the report should indicate that certain delegations had made statements and submitted working papers. He would be prepared to suggest a text if the Sub-Committee agreed.

Mr. ZEGERS (Chile) said that he supported the proposal by the Canadian representative. Any of the solutions proposed would be acceptable to his delegation. The Australian and Jamaican proposal and the other proposals which had been made should be annexed to the report.

At the request of the CHAIRMAN, Mr. BEESLEY (Canada) read out the following text

"The Sub-Committee gave consideration to a tentative programme of work for 1972 and in this connexion noted statements by a number of delegations (see summary records of the thirtieth and thirty-first meetings) as well as a working paper [working papers] submitted by the delegations of Australia and Jamaica (A/AC.138/SC.I/L.8) [and others] [symbols] which suggested a tentative programme of work as a basis for discussion. The Sub-Committee felt that it might be possible prior to the conclusion of the twenty-sixth session of the General Assembly either by informal or formal discussions to reach provisional agreement on a programme of work."

There would be a footnote after the symbol A/AC.138/SC.I/L.8 reading. "This document is annexed to the report."

It might be that delegations other than Australia and Jamaica would wish to be mentioned.

Mr. OXMAN (United States of America) suggested that, in order to clarify the Canadian text, the words "in order to assist Governments in preparing for the next session" should be inserted after the words "programme of work" at the end of the text.

It was so agreed.

In answer to a question by the CHAIRMAN, Mr BEESLEY (Canada) said that, although he had no strong views on the subject, he thought that the appropriate place for his text was after the present paragraph 22.

Mr. THOMPSON-FLORES (Brazil) asked what was meant by the expression "informal or formal discussions". He thought that, if the proposals which were before the Sub-Committee were annexed to its report, the General Assembly itself, taking into account the opinions expressed in the Sub-Committee, could take a decision on the list of subjects, which would then be ready in time for the 1972 session of the Sub-Committee.

Mr. BEESLEY (Canada) said that he had used the words "formal or informal discussions" because he had wished to ensure the greatest possible flexibility. Perhaps that could best be achieved by deleting those words, he would leave it to the Sub-Committee to decide.

Mr. JAGOTA (India) said that his comments on paragraph 22 at the previous meeting did not constitute a formal proposal. They had been prompted by the desire that delegations should have some clear indication of the type of issues which would be discussed in depth at the 1972 session of the Sub-Committee, so that they could

prepare for it adequately. He was not opposed to any of the solutions which had been suggested with regard to paragraph 22. He did not think, in fact, that there was any fundamental difference between his statement and the proposal made by the Australian and Jamaican delegations, which he hoped would be annexed to the report. If the Sub-Committee did not have time to discuss their list of issues at its present session, a short list of broad issues could be indicated and then elaborated during the twenty-sixth session of the General Assembly.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) said that he had no objection to the revised paragraph 22 as amended by the Canadian representative.

Mr. THOMPSON-FLORES (Brazil) said that he had meant in his amendment to propose the deletion of the reference to both formal and informal discussions.

Mr. de SOTO (Peru) supported the Brazilian amendment. He also proposed the deletion of the words "prior to the end of the twenty-sixth session of the General Assembly".

Mr. OXMAN (United States of America) supported the Brazilian amendment. He would have difficulty in accepting the Peruvian amendment since, although he appreciated the need for flexibility, it was important to give Governments time to prepare for the debate at the Committee's 1972 session. The end of the twenty-sixth session of the General Assembly seemed a reasonable limit and would give Governments enough time. It would also give them the possibility of holding consultations during the General Assembly.

Mr. BEESLEY (Canada) accepted the Brazilian amendment, which was not at variance with his original intention.

He hoped that the Peruvian representative would not press his amendment since it would be useful to keep the idea of pursuing negotiations during the General Assembly. The phrase in question would not be in any way restrictive.

Mr. HARRY (Australia) said that although the deletion of the reference to informal or formal consultations was acceptable, it would be useful to express the hope that provisional agreement might be reached - if possible during the twenty-sixth session of the General Assembly - in order to help Governments to prepare for the Committee's 1972 Spring session.

Mr. de SOTO (Peru) said his idea had been that delegations should not be tied down to a date that would prevent further consultations if agreement could not

be reached during the twenty-sixth session of the General Assembly. Since the Canadian representative had recognized that the phrase was not restrictive, he would not press the point.

The Canadian amendment, as amended by Brazil, was adopted.

Paragraph 22, as amended, was approved.

Paragraph 13

Mr. OXMAN (United States of America) said that the working group set up to prepare a new draft of paragraph 13 (B) had agreed on the following text, which consisted largely of the amendments originally submitted by the Jamaican delegation together with the introductory paragraph of the Rapporteur's revised draft of document A/AC.138/SC.I/L.7:

"13. (B) International Machinery

"It was accepted that the international machinery, as an integral part of the international régime, would have a wide range of tasks in implementing provisions of the international régime.

"(a) Scope and Functions of the International Machinery

Different types of international machinery were proposed. These ranged from various kinds of arrangements and machinery with varying degrees of control over activities in the area to machinery with substantial central control over activities in the area. With respect to commercial exploration and exploitation, the functions envisaged ranged from the granting of licences to States or commercial entities, individually or in combination, to direct exploration and exploitation (including production, processing and marketing) of resources by the authority itself, whether exclusively or through joint ventures and service contracts. The direct exploitation system could apply to all or designated portions of the international sea-bed area. Among other ideas that were put forward were that: le mécanisme international devrait comporter des fonctions régulatrices lui permettant de contrôler la production et les marchés afin d'éviter des variations trop importantes des prix des matières premières [the international machinery should have regulative functions so that it could control production and markets in order to avoid too great variations in the prices of raw materials]; functions of the international machinery should develop with the progress of technology and the resulting increase of activity in the international sea-bed area; functions of the international machinery could not be confined to the sea-bed alone.

"(b) Organs of the International Machinery

With considerable variance in details, several delegations made proposals on machinery. Inter alia, the following principal organs were discussed: a plenary body or assembly; an executive council; a secretariat; an enterprise; and a tribunal."

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) proposed the insertion of the words "proposals concerning" in the second line of sub-paragraph (b) before the words "principal organs". He also proposed the addition at the end of the sub-paragraph of the words: "or other methods of settling disputes".

Mr. OXMAN (United States of America) said that the working group's aim had been to name the principal organs of the international machinery without discussing their precise functions in relation to each other or to the régime. He had no particular objection, however, to the Ukrainian representative's first amendment. With regard to the second amendment, reference to other methods of settling disputes might involve the Sub-Committee in discussions on other methods and functions for the principal organs, which would be undesirable at that stage.

Mr. de SOTO (Peru) proposed the deletion of the words "régulatrices" ("regulative") and "trop importantes" ("too great") in sub-paragraph (a); and the insertion of the following words: "which would be harmful to developing countries producers of land-based raw materials" after the words "matières premières" ("raw materials").

Mr. PARDO (Malta) said that he was not very happy with the draft. It ignored the proposals submitted by his delegation. In particular, it mentioned all the principal organs suggested in other working papers but not all those suggested in his delegation's working paper. He proposed that in sub-paragraph (b) the words "Inter alia", should be deleted and the words "among others" inserted in the second line after the word "organs".

Mr. THOMPSON-FLORES (Brazil) supported the Peruvian amendment. He also proposed that the words "or arbitral court" should be added at the end of sub-paragraph (b) after the word "Tribunal".

Mr. IDZUMBUIR (Democratic Republic of the Congo), speaking as the drafter of the French part of the text, said that he could agree to the Peruvian amendments, in spite of certain doubts regarding the deletion of the word "régulatrices" ("regulative").

The Peruvian amendments to sub-paragraph (2) were adopted.

Paragraph 13(a), as amended, was approved.

Mr. HARRY (Australia) supported the Ukrainian proposal to add a phrase to the end of sub-paragraph (b) referring to other methods of settling disputes. The drafters had tried to find terms that would adequately describe each of the principal organs, but had had difficulty with "enterprise" and "tribunal".

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) said he had no objection to sub-paragraph (b). He would tentatively suggest, however, that some reference should be included to the fact that there had been general agreement on the three main organs: assembly, council and secretariat.

Mr. OXMAN (United States of America) said that neither the Ukrainian nor the Brazilian amendment to sub-paragraph (b) was acceptable. The tribunal had been discussed as a definite entity, whereas the phrase "other methods of settling disputes" was quite vague and therefore in an entirely different category. The Brazilian amendment could only be accepted if similar qualifications were made to the term "enterprise".

Mr. RAKOTOMANANA (Madagascar) observed that, simply as a matter of drafting, "other methods of settling disputes" was inappropriate, because the sentence dealt specifically with principal organs; a method was not an organ.

Mr. THOMPSON-FLORES (Brazil) said he appreciated the United States representative's difficulties with the Ukrainian amendment, but he could not see that the same objection applied to the Brazilian, since arbitral courts were an organ and had been discussed as such.

Mr. BONNICK (Jamaica) suggested that the phrase "and various kinds of tribunals" might be acceptable.

Mr. THOMPSON-FLORES (Brazil) proposed that the phrase should be expanded to read "and various kinds of tribunals or courts".

Mr. OXMAN (United States of America) said he could accept the wording proposed by the Brazilian representative.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that in view of that compromise, he would not press his own amendment.

The Brazilian amendment was adopted.

Mr. PARDO (Malta) said that the USSR suggestion that general agreement on three of the principal organs should be mentioned might well be acceptable. To remove any suggestion of imbalance in the sub-paragraph, he would propose the deletion of the words "Inter alia" and the insertion of "among others" after the words "principal organs", the sentence to read: "Proposals concerning the following principal organs, among others, were discussed."

Mr. BONNICK (Jamaica) said that he could agree to the drafting changes, but could certainly not accept the suggestion that general agreement on only three of the principal organs should be recorded. When the Maltese delegation had first made that suggestion, he himself had explained the views held by developing countries, and the reference to all five principal organs had subsequently been negotiated in what might be called a package deal.

Mr. PARLO (Malta) did not think that any package deal had been accepted. The Sub-Committee was still only at the stage of proposals.

The CHAIRMAN said he was sure that no delegation would wish at that stage to press a proposal which had encountered strong objections.

The Maltese drafting amendment was adopted.

Paragraph 13(b), as amended, was approved.

The revised version of paragraph 13 as a whole, as amended, was approved.

Mr. PARDO (Malta) said that his delegation found itself in a procedural difficulty about the draft ocean space treaty it had submitted as a working paper (A/AC.138/53). At the twenty-fifth meeting of the Sub-Committee, it had been agreed that the sponsors of the written proposals referred to in paragraph 8 of the draft report (A/AC.138/SC.I/L.7) should be invited to submit statements, for inclusion in the report, summarizing the philosophy behind their proposals. Those statements had been included in paragraph 6 of the revised version of the draft report submitted by the Rapporteur in a conference room paper without a symbol dated 25 August 1971, but the Maltese statement had not been included because it had been submitted to the plenary Committee. The Committee could not, however, include it in its own report, since it had made no request for such statements. The only way in which his delegation could receive fair treatment would be for the statement to be included in the report of Sub-Committee I. He therefore asked that that should be done.

It was so agreed.

The draft report of Sub-Committee I, as amended was adopted.

The meeting rose at 1.15 p.m.