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

Second Session

LEGAL SUB-COMMITTEE

SUMMARY RECORDS OF THE FIRST TO ELEVENTH MEETINGS

Held at Headquarters, New York,
from 12 to 26 March 1969

Chairman:	Mr. GALINDO POHL	El Salvador
Rapporteur:	Mr. BADAWI	United Arab Republic

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

69-99600

(131 p.)

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CONTENTS

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SUMMARY RECORD OF THE FIRST MEETING

Held on Wednesday, 12 March 1969, at 11.5 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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OPENING OF THE SESSION

The CHAIRMAN declared the session of the Legal Sub-Committee open.

ADOPTION OF THE AGENDA (A/AC.138/SC.1/2)

The agenda was adopted.

ORGANIZATION AND PROGRAMME OF WORK (A/AC.138/SC.1/1)

The CHAIRMAN read out the note on the programme of work (A/AC.138/SC.1/1) which he had prepared for the Sub-Committee.

Mr. BODY (Australia) said that the Chairman had been wise to use the report of the Legal Working Group of the Ad Hoc Committee as the basis for his proposals concerning the programme of work for the current session. He pointed out, however, that some expressions used in section A of the programme of work on page 5 of document A/AC.138/SC.1/1 differed in certain respects from the corresponding passages of General Assembly resolution 2467 (XXIII), which the Sub-Committee, as an organ of a Committee established by the General Assembly, had to regard as the source of its authority and whose terms it had to keep before it at all times. The terminology of that resolution should govern the Sub-Committee's deliberations and, ultimately, the preparation of its report.

Mr. CABRAL de MELLO (Brazil) said that he supported the Chairman's proposals on the programme of work; the manner in which the principles were subdivided in document A/AC.138/SC.1/1 was, as the document itself stated, the one which was least controversial. The two most important problems confronting the Sub-Committee were unquestionably the principles and norms and the establishment of appropriate international machinery. In the legal sphere with which the Sub-Committee was dealing, those two elements would, by their very nature, play the role played by constitutional law at the national level. Logically, they should, of course, be considered separately by the Sub-Committee, while remaining associated to the extent that no diplomatic or political decision on one was taken without reference to the other. The need for such an organic approach was particularly acute in view of the fact that, for the sake of taking prompt decisions on matters of immediate interest to the technologically developed

(Mr. Cabral de Mello, Brazil)

countries, the United Nations had in the past separated, at the diplomatic stage, agreements which should have constituted a whole. That was particularly true of the agreements concerning assistance to astronauts and liability for the launching of objects into outer space and of the negotiations on the non-proliferation of nuclear weapons. In such cases, the legitimate interests and aspirations of the developing countries had been relegated to a diplomatic limbo for the benefit of great-Power understanding and co-operation. The Sub-Committee should ensure that the vital interests of all countries were duly respected and protected.

The Sub-Committee should give exhaustive study to the principles and norms proposed by the Chairman before taking any decisions or preparing recommendations for the Committee. It should try to draw up a comprehensive, well-balanced set of principles and should beware of easy solutions to complex problems. If the Sub-Committee undertook, as a preliminary measure, to formulate a few general principles on which there appeared to be a large measure of agreement, it might create the false impression that a legal framework already existed for the exploration and exploitation of the sea-bed and that there was already a legal basis in international law for such activities; to do so could have adverse effects on the interests of the technologically less developed countries. Moreover, the limited measure of agreement which seemed to have emerged at the Rio de Janeiro session of the Ad Hoc Committee and during the debates of the first Committee had not extended to certain principles which expressed the vital interests of the developing countries, including, in particular, the principle of the most equitable possible application of benefits obtained from the exploration and exploitation of the sea-bed. His delegation earnestly hoped that the Sub-Committee would make substantial progress at the current session towards a statement of legal principles, agreement on which was still limited and uneven.

Mr. BALLAH (Trinidad and Tobago) said that his delegation saw the work assigned to the Sub-Committee as an organic whole. The principles and norms applicable to the subject of its work, which was the legal regime of the sea-bed and the international machinery to be established, were intimately interrelated

(Mr. Ballah, Trinidad and Tobago)

and none of them could be discussed in isolation from the others. In particular, the legal and organizational requirements for the proposed international machinery had to be taken into account. His delegation agreed with the Chairman, however, that although the legal principles and the norms were interrelated, they could be separated for the purposes of the Sub-Committee's work.

The statement, contained in the seventh paragraph of the Chairman's note, of some ten principles which had been discussed earlier could very well be used in place of the programme outlined at the end of document A/AC.138/SC.1/1. The programme did, however, have the advantage of meeting the reservations expressed by some delegations. Accordingly, his delegation fully supported the Chairman's proposals on the programme of work.

Mr. CARTER (United States of America) said that the programme of work submitted by the Chairman (A/AC.138/SC.1/1) provided the basis for a final programme of work on which the Sub-Committee could, with some minor amendments, agree. The document distinguished between legal principles and norms, the former apparently being propositions which applied even before treaties were formally concluded, while the latter were the provisions of such formal agreements. His delegation acknowledged that such a functional distinction existed and stated its agreement to the use of those terms in making the distinction. The draft resolution which it had submitted to the Ad Hoc Committee in 1968 (A/AC.135/25) contained two categories of principles, one referring to the conduct of States and their nationals beyond the limits of national jurisdiction and the other constituting guidelines for agreements establishing a boundary and a régime for the area beyond national jurisdiction. The discussion in the Ad Hoc Committee and at the twenty-third session of the General Assembly had been concerned primarily with those two categories of principles. The matter of potential treaty provisions, or norms, had not been discussed in detail, and the situation would probably be the same at the current session.

He noted that the legal principles enumerated on page 5 of document A/AC.138/SC.1/1, which were taken from the report of the Ad Hoc Committee, had been subdivided in the Secretariat document (A/AC.138/7) under fourteen headings rather than seven. The wording of the headings was of little importance provided that it was understood that all the subjects considered earlier under those headings would be discussed and that members would be free to discuss the principles as a group.

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(Mr. Carter, United States)

Sub-paragraph A (6) of the programme of work (A/AC.138/SC.1/1) dealt with "Responsibility and liability in the exploration, etc." That question, as opposed to the question of adopting safeguards to minimize pollution and other hazards, would be more appropriately discussed under "norms", and his delegation therefore suggested that the wording of sub-paragraph A (6) should be brought into line with the corresponding heading in the report of the Legal Working Group of the Ad Hoc Committee.

The CHAIRMAN said that the word "responsibility" was an approximate translation of the word "obligaciones" in the original Spanish text. He suggested that it should be replaced by "obligations".

Mr. CARTER (United States of America) agreed that that substitution would facilitate discussion of safeguards as well as responsibility and liability.

The CHAIRMAN said that the Secretariat would amend the English text of the programme of work.

Mr. KROYER (Iceland) said that the wording of sub-paragraph A (6), as amended with the agreement of the United States representative, was still unsatisfactory, since it appeared to minimize the magnitude of pollution hazards. Neither operative paragraph 2 (d) of resolution 2467 A (XXIII) nor operative paragraph 2 of resolution 2467 B (XXIII) was concerned exclusively with the prevention of pollution. When his delegation had introduced the resolution, it had had in mind not only the prevention of pollution but also measures to deal with existing pollution, as was apparent from operative paragraph 3 of resolution 2467 B (XXIII). He urged that sub-paragraph (6) of the principles enumerated in the programme of work (A/AC.138/SC.1/1) should include mention of measures for protecting waters and coastlines from pollution which already existed. He would not submit a text for the present but would consult the Chairman on the matter.

The CHAIRMAN asked the Icelandic representative to submit an amended text as soon as possible.

Mr. MENDELEVICH (Union of Soviet Socialist Republics) expressed the hope that the session would be constructive and said that the Soviet Union would endeavour to contribute to its success. It was logical that the Sub-Committee

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(Mr. Mendelevich, USSR)

should first undertake the studies defined in operative paragraph 2 (a) of resolution 2467 A (XXIII); however, the distinction between "legal principles" and "norms" was unnecessary, since it was difficult to separate the two. The discussions might result in the formulation of either a principle or a norm, as the case might be. His delegation would prefer to see that distinction eliminated, although it would not press that view if it did not receive sufficient support. In any case, it would like to make the following observations.

The term "legal principles" was inaccurate, since that concept had not yet been defined. It would be more appropriate to speak of subjects for consideration. The wording of the principles enumerated in the programme of work might prove inaccurate. If it was decided that the distinction between sections A and B (p. 5) should be retained, the title of section A should be amended to read: "Legal principles (subjects for consideration)".

His delegation was opposed to the wording of the second legal principle, since referring to the "high seas" meant excluding the continental shelf. The use of the sea-bed and the ocean floor for military purposes was a remote possibility, while plans for the military use of the continental shelf were already in existence. If the continental shelf was excluded from the Sub-Committee's competence, that body would be dealing with fantasies. He proposed that the words "beyond the limits of present national jurisdiction" should be deleted from sub-paragraph (2).

The proposed programme of work was based on that of the Ad Hoc Committee, but it was incomplete; he therefore proposed the insertion after sub-paragraph (1) of two new sub-paragraphs reading respectively: "Question of the definition of the boundary between that area of the sea-bed and the ocean floor lying beyond the limits of national jurisdiction and the area which falls under national jurisdiction" and "conduct of activities with regard to the sea-bed and the ocean floor, and the subsoil thereof, in accordance with international law, including the Charter of the United Nations". Contemporary international law was applicable not only to the surface of the earth but also to outer space. It was only logical that it should be applicable to the sea-bed.

In conclusion, his delegation suggested two drafting changes: the deletion of the word "present" which appeared in sub-paragraphs A (1), (2), (3) and

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(Mr. Mendelevich, USSR)

(4) (p. 5) of the programme of work so as to bring the latter into line with the text of resolution 2467 A (XXIII), and the addition to the English text of sub-paragraph (8) (Synthesis), which appeared to have been inadvertently omitted.

The CHAIRMAN noted that the Legal Sub-Committee had before it a number of proposed amendments to the programme of work set forth on page 5 of document A/AC.138/SC.1/1. The delegation of Iceland proposed that the text of sub-paragraph A (6) (p. 5) should be amended to read: "The problem of pollution and other hazards, including obligations and responsibility in the exploration, use and exploitation of the sea-bed and the ocean floor." The Soviet delegation had submitted three proposals: firstly, that the title of section A (p. 5) should be amended to read: "A. Legal principles (subjects for consideration:)"; secondly, that the words "beyond the limits of present national jurisdiction" should be deleted from sub-paragraph (2) of section A; thirdly, that between the present sub-paragraphs (1) and (2) there should be inserted two new sub-paragraphs reading respectively: "(2) Question of the definition of the boundary between that area of the sea-bed and the ocean floor lying beyond the limits of national jurisdiction and the area which falls under national jurisdiction" and "(3) Conduct of activities with regard to the sea-bed and the ocean floor, and the subsoil thereof, in accordance with international law, including the Charter of the United Nations".

Mr. ODA (Japan) said that he was prepared to accept the practical proposals made with regard to the Sub-Committee's programme of work as set forth on page 5 of document A/AC.138/SC.1/1. However, he hoped that the Sub-Committee would adopt a flexible approach to each of the sub-paragraphs in section A and would permit a certain amount of latitude, since all the items were closely interrelated.

He was prepared to agree to the two new sub-paragraphs proposed by the Soviet delegation.

Mr. OLISEMEKA (Nigeria) was pleased to note that the proposed programme of work contained in document A/AC.138/SC.1/1 had been drafted in such a way that while controversial issues were avoided, emphasis was nevertheless placed on the essential items already taken up by the Ad Hoc Committee. The

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(Mr. Olisemeka, Nigeria)

Sub-Committee would thus be able to take advantage of the work done by the Ad Hoc Committee and of the working paper prepared by the Secretariat (A/AC.138/7) and begin its work without delay. He noted that the list of proposed items was not intended to be exhaustive and that it was emphasized "that any principles adopted must constitute a harmonious whole and that a comprehensive discussion will therefore be necessary" (A/AC.138/SC.1/1, p. 4, final paragraph). The document in question provided a satisfactory basis for the Sub-Committee's work.

Referring to the Soviet proposal to amend the title of section A (p. 5), he suggested that it would be preferable for the sake of precision, to adopt the formula "A. Legal principles governing:". Moreover, the meaning and scope of the expression "Responsibility and liability" in sub-paragraph (6) (p. 5) should be clarified.

Subject to those few comments, his delegation was prepared to support the programme of work submitted by the Chairman.

Mr. DEJAMMET (France) recalled that the report of the Legal Working Group of the Ad Hoc Committee contained the following observations: "It was generally felt that many problems related to the sea-bed and the ocean floor were not adequately dealt with in existing international law and it was also felt that legal principles on the activities of States in the exploration and use of the sea-bed and ocean floor beyond the limits of national jurisdiction should be developed in the interests of mankind as a whole." (A/7230, p. 44, para. 18)

He agreed with the Soviet delegation that it was therefore essential to formulate specific provisions governing that field. He was prepared to endorse the proposed programme of work, taking into account, however, the observations made by the representative of Australia, with which he associated himself.

Mr. KHANACHET (Kuwait) noted with satisfaction that some of the views put forward by his delegation in the First Committee and in the Ad Hoc Committee were reflected in the proposed programme of work. Due account had been taken, in the drafting of that document, of the economic interests, political attitudes and legal principles upheld by the various delegations.

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(Mr. Khanachet, Kuwait)

Nevertheless, it was essential that the text should refer explicitly to the special interests and needs of the developing countries, as, indeed, the General Assembly had done in the seventh preambular paragraph of resolution 2467 A (XXIII) and in operative paragraph 1 of resolution 2467 B (XXIII). Accordingly, the words "and taking into account the special interests and needs of the developing countries" should be added after the word "mankind" in the present sub-paragraph A (3) (A/AC.138/SC.1/1, p. 5).

Mr. CARTER (United States of America) said he agreed with the delegation of Iceland that it would be preferable to adopt in sub-paragraph (6) the formula used in the report of the Legal Working Group of the Ad Hoc Committee. The sub-paragraph would then read: "(6) Question of pollution and other hazards".

The CHAIRMAN noted that the Sub-Committee had before it, inter alia, a United States proposal replacing the suggestion made by Iceland as well as proposals submitted respectively by the representatives of Nigeria and Kuwait.

The meeting rose at 1.5 p.m.

SUMMARY RECORD OF THE SECOND MEETING

Held on Thursday, 13 March 1969, at 11.5 a.m.

Chairman:	Mr. YANKOV	Bulgaria
later,	Mr. GALINDO POHL	El Salvador

ORGANIZATION AND PROGRAMME OF WORK (A/AC.138/SC.1/1; A/AC.138/7; A/AC.138/9)

The CHAIRMAN observed that the following amendments had been proposed to section A of the programme of work as set out in document A/AC.138/SC.1/1 (p. 5). Two alternatives to the title of section A had been proposed, one by the Nigerian delegation, namely, "A. Elaboration of legal principles governing:" and the other by the USSR delegation, namely, "A. Legal principles (subjects for consideration)" or simply "A. Subjects for consideration". The USSR delegation had further proposed the deletion of the word "present" in paragraphs (1), (3) and (4) and the insertion, between paragraphs (1) and (2), of two new paragraphs reading respectively: "(2). Question of the definition of the boundary between that area of the sea-bed and the ocean floor lying beyond the limits of national jurisdiction and the area which falls under national jurisdiction", and "(3). Conduct of activities with regard to the sea-bed and the ocean floor, and the subsoil thereof, in accordance with international law, including the Charter of the United Nations". In addition, the USSR delegation had proposed that paragraph (2) should be amended to read: "(2). Reservation of the sea-bed and ocean floor and the subsoil thereof exclusively for peaceful purposes". The delegation of Kuwait had proposed that in paragraph (3) the semi-colon should be deleted and the following words added at the end of the text: "and taking into account the special interests and needs of the developing countries". With respect to paragraph (6), the Chairman had suggested that the English text should be altered to read: "(6) Obligations and responsibility in the exploration, use and exploitation of the sea-bed and ocean floor"; the Icelandic delegation had proposed the following wording: "(6) Problem of pollution and other hazards, including obligations and responsibilities involved in the exploration, use and exploitation of the sea-bed and ocean floor". Subsequently, the United States delegation, in agreement with the Icelandic delegation, had proposed the following text: "(6) Question of pollution and other hazards". Lastly, it had been pointed out that sub-paragraph (8) did not appear in the English text.

Mr. MENDELEVICH (Union of Soviet Socialist Republics), speaking on a point of order, observed that he had simply pointed out, to facilitate the Sub-Committee's work, that there was no reason for using the word "present" in

(Mr. Mendelevich, USSR)

section A, paragraphs (1), (3) and (4), since that word did not appear in resolution 2467 A (XXIII). That was not a formal proposal, for it was self-evident that the word should be deleted. Furthermore, in proposing the insertion of a new paragraph concerning the delimitation of the area beyond national jurisdiction, the USSR delegation wished simply to stress the need for that question to be resolved. It was clear of course that the Legal Sub-Committee was not competent to make such a delimitation.

Mr. GAUCI (Malta) said that he was prepared to accept the programme of work as presented by the Chairman. His delegation felt, however, that it was not appropriate at that stage to draw a formal distinction between principles and norms. If the Sub-Committee should decide otherwise, it would be essential to define those two terms precisely and in a way that would be acceptable to all delegations.

Mr. PIÑERA (Chile), expressing his pleasure that the programme of work as presented by the Chairman had been drawn up in such a way as to avoid controversy, said that he was prepared to support it. That did not mean, of course, that the programme of work could not be usefully supplemented at a later stage. With regard to the distinction between principles and norms, he shared the view stated by the Brazilian delegation. The highest priority should be given to the elaboration of a body of principles, which should be balanced and should reflect the interests of all, in particular those of the developing countries. In the formulation of those principles, account should be taken of the need to establish international machinery that would enable the developing countries to benefit from possible exploitation activities. In that regard his delegation fully supported the Kuwaiti representative's proposal concerning paragraph (3). It would appear best to retain the present wording of paragraph (7), which left the Sub-Committee entirely free to consider other questions. He supported the USSR delegation's amendment to the title of section A. Concerning paragraph (2), it might be best to employ the wording of operative paragraph 3 of resolution 2467 A (XXIII). Quite clearly, it was the Sub-Committee's task to concern itself not with present national jurisdiction but solely with the area beyond national jurisdiction.

With regard to the working paper prepared by the Secretariat (A/AC.138/7), he believed that the title of chapter III, and particularly the word "principles",

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(Mr. Piñera, Chile)

might lead to controversy, since what was actually involved were proposals. Generally speaking, and in order to avoid lengthy preliminary discussions, it would be best to use the language adopted by the Legal Working Group of the Ad Hoc Committee. No a priori determination should be made of the principles which would emerge from the proposals in question.

Mr. Galindo Pohl, Chairman, took the Chair.

Mr. TOMOROWICZ (Poland) expressed the view that section A of the programme of work should have a title which showed that what was involved was not principles but subjects for consideration. In addition, his delegation unreservedly supported the USSR amendment to paragraph (2). It was also prepared to accept a proposal whereby paragraph (2) would be replaced by the corresponding formulation in operative paragraph 3 of resolution 2467 A (XXIII).

Mr. DARWIN (United Kingdom) said that his delegation was prepared to endorse the whole of the programme of work as presented in the note by the Chairman (A/AC.138/SC.1/1). That programme, which was based on the report of the Ad Hoc Committee and on the pertinent resolution of the General Assembly, offered a good starting point for the Sub-Committee's work. It would be well to move rapidly on to the substantive debate without spending further time on preparations. However, the distinction between legal principles and norms was not as fundamental to his delegation as it appeared to be to others.

Regarding the amendments to the draft programme as set out at the end of document A/AC.138/SC.1/1, his delegation suggested that it was broadly acceptable and that wording going beyond the headings of last year's report should be accepted only in the case of special circumstances. It would thus support the Nigerian delegation's proposal for the insertion, after A, of the words "Elaboration of legal principles governing" because the formulations which then followed stated questions and not principles. Secondly, the Chilean delegation's suggestion relating to paragraph (2) deserved support because it would introduce the wording of operative paragraph 3 of General Assembly resolution 2467 A (XXIII) and thus keep the matter within the context of the Legal Sub-Committee's terms of reference. Lastly, the proposal to include, in paragraph (6) a reference to the problem of pollution and other hazards should be approved, since it would have the effect of strengthening the formulation prepared by the Chairman. His delegation,

(Mr. Darwin, United Kingdom)

in accepting these amendments, hoped that the resulting programme, representing a compromise among different views, would enable most delegations to endorse the programme of work that had been presented.

Mr. CULD HACHEME (Mauritania) supported the formulations proposed by the delegations of Kuwait and Nigeria.

Mr. YANKOV (Bulgaria) said he did not agree that the distinction between legal principles and norms was the same as a distinction between rules of behaviour and treaty provisions. There were legal principles in existence which had been established by international instruments such as the United Nations Charter, and the distinction in question derived mainly from the difference in scope between the two types of rules. Instead of separating them, it might perhaps be more appropriate to group them together, as had been done in General Assembly resolution 2467 A (XXIII).

With regard to the proposed amendments to the programme of work, his delegation was prepared to support any improvements which would facilitate acceptance of the very useful proposals presented by the Chairman. It was in favour of the insertion after paragraph (1) of the new items proposed by the Soviet delegation not only because a discussion was bound to be held on the first item with regard to the legal status of the sea-bed and the ocean floor but also because in regard to the need for proposed activities to be carried out in accordance with international law the proposed wording reproduced verbatim a formulation which appeared in paragraph 43 of the report of the Legal Working Group for 1968. With regard to paragraph (2), his delegation felt it would be unwise to prejudge the extent of disarmament measures; it might therefore be more appropriate either to reproduce the relevant terms of operative paragraph 3 of General Assembly resolution 2467 A (XXIII), or to adopt the wording proposed by the USSR, which had the additional merit of brevity. His delegation endorsed the Kuwait delegation's proposal for mentioning in paragraph (3) the special interests and needs of the developing countries, and the proposal submitted by the Icelandic delegation with regard to paragraph (6).

Mr. BADAWI (United Arab Republic) said that his delegation was willing to endorse the programme of work presented by the Chairman. Also, the suggestions put forward by Nigeria and the Soviet Union were both acceptable, and it had no

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(Mr. Badawi, United Arab Republic)

objection to the amendment proposed by Kuwait to paragraph (3), as that amendment was consistent with the spirit of General Assembly resolution 2467 A (XXIII). The proposal submitted by the Icelandic delegation was also sound. With regard to the two new items, the wording of which had been suggested by the Soviet delegation, he asked whether they had been submitted as formal proposals or whether the Soviet delegation had wished to emphasize that those two items came within the Sub-Committee's competence.

Mr. NJENGA (Kenya) said that his delegation was prepared to accept the programme of work proposed by the Chairman, as it corresponded to the terms of reference set out in General Assembly resolution 2467 A (XXIII). It was also able to accept some of the proposed amendments because they improved the existing text. That was particularly true of the title suggested by Nigeria for section A. Referring to the Soviet amendment regarding the definition of the boundary between that area of the sea-bed and the ocean floor lying beyond the limits of national jurisdiction and the area which fell under national jurisdiction, he pointed out that, according to General Assembly resolution 2467 A (XXIII), the consideration of that item was not included in the Sub-Committee's terms of reference. The item in question could be dealt with by a conference to be convened by the General Assembly at a later date. On the other hand, his delegation would support the amendment submitted by Kuwait to paragraph (3), as it was fully consistent with the spirit of the relevant General Assembly resolution and of the Charter, and the proposal submitted by the Icelandic delegation with regard to paragraph (6).

Mr. KHANACHET (Kuwait), speaking on behalf of the Afro-Asian members of the Sub-Committee, said that those countries were prepared to approve the programme of work set forth in document A/AC.138/SC.1/1 both because it was logical and rational and because it corresponded to the Sub-Committee's terms of reference, to the relevant General Assembly resolution and to the Ad Hoc Committee's conclusions. At the same time, however, they also approved of the amendments proposed respectively by Nigeria and the Soviet Union with regard to the title of section A, which would thus read: "To study the elaboration of legal principles relating to:". They also whole-heartedly endorsed the amendment to paragraph (3) submitted by the delegation of Kuwait.

With regard to the question of defining the boundary of the area lying beyond the limits of national jurisdiction, which had been suggested by the

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(Mr. Khanachet, Kuwait)

Soviet delegation, the Afro-Asian countries welcomed the explanations which had been given at the current meeting by the Soviet representative, and which to a large extent coincided with their own views. Steps should be taken to ensure that that item was considered in due course by a competent organ. It would be inadvisable, however, for a new paragraph on that item to be inserted in the programme of work. Possibly the Soviet Union delegation would not press for the adoption of its amendment if it was satisfied that the Sub-Committee acknowledged the need for the problem to be considered by a competent organ. The Chairman could perhaps make a statement to that effect and thus make it possible for delegations to express their opinions on the subject in due course. While the Afro-Asian countries were satisfied with the wording of paragraph (6) they had given consideration to the suggestion made by the Icelandic delegation and were willing to participate in any consultations aimed at finding a formulation that was more satisfactory to the Sub-Committee.

Mr. HOLDER (Liberia) said that he regarded the proposed programme of work as highly satisfactory, although he did support the Nigerian amendment to the title of section A. He also endorsed the amendment submitted by Kuwait with regard to paragraph (3), and he did not see why the Icelandic amendment referring to the problem of pollution should not be included in paragraph (6), especially as the Ad Hoc Committee had already adopted a resolution reflecting Iceland's strong views on the matter. He felt, however, that the term "liability" should be retained in paragraph (6).

He believed that in the light of the Bulgarian representative's remarks on legal principles and norms, the Sub-Committee would be hard pressed to draw a distinction between those two concepts.

Mr. PANYARACHUN (Thailand) said the Sub-Committee might like to know that the group whose point of view had been voiced by the representative of Kuwait consisted of ten or twelve countries which included Yugoslavia, some six or seven African countries and the Asian countries with the exception of Japan.

Mr. CABRAL de MELLO (Brazil) recalled that, at the first meeting of the Legal Sub-Committee, his delegation, for the sake of agreement, had recommended the adoption of the programme of work presented by the Chairman even though it did

(Mr. Cabral de Mello, Brazil)

not fully reflect his country's views, particularly as set forth in the draft statement of principles drawn up at the Rio de Janeiro session. He now appealed to all members to avoid a prolonged discussion on questions of wording. Brazil, like the USSR, felt that the paragraphs of section A were subjects for consideration rather than principles; however, it was opposed to the suggestion made by the USSR to delete in paragraph 2 the words "beyond the limits of present national jurisdiction". With regard to paragraph (6), it preferred the Chairman's wording because, generally speaking, it considered that it would be advisable to keep as closely as possible to the original text.

The CHAIRMAN suggested that the Sub-Committee should proceed to examine the proposals which had been made. He recalled that the matter at hand was to take decisions on the organization of work which could in no way prejudge the stands to be taken by Governments. The object was not to interpret the Committee's terms of reference or the resolutions already adopted, but to draw up a programme of work promptly. He took it that the members approved of the Nigerian proposal to replace the title of paragraph A with the words "Legal principles governing:".

Mr. MENDELEVICH (Union of Soviet Socialist Republics) said that he preferred the wording proposed by the representative of Kuwait, namely: "Elaboration of the legal principles governing:". If that wording was adopted, he would not insist on his own proposal.

Mr. OLISEMEKA (Nigeria) said that he accepted the text proposed by the representative of Kuwait.

The CHAIRMAN suggested that the text proposed by the representative of Kuwait should be adopted.

It was so decided.

The CHAIRMAN submitted for the Sub-Committee's consideration the Kuwait proposal to replace the semi-colon at the end of paragraph (3) with a comma and to add the words "and taking into account the special interests and needs of the developing countries".

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Mr. MENDELEVICH (Union of Soviet Socialist Republics) said that he was not opposed to the amendment provided it accurately reproduced the wording used in the penultimate preambular paragraph of General Assembly resolution 2467 A (XXIII): "irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries".

Mr. KHANACHET (Kuwait) said that while his proposal had resulted from consultations among several countries, he believed that they would be able to accept the text read out by the representative of the Union of Soviet Socialist Republics.

Mr. MIRZA (Pakistan) proposed that the wording of the amendment should be preceded by the words "for the benefit of mankind as a whole", which also appeared in the same preambular paragraph of the resolution in question.

Mr. HOLDER (Liberia) said he believed that the intention of the USSR was to supplement rather than to modify the text suggested by the representative of Kuwait.

The CHAIRMAN said he recognized that an additional element was involved. He recalled the need to protect the interests of land-locked States and suggested that the Sub-Committee should accept the Pakistan proposal to replace the words "in the interests of mankind" in paragraph (3) with the words: "for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries".

It was so decided.

The CHAIRMAN agreed to the changes in his wording of paragraph (6) which had been suggested by the representatives of Iceland and the United States, who recommended using the terms which appeared in the existing documents.

Mr. WALDRON-RAMSEY (United Republic of Tanzania) said that he preferred the initial wording submitted by the Chairman. He suggested, however, that the two versions should be combined to read: "The question of pollution and other hazards as well as of the obligations and liabilities of States involved in the exploration, use and exploitation of the ocean floor".

Mr. YANKOV (Bulgaria) observed that the question of liability for any damage caused and the question of the prevention of pollution were closely linked. He proposed the wording: "Responsibility and liability in the exploration, use and exploitation of the sea-bed and ocean floor, particularly with regard to pollution and other hazards".

Mr. KROYER (Iceland) said that he accepted the text proposed by the representative of the United Republic of Tanzania.

The CHAIRMAN pointed out that the Sub-Committee also had before it a proposal by the representative of Bulgaria.

Mr. YANKOV (Bulgaria) withdrew his proposal.

Mr. KROYER (Iceland) thanked the representative of Bulgaria and said that Iceland would have experienced some difficulty in accepting the Bulgarian text.

Mr. ODA (Japan) suggested that the words "of States" be dropped. Since a private company, for example, might bear the liability in question, it would be preferable not to be too specific.

Mr. WALDRON-RAMSEY (United Republic of Tanzania) said that it was necessary only to define the substance of the matter so as to prepare a programme of work. The question of assigning liability could be considered when paragraph (6) was discussed in detail.

The CHAIRMAN recalled that the programme of work did not in any way represent a future commitment on the part of a Member State.

Mr. ODA (Japan) said that he accepted the text proposed by the representative of the United Republic of Tanzania, subject to the reservation that the state responsibility would not be prejudiced.

The CHAIRMAN suggested that the Sub-Committee should adopt the text for paragraph (6) submitted by the Tanzanian delegation.

It was so decided.

The meeting rose at 1.25 p.m.

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SUMMARY RECORD OF THE THIRD MEETING

Held on Friday, 14 March 1969, at 11.5 a.m.

Chairman: Mr. GALINDO POHL El Salvador

ORGANIZATION AND PROGRAMME OF WORK (A/AC.138/SC.1/1)

The CHAIRMAN invited the Sub-Committee to continue its consideration of proposed amendments to the programme of work. One of the most important items was section A, paragraph (2), of the programme. In addition to the wording in document A/AC.138/SC.1/1 - namely, "Reservation of the sea-bed and ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction exclusively for peaceful purposes" - which was taken from the report of the Ad Hoc Committee, the Legal Sub-Committee had before it a USSR proposal to delete the part of paragraph (2) coming after the words "high seas", and proposals by Chile and the United Kingdom to use the wording of operative paragraph 3 of General Assembly resolution 2467 A (XXIII).

Mr. ARORA (India) said that he had originally supported the formulation suggested by Kuwait. As, however, a number of amendments had been proposed since them, he wished tentatively to propose a compromise, under which only the following part of operative paragraph 3 of resolution 2467 A (XXIII) would be quoted, namely: "the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which may be agreed upon in this respect". All mention of disarmament activities would thus be omitted.

Mr. PAVICEVIC (Yugoslavia) said he supported that proposal on the assumption that the Main Committee was to deal with all activities of the kind referred to in operative paragraph 3 of resolution 2467 A (XXIII).

Mr. DEJAMMET (France) said that he too supported the proposal, which represented a very reasonable compromise.

Mr. MENDELEVICH (Union of Soviet Socialist Republics) said that his delegation's intention in proposing that certain words at the end of section A, paragraph (2), should be omitted had been to avoid defining the limits of the area of the sea-bed and ocean floor to be reserved for peaceful purposes, in order to give the Disarmament Committee the opportunity to determine those limits in the best interests of peace. The Sub-Committee had so far heard only one argument against that proposal, and that had related to its form. It had, in fact, implicitly accepted the Soviet proposal by adopting the wording of paragraph (6), in which

(Mr. Mendelevich, USSR)

reference was made only to the "exploration, use and exploitation of the sea-bed and ocean floor". His delegation did not believe that there was any difference between the areas covered by paragraphs (2) and (6) and, in order to obviate further debate, it suggested that the Sub-Committee should accept the Indian proposal.

Mr. PIÑERA (Chile) said that his delegation had originally expressed its preference for the existing text of paragraph (2) as presented by the Chairman. The advantage of quoting the wording of a resolution was that it was an approved text. Since the introduction of amendments implied that that solution was not acceptable to everyone, he proposed that paragraph (2) should refer only to the principles of peaceful uses, thus allowing each member to express his opinion. He further suggested that the Chairman should make a statement to the effect that the wording of paragraph (2) in no way prejudged future discussions.

Mr. KHANACHET (Kuwait) said that he considered the Indian proposal acceptable.

Mr. CABRAL de MELLO (Brazil) supported the Chilean proposal.

Mr. MLADEK (Czechoslovakia) said that the wording of operative paragraph 3 of resolution 2467 A (XXIII) was the result of a compromise which had been reached after prolonged discussion in the Ad Hoc Committee and the Assembly. He supported the Indian proposal and suggested that the discussion should be brought to a close.

The CHAIRMAN summarized the proposals before the Sub-Committee.

Mr. GAUCI (Malta) expressed the view that the Sub-Committee should avoid altering a formulation taken from a resolution which was considered to be the Committee's charter. The solution might be to abbreviate the text of paragraph (2) by making it read "Question of the peaceful uses".

The CHAIRMAN asked whether the intention was to substitute those words for "Reservation... exclusively for peaceful purposes" in the original text.

Mr. GAUCI (Malta) said that his suggestion had been merely a preliminary one. No formula should be used which would force some delegations to take a stand in advance or oblige the Sub-Committee to look for a new definition.

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Mr. YANKOV (Bulgaria) said that the issue at that stage was not the defining of principles, but merely of a programme of work. He supported the Indian proposal.

Mr. PAVICEVIC (Yugoslavia) pointed out that document A/AC.138/8, on the organization of work, specified that the Legal Sub-Committee was responsible for drawing up principles and norms. Because the programme of work should therefore expressly mention principles and norms, the wording suggested by Malta was not sufficiently explicit.

Mr. MENDELEVICH (Union of Soviet Socialist Republics) said that the Sub-Committee, having adopted the text of paragraph (6), could not logically reject the Indian proposal. He asked the representative of Malta to give the exact wording of his proposal so that the Sub-Committee could judge whether it might be adopted.

Mr. GAUCI (Malta) said his proposal had been that the wording of paragraph (2), should be : "Reservation of the area in question exclusively for peaceful purposes, in conformity with the provisions of operative paragraph 3 of resolution 2467 A (XXIII)".

Mr. MIRZA (Pakistan) said that the effect of the Indian delegation's proposal would be to quote the latter part of operative paragraph 3 of the resolution, whereas the wording proposed by Malta made reference to the whole of that paragraph. As there was only a slight difference between the two versions and debate on paragraph (2) would be subject to no rigid limitations, he appealed to the representative of Malta to accept the wording proposed by the Indian delegation.

Mr. PIÑERA (Chile) said that if a reference was made to operative paragraph 3 of resolution 2467 A (XXIII), the whole of that paragraph should be taken into consideration. He proposed that the meeting should be suspended for about fifteen minutes to give delegations an opportunity to consult one another and draw up a generally acceptable text.

It was so decided.

The meeting was suspended at 12.17 p.m. and resumed at 12.47 p.m.

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The CHAIRMAN announced that agreement appeared to have been reached among delegations on an amended version of section A. He invited the representative of India to read out the text to the Sub-Committee.

Mr. ARORA (India) read out the following text:

"A. To study in the context of appropriate provisions of resolution 2467 A (XXIII) the elaboration of legal principles relating to:

(1) legal status;

(2) reservation exclusively for peaceful purposes;

(3) use of the resources for the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries;

(4) freedom of scientific research and exploration;

(5) reasonable regard to the interests of other States in their exercise of the freedoms of the high seas;

(6) question of pollution and other hazards, and obligations and liability of States involved in the exploration, use and exploitation;

(7) other questions;

(8) synthesis.

Mr. MIRZA (Pakistan) recalled that agreement had been reached at the previous meeting on the Soviet delegation's suggestion to insert the words "irrespective of the geographical location of States" in paragraph (3). Those words would therefore have to appear in the version read out by the Indian delegation.

Mr. MENDELEVICH (Union of Soviet Socialist Republics) welcomed the spirit of co-operation which had been shown by the members of the Legal Sub-Committee. He said that he was prepared to accept the proposed text, with the reservation that account should be taken, on the one hand, of the Pakistan representative's remarks concerning the previous decisions of the Committee and, on the other hand, of the two Soviet proposals, namely, the one concerning the definition of the boundary between areas and the other concerning international law, including the United Nations Charter.

Mr. PANYARACHUN (Thailand) felt that the version read out by the Indian delegation simply gave the Chairman's suggestions a new format and would thus allow the two Soviet proposals to be taken into account.

The CHAIRMAN said that the Sub-Committee still had the two proposals before it; if it decided to adopt them in principle, it could adapt their format to the simplified text which had just been proposed.

Mr. CARTER (United States of America) welcomed the compromise solution presented by the Indian delegation. He said that the United States delegation was prepared to agree to the inclusion of the two additional Soviet proposals in the programme of work or to having them omitted from the programme of work, on the understanding that the problems with which they dealt would be proper subjects of discussion.

Mr. BERMAN (United Kingdom) said that the Committee ought to view the Indian delegation's proposed compromise as a very general formula for the programme of work. In the United Kingdom delegation's opinion, the points which the Soviet delegation wished to add could be dealt with under the programme as already drawn up; in view of the limited time at the Sub-Committee's disposal, he appealed to all delegations, and especially the Soviet delegation, to accept the present format, on the understanding that the questions covered by the new proposals could be taken up under the appropriate headings.

Mr. HOLDER (Liberia) said that he was willing to accept the new version of the programme of work, inasmuch as it took account of the Sub-Committee's earlier decisions.

Mr. MENDELEVICH (Union of Soviet Socialist Republics), referring to his delegation's proposal for inserting the words "question of the definition of the boundary..." in the programme of work, said that the doubts expressed by some delegations about the suitability of such an addition did not touch the root of the problem. Certain other delegations, especially the French delegation, had, on the other hand, supported the proposal. While his delegation agreed that the actual definition of a boundary was the function of some other body, the Legal Sub-Committee would certainly have to express some opinion on the appropriateness of the boundary in question. In any case, his delegation would not insist on the

(Mr. Mendelevich, USSR)

problem being mentioned separately in the programme of work, but it did feel that the Chairman of the Sub-Committee should confirm in some appropriate way that the members of the Sub-Committee would be able to take up the matter.

With regard to the second Soviet proposal, no objection to it had been raised during the discussions; to do so would in any case have been inconceivable, since the matter at issue was respect for international law and for the United Nations Charter. His delegation therefore maintained its proposal and, in order to adapt it to the shortened form of the programme of work, suggested that it should be worded as follows: "applicability of international law, including the Charter of the United Nations". The logical place for the insertion of the new item would be after paragraph (1) of the programme of work.

Mr. PIÑEPA (Chile) said that, with regard to the first addition proposed by the Soviet delegation, the Chairman might consult the delegations with a view to producing a phrase which would make it clear that the programme of work had been adopted without in any way prejudicing the basic issues and that the consideration of the items it contained did not preclude discussion of other points dealt with in the Ad Hoc Committee's report or of other proposals submitted to the Sub-Committee and having a bearing on its work. Such a solution would enable the members of the Sub-Committee to refer back to their earlier positions. With regard to the Soviet delegation's second new proposal, he wished to reserve his delegation's stand on the reference to international law. As to the application of the Charter, it went without saying that that was the very basis of the Sub-Committee's work.

Mr. de SOTO (Peru) said that his delegation approved the proposed programme of work. With regard to the Soviet delegation's first new proposal, a statement by the Chairman would smooth out all difficulties. The second Soviet proposal, on the other hand, was, in his delegation's view, entirely covered by the item "legal status" which was embodied in paragraph (1) of the programme of work.

The CHAIRMAN said that, in view of the opinions expressed and, in particular, of the points mentioned by the Soviet representative, he would consult the members of the Sub-Committee in order that a statement dealing with the

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(The Chairman)

question of defining the boundary between areas could be drawn up and could then be submitted to the Sub-Committee the following week. With regard to the second Soviet proposal, there seemed to be no objection to an express reference to international law and the Charter. In any event, the point at issue was not the applicability of international law to the matter under discussion but simply the question of its application in the context of the programme of work.

He suggested that, having regard to the decisions already adopted, the Sub-Committee should approve the wording proposed by India for section A and should agree to the insertion of a new paragraph (2) worded "applicability of international law, including the United Nations Charter" in order to take account of the Soviet proposal.

It was so decided.

The CHAIRMAN noted that although fundamental differences of outlook had arisen regarding the relationship between legal principles and norms, the Sub-Committee did not appear opposed to the retention of section B entitled "Norms". He therefore suggested that it should be adopted.

It was so decided.

OTHER QUESTIONS

Question of summary records

The CHAIRMAN recalled that, in accordance with the Main Committee's decision at its fourth meeting, the Sub-Committee was required, under the provisions of General Assembly resolutions 2292 (XXII) and 2478 (XXIII), to consider dispensing with summary records. The Committee officers, when consulted on that matter, had felt that the Legal Sub-Committee's work was so delicate, and entailed such heavy responsibilities for the delegations, that it would be as well not to dispense with summary records in order to obviate any problems relating to the contents of delegations' statements.

If there were no objections, he suggested that the Sub-Committee should adopt the advice of the Committee officers.

It was so decided.

The meeting rose at 1.35 p.m.

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SUMMARY RECORD OF THE FOURTH MEETING

Held on Monday, 17 March 1969, at 4.5 p.m.

Chairman: Mr. GALINDO POHL El Salvador

ORGANIZATION AND PROGRAMME OF WORK (A/AC.138/SC.1/3)

The CHAIRMAN said that, after the adoption of the programme of work (A/AC.138/SC.1/3), the delegations had had consultations to decide on the procedure to be followed in the substantive debates. Some delegations had expressed the desire that the subjects listed in the programme of work should be considered separately, while others preferred a general debate. The officers of the Sub-Committee believed that all discussion about the priority to be given to various subjects should be avoided, since the Sub-Committee could hold only six more meetings. If delegations, without reopening the general discussion, dealt as they saw fit with the questions that interested them, while keeping within the framework of the programme of work, it would be possible to establish the main trends of the debate and to compare the various statements. If there were no objections, he suggested that the Sub-Committee should adopt that kind of flexible procedure for the remainder of its work.

It was so decided.

CONSIDERATION OF QUESTIONS CONTAINED IN THE PROGRAMME OF WORK

Mr. HASHIM (Malaysia), recalling the language used by his delegation in the First Committee, at the twenty-third session of the General Assembly, stressed the need to establish an internationally recognized uniform breadth of the territorial sea so as to eliminate the element of unreality in the discussions on the sea-bed and the ocean floor, the depth and area of which were not precisely known (A/C.1/PV.1600, para. 113). Although it was not empowered to draft an agreement on the subject, the Sub-Committee should recommend without further delay that measures should be taken to reach such an agreement, despite the failure of the 1958 and 1960 Geneva Conferences to do so. His delegation attached the greatest importance to the question of defining the boundary of the area of the sea-bed and ocean floor beyond the limits of national jurisdiction and of the area within that jurisdiction. It would have supported the Soviet proposal for the Sub-Committee to consider that question if it had been convinced that the Sub-Committee had the authority to do so. It believed, however, that the boundaries of those two areas were not necessarily identical. Because, moreover,

(Mr. Hashim, Malaysia)

of the different geographical features of the various coastal regions, it was possible that the width of territorial sea might not be uniform.

He referred in that connexion to the geophysical features of his own country, which was made up of the Malay Peninsula and of East Malaysia, the latter comprising the north-western coastal area of the island of Borneo. The two regions were separated by a minimum of 400 miles of water on the Sunda Shelf, where the depth was no greater than 150 metres. If his country were to claim a width of 200 miles for its territorial sea instead of twelve miles, a part of the South China Sea would become Malaysia's internal waters. Malaysia, which had long been the world's largest tin producer still had significant reserves of that metal, had embarked on a programme of off-shore tin mining also. In addition, exploration for petroleum in the Straits of Malacca and on the continental shelf on both sides of the South China Sea had produced positve results. It was not unlikely therefore that, in the not too distant future, exploitation of the sea-bed would extend beyond his country's territorial waters.

It was essential for Malaysia to know whether the international régime envisaged by the Sub-Committee would apply to the continental shelf in the South China Sea and, if so, in what manner. Under article 2 of the Convention on the Continental Shelf, Malaysia was accorded sovereign rights for the purpose of exploring and exploiting the continental shelf in question, to which the definition given in article 1 of the said Convention applied. With regard to neighbouring countries, boundary delimitations were provided for in article 6 of the same Convention. It was to be wondered whether conflict might not arise between those various provisions and the objectives of an international régime in so far as the sovereign rights of Malaysia were concerned.

His delegation reserved the right to speak further on that item or on other items included in the programme of work.

Mr. CARTER (United States of America) expressed the hope that the Sub-Committee would be able to reach agreement on a statement of legal principles at the present session, and said that he would like to explain what, in his view, the content of such a statement of principles should be. At the meeting of the Ad Hoc Committee in Rio de Janeiro, and later at the General Assembly, his delegation had reaffirmed the proposals which it had made in June 1968 and which

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(Mr. Carter, United States)

were embodied in the draft statement of principles that appeared in document A/AC.135/25. It had also declared its willingness to accept the minimum balanced statement of principles, known as the "B" principles, which appeared on page 19 of the Ad Hoc Committee's report (A/7230).

The two statements of principles had certain elements in common even though sometimes worded differently. The elements found in the "B" principles which did not appear in his country's draft were provisions 1, 5 and 6, namely: (1) "there is an area of the sea-bed and ocean floor and the subsoil thereof, underlying the high seas, which lies beyond the limits of national jurisdiction"; (5) "exploration and use of this area shall be carried on for the benefit and in the interests of all mankind, taking into account the special needs of the developing countries"; and (6) "this area shall be reserved exclusively for peaceful purposes".

The Sub-Committee, as the Chairman had suggested, should, in seeking agreement on a balanced statement of principles, avoid detailed consideration of solutions for ultimate substantive issues - in other words, "norms". The statement of principles to be adopted should accomplish two objectives: it should provide guidance for States and their nationals in the exploration and use of the area beyond the limits of national jurisdiction, and it should provide some guidelines along which the substantive issues regarding a boundary and régime for that area might ultimately be resolved.

As paragraphs 1, 4, 5, 6 and 7 of his country's draft statement of principles, and paragraphs 1, 4, 5, 6 and 7 of the "B" principles could supply guidance pending the adoption of an agreed boundary and régime, they thus met the first objective. Paragraphs 2 and 3 of the United States draft and paragraphs 2 and 3 of the "B" principles met the second objective. Paragraphs 1 to 7 of the Sub-Committee's programme of work were primarily concerned with the first objective, although some of them could just as well accommodate principles in the second category, as the report of the Legal Working Group of the Ad Hoc Committee showed. Paragraph 8 of the programme of work ("other questions") could also include guidelines for eventual agreement on the problems of boundary and régime. It was to be hoped that the Sub-Committee would agree on a set of principles which it could send to the Main Committee so that recommendations could be made to the General Assembly. His delegation reserved the right to speak again on certain of the principles under consideration.

SUMMARY RECORD OF THE FIFTH MEETING

Held on Tuesday, 18 March 1969, at 3 p.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF QUESTIONS CONTAINED IN THE PROGRAMME OF WORK (A/AC.138/SC.1/3) (continued)

Mr. DEBERGH (Belgium), after recalling that the programme of work of the Legal Sub-Committee had been drawn up on the basis of material contained in the report of the Ad Hoc Committee (A/7230), emphasized the need for taking into account the many comments which had been made concerning that report both in the General Assembly and in the First Committee by delegations which had not been members of the Ad Hoc Committee and were not participating in the work currently being done.

The concept of a "common heritage of mankind", which had been proposed to characterize the legal status to be applied to the sea-bed and ocean floor beyond the limits of national jurisdiction, was of particular interest and reflected the high ideals which motivated the members of the Committee. However, that concept was actually a variant of the concept of joint property. It was an exaggeration in that regard to say that the concept of "res communis" implied a state of anarchy, for, when joint property was established by a deliberate act, the rules regulating the relationship among the co-proprietors were determined at that time. His delegation would not, however, oppose the inclusion of the concept of a "common heritage" in the preamble of a declaration so long as that point was emphasized. No useful purpose would be served by initiating a dispute in that matter between the different schools of thought or the different bodies of legal theory. The important thing was not so much to arrive at a precise definition of the legal status in question as to state the objectives to be achieved. As President Johnson had noted, it was necessary above all to avoid making the sea-bed and ocean floor the object of a new form of colonial rivalry instead of using them for the benefit of all mankind. As to the content of a "teleological" statement, the proposals put forward in 1968 resembled each other so closely that it should not be difficult to reach agreement on concise, concrete formulations. For example, the following fundamental principles could be stated. First, the sea-bed and ocean floor were not subject to appropriation, and States could not exercise national sovereignty over them. The application of that principle could not, of course, be unlimited, for all exploitation resulted inevitably in the appropriation of the resources concerned. Second, the exploration, use and exploitation of the sea-bed and ocean floor must be carried out for the benefit and in the interests of all mankind, in

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(Mr. Debergh, Belgium)

accordance with the formulation submitted by the spokesman of the Afro-Asian group. Third, activities in the area in question must be carried out in accordance with the United Nations Charter and international law. That excluded all discrimination and implied that all States which wished to do so could participate on an equal footing in the exploration and exploitation of resources. In that regard, the problems of de facto inequality and of freedom of the high seas would, of course, inevitably arise. Fourth, an international régime would have to be instituted to provide some form of control over the exploitation of resources. It was essential, however, to avoid an excessive proliferation of bureaucracy and to encourage public and private investors by offering them favourable terms and effective guarantees. Fifth, activities connected with the exploitation and exploration of the sea-bed and ocean floor must not harm the legitimate interests of other States, and liability must be incurred for any damage caused by such activities. His delegation was particularly anxious that, at the appropriate time, that principle should be the subject of an international convention, for it would be unfortunate if the gaps which existed in regard to outer space activities should occur again in connexion with the sea-bed and ocean floor. Sixth, the exploration, use and exploitation of the sea-bed and ocean floor must be carried out exclusively for peaceful purposes. That enumeration of principles was in no way intended to be exhaustive.

It was obvious that the elaboration of a legal status for the sea-bed and ocean floor was bound up with the settlement of a very important and sensitive question, namely, the determination of the area to be internationalized. In that connexion, the Convention of 1958 added nothing but confusion and uncertainty. Some thirty-seven delegations had acknowledged that it was necessary to define the limits of that area (A/AC.138/7, page 25), and his delegation had some doubt about the cogency of the argument that the Sub-Committee was not competent to discuss the limits of national sovereignties. The representative of Malaysia had made some extremely pertinent observations in that regard. Disregarding the consequences of the current régime, however, it was quite proper to approach the problem from the opposite angle and to say that the Sub-Committee was competent to discuss the limits of the international area. Because of the elastic nature of the current definition of the continental shelf, the limits of the international

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(Mr. Debergh, Belgium)

area might keep receding to the advantage of the technically developed countries. That might constitute a source of discrimination against the technologically less developed coastal countries and the land-locked countries. There was, moreover, increasing talk about transitional and intermediate zones, but just where they would begin and end was an open question. It was not impossible that some parts of the sea-bed and ocean floor underlying the high seas would follow the régime applied to the superjacent waters, for which, for historical and other reasons, a special régime was claimed. In addition, special régimes were being recommended for internal and marginal seas. There was therefore reason to wonder whether, in a few years, when the legal status of the area to be internationalized had been defined, that area might not have shrunk to practically nil and ceased to be of any importance to mankind and more especially to the developing countries and the land-locked countries. In those circumstances the international sea-bed and ocean floor, which would have been given the status of a common heritage or res communis, would in fact relapse into the domain of res nullius, in which no one took any interest. It was necessary to prevent the occurrence of situations in which there was nothing left to negotiate but abstract, theoretical or imaginary benefits. While his delegation was not asking the Sub-Committee to formulate rules for the determination of guiding principles in that regard, it did feel that the attention of the General Assembly and of Governments should be drawn to the problem. The Sub-Committee could, for example, follow the course recommended by the representative of Cyprus the previous year.

Mr. VALLARTA (Mexico) recalled that, before the Committee had been established, his delegation had emphasized the need for avoiding situations which would be prejudicial to the technologically less developed countries. It had accordingly proposed that, until such time as a treaty concerning the matter under consideration had been concluded, the status quo should be maintained in regard to the resources of the sea-bed and its subsoil. More recently, his Government had formulated the fundamental principles which represented its position, namely, the reservation of the sea-bed and the ocean floor exclusively for peaceful purposes and the use of their resources in the interests of mankind. Those principles were embodied in the heading of the relevant item on the agenda of the twenty-second session of the General Assembly. At the twenty-third session of the Assembly, his

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(Mr. Vallarta, Mexico)

Government - which had unconditionally renounced once and for all the idea of equipping itself with atomic weapons and which wanted nuclear weapons to be prohibited in the international submarine zone - had requested the adoption of a declaration containing the following principles: (1) the international submarine zone belonged to all mankind and, consequently, no State might lay claim to or exercise sovereignty over any part of it, nor should it be subject to national appropriation in any form; (2) the exploration, use and exploitation of the international submarine zone should be carried out exclusively for peaceful purposes; and (3) the exploration, use and exploitation of the international submarine zone should be carried out for the benefit of all mankind, taking into account the special needs and interests of the developing countries.

Under the terms of reference given to the Committee by the General Assembly, the contemplated legal principles and norms should be directed towards a concrete and practical objective. Firstly, international co-operation in the exploration and use of the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction should be promoted; secondly, the exploitation of the resources of that area for the benefit of mankind should be ensured; and thirdly, the economic and other requirements which such a régime would have to meet in the interests of all mankind should be determined. His delegation felt that the principles in question should be embodied in a declaration. Other delegations had spoken in favour of a mere recommendation. In view of the fact that the General Assembly, under Article 13 of the Charter, was charged with encouraging the progressive development of international law and its codification, the Assembly was empowered to codify the law of the sea-bed and ocean floor in an instrument which would be binding on States, subject, of course, to conventions which might be adopted at a later date.

It must also be determined whether any fundamental principles existed, whether any corollary principles could be inferred from them, and whether the principles should be formulated at one time or in several stages. Work should proceed on the drafting of the principles, and the decision on the requirements that must be met by the declaration of principles guaranteeing justice for both large and small countries should be deferred until a later stage. As for the specific proposals submitted to the Ad Hoc Committee, relating in particular, to the existence of a zone which was not subject to national jurisdiction, its

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(Mr. Vallarta, Mexico)

international character, the preservation of that character, the reservation of that zone exclusively for peaceful purposes, and so on, his delegation would confine itself for the present to restating the principles contained in document A/C.1/L.430 which, because of its general nature, was a basis of agreement already accepted by the Committee. His delegation considered that when the competent bodies felt that the time had come to determine the limits of the continental shelf, that difficult task should not hinder the Sub-Committee in the accomplishment of its main objective, which was, firstly, to study the legal principles and norms which would ensure the existence of international co-operation for the benefit of all mankind in that new submarine zone and, secondly, to determine the economic and other requirements which the future régime of the sea-bed and ocean floor would have to meet.

Mr. BODY (Australia) said that the Sub-Committee could usefully as a first task draw up a set of principles to govern the exploration and use of the submerged lands lying beyond the limits of national jurisdiction. Its efforts in that regard would doubtless be greatly facilitated by the working paper prepared by the Secretariat (A/AC.138/7), in which the issues raised and the proposals submitted were accurately set forth. As it approached that task, the Sub-Committee should, in his delegation's view, bear in mind three considerations. Firstly, the task would be of a long-term nature. Secondly, and for that same reason, the Sub-Committee should approach the problem modestly, instead of trying to cover in detail every contingency that might arise in the future. Thirdly, the preliminary statement of principles should be succinct and should offer a solid basis for future work.

The statement of principles in the Ad Hoc Committee's report for 1968 (A/7230, p. 19) which was referred to as the "B" principles was the one which his delegation found most compatible with the considerations he had just mentioned, and it considered that those principles should be recommended for adoption by the General Assembly. Those principles were quite simple and could be confidently presented as a form of charter for the exploitation and use of the sea-bed and the ocean floor. The first principle was a statement of the idea which was basic to all aspects of the Committee's work and which should continue to appear as the

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(Mr. Body, Australia)

first principle in any set of principles adopted by the Sub-Committee. The second principle recognized the need for an agreed precise boundary for the area beyond the limits of national jurisdiction and noted that the relevant dispositions of international law were to be taken into account. In particular, account had to be taken of the 1958 Convention on the Continental Shelf. Many States, including Australia, were parties to that Convention, and they had had recourse to it in enacting domestic legislation with respect to the exploitation and use of the submerged lands adjacent to their coasts. The principles of that Convention had also been taken into consideration in the domestic legislation of other States which were not parties to the Convention. The settlement of the boundaries of the respective areas would, however, require detailed and prolonged study. The third principle referred to agreement on an international régime and followed from the first two principles. However, his delegation, as it had stated in the Economic and Technical Sub-Committee, would not associate itself with any particular régime at the present stage, pending the submission of the report to be prepared by the Secretary-General in pursuance of resolution 2467 (XXIII). The fourth principle was a natural corollary of the first principle, and the fifth principle was fully consistent with the philosophy underlying resolution 2467 (XXIII). With regard to the sixth principle, which called for the reservation exclusively for peaceful purposes of the area beyond the limits of national jurisdiction, his delegation maintained that that principle in no way precluded defensive activities which were consistent with international law and with the Charter of the United Nations. In view of the discussions which had already taken place in the Ad Hoc Committee and which would be taking place in other organs of the United Nations, his delegation had nothing further to add on the subject. Referring to the seventh principle, he said that all activities undertaken in the area under consideration must be governed by respect for international law and the Charter of the United Nations.

He expressed the hope that the Sub-Committee would confine itself to the preparation of a short statement of fundamental principles and that the "B" principles would receive widespread support.

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Mr. CABRAL de MELLO (Brazil) said that he wished to express his delegation's views on items 1 and 2 of the Sub-Committee's programme of work, namely, legal status, and the applicability of international law, including the Charter of the United Nations. He first of all recalled how the classic law of the sea had undergone certain changes. On the one hand, the concept of the territorial sea had been refined, and the notion of a contiguous zone which was subject to national residual jurisdiction had been formulated. On the other hand, the principle of the freedom of the high seas had become somewhat more qualified. Following, as it had, the adoption of the Convention on the Continental Shelf, the study of the question of the sea-bed by the General Assembly since 1967 was an attempt to examine the full doctrinal and practical implications of the opening-up of a new maritime area to human activity.

A summary of the relevant provisions of existing law might help to determine to what extent the principles and rules of the law of the sea were relevant to the sea-bed and the ocean floor. First of all, there was the Charter, which, however, contained no express provisions on the subject. In the second place, it could not be deduced from the principle of the freedom of the high seas that similar freedom existed for the exploration and exploitation of the sea-bed. There were also norms which had been established for specific purposes and which related, for example, to submarine cables and pipelines, but they could not be extended to the exploration and exploitation of the sea-bed. With regard to the Convention on the Continental Shelf, its scope was limited by the fact that the international community, as embodied in the United Nations, had recognized the existence of an area of the sea-bed and the ocean floor beyond the limits of national jurisdiction. A further relevant provision of international law - article 1 of the Treaty banning nuclear-weapon tests in the atmosphere, in outer space and under water - could be interpreted, according to Professor Burke, to mean that the testing of nuclear weapons or devices was forbidden on the ocean floor, although perhaps testing conducted beneath the sea-bed might not be included if it could be accomplished without effects on the superjacent floor or water. The conclusion was therefore clear that the lex lata was relevant to the sea-bed and the ocean floor only in so far as the legal régime to be applied to that area ought to respect the rules which governed human activities in the other areas of the sea.

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(Mr. Cabral de Mello, Brazil)

In those circumstances, the efforts to formulate a legal régime for the sea-bed must start from the very beginning. While the two concepts of res nullius and res communis were of no help to the Sub-Committee in its task - the International Law Commission having rejected the doctrines based on those concepts - the concept of the common heritage of mankind did lend itself to the sea-bed and the ocean floor. That view had been expressed by many delegations and had been explained with great lucidity by the representative of Malta at the 1968 session of the Ad Hoc Committee. The representative of Malta had pointed out that the principle of a "common heritage" went beyond that of res communis and the internationally accepted test of "reasonable use". It implied something to be administered in common and thus contained the notion of a trust and of trustees, although not necessarily that of property; furthermore, the concept of indivisibility was inherent in the notion of a "common heritage" and thus also that of peaceful use. Most important of all, however, it implied not only the principles of freedom of access and use but also the regulation of the use made of that heritage and the equitable distribution of benefits among those with an interest in the common property though not participating directly in its exploration (A/AC.135/WG.1/SR.7, p. 52).

The principle of a common heritage was the creative application to international law of a well-known principle of domestic law. His delegation fully supported that principle, and he noted that it had already expressed the view that the resources of the sea-bed and the ocean floor should not be disposed of without adequate compensation to the community of nations and observance of agreed substantive and procedural rules (A/C.1/PV.1591, pp. 8-10). The corollary of the principle of the common heritage of mankind was that the international community, as embodied in the United Nations, should be empowered to regulate and to legalize the activities carried out on the sea-bed and the ocean floor. It would therefore be difficult to endorse the view that, as there were no legal principles or norms governing the utilization of the resources of the sea-bed and ocean floor, those resources were therefore free to be explored and exploited, on the sole condition that such activities did not interfere with rights related to other areas of the sea.

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(Mr. Cabral de Mello, Brazil)

His delegation regretted that the concept of the common heritage of mankind had not been incorporated either into the draft resolution submitted by the United States or into the "B" principles. Mere mention of the fact that the sea-bed might not be subject to national appropriation was unsatisfactory, as such a statement was not incompatible with an unqualified concept of freedom of exploration and exploitation. Such a concept, moreover, would unfavourably affect the vital interests of those countries which were not at a stage of technological development that would enable them in the foreseeable future to profit by the opening-up of the sea-bed and the ocean floor. On the other hand, the principle of a common heritage was included in the "A" principles, in the draft declaration submitted by India and in the working paper which had been proposed by the countries of Africa, Asia and Latin America and which appeared in annex III of document A/7230. There was a need for a comprehensive and balanced set of legal principles, which should, in his delegation's view, necessarily incorporate the principle of the common heritage of mankind.

The meeting rose at 4.35 p.m.

SUMMARY RECORD OF THE SIXTH MEETING

Held on Wednesday, 19 March 1969, at 3.35 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF QUESTIONS CONTAINED IN THE PROGRAMME OF WORK (A/AC.138/SC.1/3) (continued)

Mr. DARWIN (United Kingdom) said that he would like to consider briefly and comment on some of the topics included in the Legal Sub-Committee's programme of work. With regard to the legal status of the sea-bed and the ocean floor, he believed that the work of the Ad Hoc Committee and the First Committee had evinced agreement on a fundamental issue, namely, that there did exist an area of the sea-bed and the ocean floor which was beyond the limits of national jurisdiction. It therefore followed that no State could arbitrarily appropriate any area of the ocean whatsoever. The proof that the majority of States accepted that principle was to be found in the very existence of the Convention on the Continental Shelf and in international law, and the Sub-Committee should take cognizance of the agreement existing in that regard.

It was generally acknowledged that the Charter of the United Nations applied to activities in the under-water area concerned. Whatever disagreements had arisen on the applicability of international law, had been concerned with the limits of the area to which that law applied and not with the principle itself. No one objected to international law being applied beyond the area of national jurisdiction; the point at issue was the delimitation of the area in which that law might not apply. It should be possible to find some formula to express the items on which agreement existed.

Section A, paragraph (3), of the programme of work met with general support. Activities on the sea-bed, like the activities on the continental shelf as provided in article 5, paragraph 1, of the Convention, should not interfere with navigation, fishing, the conservation of resources or research.

There also appeared to be agreement on the principles in section A, paragraph (5) and paragraph (6), of the programme of work, though the work of the Sub-Committee might be made easier if research, paragraph (5), were considered separately. Many countries were interested in research, as illustrated by the recent International Conference and Exhibition of Oceanology and Marine Technology in the United Kingdom, to which reference had already been made in the Economic and Technical Sub-Committee. But surely the Legal Sub-Committee could take note of the general agreement which existed on regard for the interests of other States, which was the subject of paragraph (6) of the programme of work.

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(Mr. Darwin, United Kingdom)

The Sub-Committee would be able to find some way of expressing the general agreement which existed on particular items.

Item 4 was perhaps the most important one, for it set forth the concept of the general interest which had led the United Nations to concern itself with the sea-bed. But that concept had many aspects. The same was true of the concept of the "common heritage" discussed by Brazil. It was not an established legal concept whose implications were known. Its content had to be worked out in specific arrangements. For example, it had been suggested that it would be desirable to apply the principle of non-discrimination but, at the same time, it might be necessary to grant the advantage of certain priority of exploitation to the countries or undertakings which were responsible for exploration in order to reimburse them for prospecting costs. One must not stifle a new industry or destroy the incentives for its activity. The concept in item 4 would only come into effect by the working out of the various aspects which it included. The report being prepared by the Secretariat in pursuance of General Assembly resolution 2467 C (XXIII) should provide useful guidance in that respect.

His delegation reserved the right to speak again at a later stage on the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, which was dealt with in operative paragraph 3 of resolution 2467 A (XXIII).

The limits of the international area would depend to a great extent on the régime to which the area would be subject. While no country wished to make unlimited claims, every country was naturally interested in what was taking place in the immediate vicinity of the area under its national jurisdiction, for certain activities could endanger the prosperity and well-being of its people. In that regard the Convention on the Continental Shelf had established certain limits of continuity and contiguity and any alternative must be justified. Any further definition of the limits of the international area could be arrived at only in the course of progressively defining the régime to which that area would be subject.

His country doubted whether it was essential to draw a rigid distinction between principles and norms.

To summarize, his delegation felt that the Sub-Committee should take note of the progress already achieved and should avoid any fragmentation of its activities in regard to items on which there was still disagreement, for those items were interdependent, and agreement could be achieved only by a gradual process.

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Mr. KUIAZHENKOV (Union of Soviet Socialist Republics) said that in its present statement his delegation wished to deal with one of the problems of the sea-bed which it regarded as particularly urgent and pressing. That was the problem of prohibiting the military use of the sea-bed and of creating conditions under which the sea-bed would be used only for peaceful purposes. The success or failure of the efforts to put such a prohibition into effect would decisively influence the development of international co-operation in the exploration and use of the sea-bed.

The Soviet Union was in favour of an understanding being reached to prohibit any kind of military use of the sea-bed and the ocean floor so that they might be free of military equipment and installations and thus be reserved exclusively for peaceful purposes.

In its memorandum of 1 July 1968 on urgent measures for halting the arms race and for disarmament, the Government of the Soviet Union, considering present and prospective progress in the exploration of the sea-bed and the ocean floor, raised the question of the timely establishment in some suitable form of a régime which would guarantee the use of the sea-bed exclusively for peaceful purposes and would prohibit any kind of military activity on the sea-bed - particularly the placing of stationary military installations there.

In the course of the proceedings of the Ad Hoc Committee on the Sea-Bed, the Soviet Union submitted for the Committee's consideration a draft resolution for the General Assembly in which the General Assembly would in particular call upon all States to use the sea-bed and ocean floor exclusively for peaceful purposes.

As had been announced in the Press, the Soviet Union, on 18 March 1969, had submitted to the Eighteen-Nation Committee on Disarmament a draft treaty on prohibition of the use for military purposes of the sea-bed and the ocean floor and the subsoil thereof.

He would like to make a few brief comments on that draft treaty, which, he was deeply convinced, would be an effective means of preventing the extension of the arms race to the sea-bed. Its acceptance would create favourable conditions for the development of international co-operation in the exploration of the sea-bed and for ensuring that the sea-bed and the ocean floor would be used exclusively for peaceful purposes.

(Mr. Kulazhenkov, USSR)

The draft treaty on prohibition of the use for military purposes of the sea-bed and the ocean floor and the subsoil thereof, consisted of a preamble and five articles.

The preamble of the draft treaty consisted of three paragraphs. In paragraph (a), it was noted that developing technology made the sea-bed and the ocean floor and the subsoil thereof accessible and suitable for use for military purposes. In paragraph (b), it was considered that the prohibition of the use of the sea-bed and the ocean floor for military purposes served the interests of maintaining world peace and reducing the arms race, promoted relaxation of international tension and strengthened confidence among States. In paragraph (c), the conviction was expressed that the treaty would contribute to the fulfilment of the purposes and principles of the United Nations.

The essence of the treaty was embodied in article 1. The first paragraph of that article provided for the prohibition of the use for military purposes of the sea-bed and the ocean floor and the subsoil thereof beyond the twelve-mile maritime zone of coastal States. The second paragraph enumerated, by way of example, the objects whose emplacement or setting-up on the sea-bed and the subsoil thereof would be prohibited under the treaty. The text of the second paragraph was as follows: "It is prohibited to place on the sea-bed and the ocean floor and the subsoil thereof objects with nuclear weapons or any other types of weapons of mass destruction, and to set up military bases, structures, installations, fortifications and other objects of a military nature."

Thus, according to the treaty, every kind of military activity on the sea-bed, including the emplacement of nuclear missiles would be prohibited. The adoption of the treaty would mean a complete demilitarization of the sea-bed.

The twelve-mile maritime zone proposed in the draft treaty beyond which the use of the sea-bed for military purposes would be prohibited would serve the interests of all coastal States despite differences in the breadth of the territorial sea from State to State, because, for the purposes of the treaty, it would be provided that, irrespective of the breadth of their existing territorial sea, the military use of the sea-bed would be prohibited beyond a distance from the coast which would be uniform for all States.

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(Mr. Kulazhenkov, USSR)

Article 2 of the draft treaty provided that all installations and structures set up or emplaced on the sea-bed and the subsoil thereof should be open on the basis of reciprocity to representatives of other States Parties to the treaty for verification of the fulfilment by States which had placed such objects thereon of the obligations assumed under the treaty.

Article 3 of the draft treaty was concerned with the question of how the outer limit of the twelve-mile maritime zone would be measured. It proposed that the said outer limit established for the purposes of the treaty should be measured from the same base-lines as were used in defining the limits of the territorial waters of coastal States.

Articles 4 and 5 of the draft treaty were made up of final provisions similar to those of other international treaties. With regard to the question of parties to the treaty, under the provisions of article 4 the treaty would be universal in nature and would be open for signature to all States.

As was apparent from the provisions of the draft treaty on prohibition of the use of the sea-bed for military purposes, consideration had been given in drafting the treaty to the proposals and arguments advanced by the overwhelming majority of States which had expressed their views in various bodies of the United Nations on the problem of the sea-bed. Since it was intended to prevent the extension of the arms race to a potentially new sphere of human activity, namely, the ocean floor, and since it served the interests of maintaining the peace and security of peoples, the proposed treaty, he was convinced, would meet with a generally positive response and would be supported by the peace-loving States which realized the danger of extending the arms race to the sea-bed and the ocean floor and were interested in developing co-operation with a view to the peaceful exploration of the sea-bed.

A substantial contribution to the achievement of agreement on the demilitarization of the sea-bed could also be made by the Committee on the

(Mr. Kulazhenkov, USSR)

Peaceful Uses of the Sea-Bed if, in considering the legal principles relating to the sea-bed, it gave due attention to the formulation of the principle of the use of the sea-bed exclusively for peaceful purposes as an integral part of any such set of principles.

Mr. NJENGA (Kenya) said that he attached no special importance to making a distinction between principles and norms. In his opinion, the basic principle from which all the others should be evolved was the concept that the sea-bed and ocean floor beyond the limits of national jurisdiction were the common heritage of mankind. Once that principle was granted, the logical consequence was that that area of the sea-bed and ocean floor should be used for the benefit of all States, whether or not they were able to take part in its exploitation, that all military installations should be banned from that area and that any damage arising from exploration or exploitation activities carried on there entailed liability. In common with the Brazilian delegation, he held that the provisions of international law and of the United Nations Charter did not adequately meet the needs of that new environment. It was therefore essential for the Sub-Committee to recommend the establishment of an appropriate legal régime in order that the General Assembly might be able to fulfil the obligations placed upon it by Article 13, paragraph 1 (a), of the Charter. Such principles as were adopted should, without being excessively detailed, cover the essential aspects of the question. The draft declaration of general principles, usually referred to as draft (a), in paragraph 88 of the Ad Hoc Committee's report (A/7230), met those requirements and did not differ fundamentally from the draft statement of agreed principles, usually referred to as draft (b), which appeared later in the same paragraph of that report. The main ideas expressed in paragraph (4) of draft (a) were also to be found in paragraph (5) of draft (b). The provisions of paragraph (6) of draft (a), on liability and pollution, had not, however, been included in draft (b). Draft (a), in his delegation's opinion, was an appropriate basis for the Committee's recommendations to the General Assembly.

Miss MARTIN SANE (France) recalled that the Sub-Committee had decided to draft a number of principles before embarking on detailed consideration of

(Miss Martin Sane, France)

an international régime. The question which must now be answered was whether a very detailed set of principles or just a few general guidelines were what was wanted. In view of the fact that the Sub-Committee still lacked some important information - which it would not receive until the following session - and in view of its decision not to consider, at the outset, the very complex question of the legal régime of the sea-bed and ocean floor, it might more profitably confine itself for the moment to unanimously adopting a limited number of summary principles, thus laying down the guidelines for its subsequent task of drawing up the legal régime in question. Draft (b) (A/7230, para. 88), which had been drawn up at Rio de Janeiro, appeared to satisfy that essential requirement of clarity and precision. It should be noted that that draft statement of principles contained explicit guarantees. For example, paragraph (4) provided that the area beyond the limits of national jurisdiction was not "subject to national appropriation by claim of sovereignty, by use or occupation, or by any other means". Similarly, with regard to exploitation, the opening words of that paragraph were: "No State may claim or exercise sovereign rights over any part of this area". What those provisions meant was that no State could use an exploration or exploitation activity as the basis for a claim to sovereign rights and thus claim exclusive rights to deposits discovered by it. Nevertheless, it should be borne in mind that in article 1 of the 1958 Convention, the continental shelf of a State was defined as referring "(a) to the sea-bed and subsoil of the submarine areas adjacent to the coast... to where the depth of the superjacent waters admits of the exploitation of the natural resources... ". That concept might therefore provide authority for an unjustifiable extension of national jurisdictions. In any event, the French Government, in depositing its instrument of accession to the Convention, had stated that the words "areas adjacent" in article 1 of the Convention referred to an assumption concerning geophysical, geological and geographical dependence which, in itself, excluded an unlimited extension of the continental shelf. The Belgian delegation had spoken so brilliantly on the question of the agreed boundary referred to in paragraph (2) of draft (b) as to make it unnecessary to stress that point further. The French delegation had noted with interest the proposal of the Maltese representative for a review of the 1958 Convention and the observations of the United Kingdom

(Miss Martin Sane, France)

delegation to the effect that to proceed first with the institution of a régime would facilitate the establishment of such a boundary. She reserved the right to comment at a later stage on other questions, including item A (3) of the programme of work concerning reservation exclusively for peaceful purposes. In that connexion, her delegation had listened with interest to the USSR representative's comment on the draft treaty submitted by his Government to the Eighteen-Nation Committee on Disarmament at Geneva.

Mr. ODA (Japan), recalling that his delegation had supported draft (b) (A/7230, para. 88) at Rio de Janeiro, pointed out that there were few discrepancies as between draft (a) and draft (b). Although it was still too early to embark on consideration of international procedures and machinery, agreement should be possible at least on paragraphs (1), (4), (5) and (7) of draft (b). In the case of paragraph (1), for instance, all delegations were agreed that there was an area of the sea-bed and ocean floor which lay beyond the limits of national jurisdiction. His delegation also had the view that the fundamental régime of the continental shelf was now recognized in customary international law and that each coastal State, no matter whether it had or had not ratified the Convention on the Continental Shelf or acceded to it, was entitled to the off-shore subsoil areas for the purpose of their exploration and exploitation. Since it was true that article 1 of the 1958 Convention could give rise to unwarrantable appropriation, because of the concept of exploitability, he noted that the provisions of that article could be thoroughly re-examined, in accordance with article 13. Paragraph (4) of draft (b) provided that no State might exercise sovereign rights over any part of the area and that no part of it was subject to national appropriation. In his view, it would be neither necessary nor useful to define that area by referring to some existing legal terminologies such as res nullius or res communis; that did not mean that exploration or exploitation of the area in question must be prohibited, for there was no rule of international law to justify such action. A distinction should therefore be made between exploitation and appropriation. In regard to exploration and use, as referred to in paragraph (5), the way in which such activities were organized should receive careful attention. Whether to set up an international body which would

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(Mr. Oda, Japan)

give licences to entrepreneurs or merely to draw up regulations, should be a subject of the Committee's future work. Meanwhile, it should be made clear that exploration and exploitation activities which created no sovereign rights could be undertaken. His delegation wished to stress that the principle of the freedom of the high seas was eminently applicable to the exploration and exploitation of the area under discussion. Especially, activities in the sea-bed and subsoil should not infringe upon the freedom of the high seas. No matter whether the exploration or the exploitation would take place on the continental shelf under the full jurisdiction of the coastal State or on the area beyond under any international arrangements, it was quite apparent that activities should not infringe upon navigation, fishing and other legitimate use of the sea areas, which undoubtedly continued to stay as the high seas. That did not, of course, necessarily give any prejudgement of state responsibility for hazards which might occur as a result of exploration or exploitation. He hoped that general agreement could be reached on all those matters.

Mr. DIACONESCU (Romania) said that the contribution which the exploitation of the vast resources of the sea-bed and ocean floor could make to the economic development of all nations depended on the establishment of some kind of arrangement to govern all the activities of man in relation to the sea-bed. Specific measures would have to be taken in the immediate future to set up a legal framework that would prevent any discrimination between States. His delegation felt that, in order to take all viewpoints into account, the elaboration of complete and effective legal rules should preferably be accomplished by stages, starting from general principles which did not entail special problems and which would be established on the basis of three prior considerations. The first of those was that the existence, beyond the limits of national jurisdiction, of an area which was not subject to appropriation claims of any kind must be acknowledged as indisputable. Since, however, the discussion in the Sub-Committee had shown that the increasingly vague and variable limits of national jurisdiction might be of a discriminatory nature and that extension of the area of sovereignty might

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(Mr. Diaconescu, Romania)

possibly give rise to disputes, it was essential to consider the ways in which the limits in question might be defined. In order to do that, it would be a sound policy to rely on the existing instruments concerning the law of the sea, and in particular the Convention on the Continental Shelf. A careful examination of the definitions in that Convention should lead to useful conclusions, particularly with regard to the limits within which sovereign rights were exercised in various situations. The second consideration was that the exploration and use of the sea-bed beyond the limits of national jurisdiction must be undertaken exclusively for peaceful purposes - that being an essential condition of co-operation - and with due regard for the special needs of the developing countries. The Romanian delegation was in favour of all measures which would help to prevent the placing of weapons on the sea-bed. The third consideration was that all activities carried out on the sea-bed and the ocean floor must conform to the unanimously accepted principles of international law and of the Charter and must be conducted in such a way as not to impair the freedom of the high seas, particularly in regard to fishing and navigation. A further essential requirement was the immediate preparation of effective measures to protect the marine environment against any possible harmful effects from the exploration and the use of the sea-bed.

Mr. KHANACHET (Kuwait) said that his delegation was in favour of adopting a set of principles relating to the exploration and the use for peaceful purposes of the sea-bed and the ocean floor beyond the limits of national jurisdiction. It had noted that most of the principles formulated in 1968 by the Ad Hoc Committee - which Kuwait had not been a member - were not open to dispute and might be codified in such a way as to achieve broad acceptance by Member States. It felt that the following points, in particular, could be included in such a set of principles:

"1. No State may claim sovereign rights over the sea-bed and ocean floor in the area beyond the limits of national jurisdiction;

2. The area not subject to national jurisdiction shall be exploited for the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries, including land-locked countries;

3. The exploration and exploitation of the resources of this area shall not contravene the legal status of the superjacent high seas or of

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(Mr. Khanachet, Kuwait)

the airspace above those seas and shall not impair freedom of navigation, fishing or the conservation of biological resources;

4. Exploration activities shall not prejudice the rights of coastal States in the area under their jurisdiction and must be carried out with the prior consent and active participation of the coastal States;

5. Exploration and exploitation activities shall avoid pollution of the sea and any other mishaps which may affect the biological resources of the sea and of the coastal regions;

6. The sea-bed and the ocean floor shall be reserved exclusively for peaceful purposes."

The Sub-Committee must in some cases expect controversy, which would be due rather to the lack of binding norms of international law than to political motives. With regard, for example, to the impossibility at the present time of reaching agreement on the boundary of the area subject to national jurisdiction, it would be noted that the States Parties to the Convention on the Continental Shelf affirmed that national jurisdiction in the area of the continental shelf was limited, whereas States whose position was based on unilateral declarations claimed sovereignty over that area without limitations. In the absence of any norm which applied to the legal status of the sea-bed and the ocean floor beyond the areas under national jurisdiction, there was need for a new legal order which, in his delegation's opinion, should be based on the concept of the "good of mankind", which, together with the concept of peaceful use, was the basis of the Sub-Committee's terms of reference.

The question of defining the outer limit of the area under national jurisdiction would have to be faced sooner or later. Consideration would also have to be given to the possibility of revising the 1958 Convention on the Continental Shelf, although care would have to be taken not to upset the existing situation on account of the many bilateral agreements that were based on the provisions of that Convention, which was still the only general international instrument laying down rules in that regard.

(Mr. Khanachet, Kuwait)

In his delegation's view, the documents submitted to the Sub-Committee and the statements which had been made confirmed that the establishment of some international machinery to facilitate the exploration and use of the sea-bed and the ocean floor was essential in order to protect the interests of countries liable to be affected by adverse movements in world commodity prices which might result from the development of marine mineral resources, and also to ensure for the developing countries a fair share of the income from such development.

The meeting rose at 5.25 p.m.

SUMMARY RECORD OF THE SEVENTH MEETING

Held on Thursday, 20 March 1969, at 3.30 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF QUESTIONS CONTAINED IN THE PROGRAMME OF WORK (A/AC.138/SC.1/3, A/AC.138/11) (continued)

Mr. PARDO (Malta) recalled that in March 1968 his delegation had stated what, in its view should be the general objective of the work relating to the sea-bed and the ocean floor beyond the limits of national jurisdiction (A/AC.135/1, p. 29, para. 1) and had suggested the action which should be taken to pursue that objective (ibid., pp. 29 and 30, para. 2). The General Assembly's reaction to those proposals had been cautious, and the terms of reference given to the Ad Hoc Committee in 1968 had been of an essentially fact-finding nature. His delegation wished to elaborate its views in the light of the present status of the problem and to indicate the solutions which it considered desirable, with particular reference to draft resolution A/AC.138/11, which it now submitted for consideration by the Legal Sub-Committee.

The report of the Ad Hoc Committee (A/7230) contained only two generally agreed conslusions, namely: (a) that there existed an undefined area of the sea-bed, underlying the high seas, beyond the limits of natural jurisdiction, and (b) that the various aspects of the item required further study. Useful proposals concerning possible declarations of principle had been put forward; however, the General Assembly in 1968 had not had time to combine them into a unanimously acceptable resolution, and they had been referred to the Standing Committee established under resolution 2467 (XXIII). He drew attention to the terms of reference contained in that resolution, and noted that an international forum now existed where the question of the sea-bed beyond the limits of national jurisdiction could be considered as a whole and where proposals could be made with regard to the legal status of, and the future régime for, that area; moreover, the United Nations had recognized that the exploration and exploitation of the sea-bed should be carried out for the benefit of mankind as a whole. However, that did not necessarily ensure that a régime effectively safeguarding the common interest would eventually be established. The saying: "There's many a slip twixt the cup and the lip" was particularly true in an area where so many interests of States were involved. Nevertheless, it would be a tragedy if the Committee confined itself to the less demanding part of its task and deferred the performance of the main part. He himself had been considered a prophet of doom by many delegations

(Mr. Pardo, Malta)

because he had predicted the grave consequences of the present uncertain legal status of the sea-bed, but little had happened since 1967 to disprove his pessimism. There had, in fact, been a trend towards anarchy, rather than towards the development of law. Although little was known of the characteristics of the ocean floor, it was clear that substantial mineral resources existed beyond the continental shelf and that certain areas of the sea-bed were of greater economic or military value than others; that technological progress had made possible the exploration and exploitation of a large part of the sea-bed, and even the occupation of some areas; that the marine environment could be impaired, perhaps permanently, by certain practices, unless strict safeguards were enforced; and that there was a legal vacuum over the area under consideration. In that connexion, he drew attention to the ambiguities and inadequacies of the 1958 Convention on the Continental Shelf.

Although the legal definition of the continental shelf contained in article 1 of the Geneva Convention was controversial, it could, in his delegation's view, be interpreted only in the following way: the word "adjacent" qualified the areas referred to with regard to the criteria both of depth and of exploitability; moreover, as the latter criterion had been formulated in the light of the technology available in 1958, the Convention could not be interpreted as establishing an "elastic" boundary (in which case the authors would have used the future rather than the present tense). In recognizing the existence of an area of the sea-bed, underlying the high seas, beyond the limits of national jurisdiction, the Ad Hoc Committee had agreed with the majority of writers that "there is a geographical limit ... which circumscribes the extent to which a coastal nation can validly assert exclusive sovereign rights to explore the sea-bed and to exploit its natural resources". The fact, however, remained, that the limits proposed ranged from twenty-five to several hundred nautical miles from the coast. There was wide diversity in national legislation. However, a large number of States, including the main maritime Powers, conformed in their national legislation to the definition contained in article 1 of the 1958 Convention. As for the practice of States, the issue of mineral exploration and exploitation permits was widely regarded as a claim to exclusive jurisdiction over the area concerned, and quite

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(Mr. Pardo, Malta)

a number of countries had already granted exploratory drilling licences far beyond the 200-metre isobath. In that connexion, his delegation questioned the legality of the practice of indirectly asserting national jurisdiction by the grant of exclusive exploration licences over areas not immediately exploitable by contemporary technology and not in close proximity to the coast. Under the Geneva Convention, the criterion to be borne in mind was that of exploitability, not possibility of exploring or evaluating resources. The Ad Hoc Committee's report noted that in 1968 proved exploitability in petroleum production existed only to about 120 metres water depth (A/7230, p. 27).

There were at present no legal norms and no clear international consensus which could restrict the extension of national jurisdiction. He did not believe that events would be permitted to result in a division of the entire ocean floor among coastal States in accordance with one interpretation of the Geneva Convention. The confusion and conflict resulting from such a division would far outweigh its supposed advantages. Such a situation would severely inhibit co-operation in scientific research, pollution control and respect for the traditional freedoms of the high seas. Moreover, a division in accordance with theoretical median lines, which would benefit a dozen States, would meet with the determined resistance of the remainder of the world community and of the two major maritime Powers, which would find that solution difficult to reconcile with their economic and security interests. Nevertheless, if the United Nations did not move swiftly to remove some of the uncertainties with regard to the area and legal status of the sea-bed beyond national jurisdiction, there was a danger that those two major maritime Powers, which possessed a preponderance of technological capacility, might take advantage of the fact that national jurisdiction was limited to within a short distance from the coast in order to secure unrestricted access to the sea-bed for their nationals and to protect the exclusive rights which their nationals claimed over those areas. As only a limited number of areas of the sea-bed were readily exploitable with foreseeable technology, there would be a race between the view countries which possessed the requisite technological capability. The identification of those areas would, of course, be facilitated by the implementation of the co-ordinated long-term programme of oceanographic research welcomed by the General Assembly at its twenty-third session (resolution 2467 D (XXIII). However, as exclusive rights could not be

(Mr. Pardo, Malta)

clearly guaranteed, a situation would develop in which the competing countries spied on each other's sea-bed enterprises, in the same way as their fleets shadowed each other on the surface. If it became known that areas of the sea-bed had been appropriated for the installation of weapons of mass destruction, the result would undoubtedly be international tension and an escalation of the arms race. It would also become difficult to control pollution and to accommodate the various uses of the sea-bed.

In any case, the numerous countries which lacked the means to participate in the exploitation of the sea-bed would find such a situation entirely unacceptable, and its political drawbacks would eventually render it impracticable. Nevertheless, the situation would remain unsatisfactory. In the view of his delegation, a régime which would protect the legitimate interests of all countries must be established without further delay. In discharging its task, the Sub-Committee would encounter difficulties which could not be overcome without goodwill and some sacrifice by States of present or potential interests. The overwhelming majority of States had to find, beyond divergent interests, the answers to the three following basic questions:

(1) What were the outer limits of the continental shelf subject to the sovereignty of the coastal State for the purposes of exploration and resource exploitation?

(2) What legal theory and principles should be applied to the area of the sea-bed beyond the legally defined continental shelf?

(3) What was the precise nature of the legal régime that should be established, in application of the principles adopted, for the sea-bed beyond national jurisdiction, and what were the implications for individual States?

In replying to those questions, the Sub-Committee must bear in mind that a general goal, even if accepted in theory, could not obtain the support of States in practice unless it could be shown that the interests which they considered vital were not seriously endangered. The burden of proof unfortunately rested, in the present case, with the advocates of change.

To answer the first question properly, it was necessary to try to ensure that the area of the sea-bed beyond the limits of national jurisdiction was defined with sufficient approximation; at the same time, the general acceptability of any

(Mr. Pardo, Malta)

definition proposed depended upon agreement on the type of régime to be established for the area. If that régime was based on the principle of unrestricted access for the purpose of exploitation, modified by certain general principles, States without a short-term exploitation capability were likely to maximize their claims in the hope of reserving for themselves as large a share as possible of the eventual benefits. However, those States would no doubt moderate their claims if others were to agree to a régime protecting the common heritage of the sea-bed and enabling all to benefit equitably from its exploitation.

His delegation drew the Sub-Committee's attention to the Maltese proposal contained in draft resolution A/AC.138/11 and hoped that it would be rounded out and submitted as a recommendation to the General Assembly. In that connexion, he noted that the General Assembly was not empowered to formulate a legal definition of the continental shelf. Even if such a definition were attempted, it could at best have only a moral value. A legal definition of the continental shelf must be adopted at an international conference convened for the specific purpose of revising the 1958 Geneva Convention on the Continental Shelf, in accordance with the procedure indicated in article 13 of the Convention. Such a revision was urgent, but was unlikely to be successful unless carefully prepared. That was why his delegation, in its draft resolution, proposed that the Secretary-General should initiate an elaborate process of consultation. It was not absolutely essential to consult all the bodies mentioned in operative paragraph 2, and it would perhaps be sufficient for the Secretary-General to consult Member States. The principle of prior consultation was important however, in order to ascertain whether sufficient agreement existed to make an international conference worth convening. Furthermore, a precise legal definition of the continental shelf was unlikely to receive the necessary support at any future conference unless that conference also adopted a legal régime for the area beyond the continental shelf acceptable to the majority of countries. The norms elaborated by the Committee and endorsed by the General Assembly could be incorporated, in part at least, in an international treaty. The Committee's work thus was extremely useful and would save much time if a conference were convened. The conference should not consider aspects of the law of the sea other than the question of arriving at a legal definition of the continental shelf.

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(Mr. Pardo, Malta)

While the Sub-Committee could not formulate such a definition, it should be able to identify a minimum area of the sea-bed which without question was beyond national jurisdiction. That would facilitate a co-operative solution of the political problems impeding progress. The General Assembly could proclaim the minimum area in question, which it should be possible to extend at any future conference convened for the purpose of delimiting the continental shelf; the Assembly could indicate the maximum permissible extension of the concept of continuity implied in the word "adjacent" in the definition of the Geneva Convention (article 1). The proclamation, if supported by a sufficient majority, would carry sufficient moral weight to constitute an effective limitation to claims of sovereignty, pending a precise legal definition of the continental shelf. That approach would give a basis of realism to the Sub-Committee's deliberations and would assist Governments in evaluating the proposed concepts, principles and régimes for the area beyond national jurisdiction.

As to the criteria for determining such a minimum area, he noted that the only existing criteria were those which had been established to determine the outer limits of the continental shelf. Some - particularly spokesmen for the petroleum industry - had suggested a geomorphological criterion, which would place not only the continental slope but also the zone just beyond the base of the shelf within the scope of the continental shelf doctrine. Despite the advantages claimed for it, that criterion would remain uncertain because of geological irregularities, and the boundary defined thereby would occur at sharply differing depths of water and distances from the coast, depending on the location, so that some States would gain much more than others. The establishment of a limit to the area subject to national jurisdiction, whether on land or in the ocean, was a political act. Other criteria were based, respectively, on depth, a specified distance from the coast, or a combination of the two. A boundary fixed by depth alone was unsatisfactory because of differing results. Similarly, if the uniform distance criterion was applied, it was necessary to avoid giving the impression of attempting to deprive some States of rights acquired under the 1958 Convention. Thus, it would appear that a combination of the distance and depth criteria was the most suitable way of defining the outer limits of the continental shelf subject to national jurisdiction and, by implication, the minimum limits of the area beyond national jurisdiction.

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The crucial question was how to determine the limits of the minimum area subject to the international régime. That meant bearing in mind the provisions of the Convention on the Continental Shelf, on which the legitimate expectations of many States were based, current capabilities in exploitation technology, national legislation and claims to exclusive jurisdiction, particularly if based on obvious technological competence. The exploitability criterion, which was too vague to have any legal meaning, could be omitted. The demarcation of the area must produce equitable results for all coastal States, despite the varied topography of the ocean floor. Finally, the security interests of States must be taken into account.

While it would be desirable to reserve as large an area as possible beyond national jurisdiction, it was necessary for the reasons just mentioned to exclude a fairly wide belt of the sea-bed adjacent to the coast of States. It was unrealistic to limit that belt to a width of forty to fifty miles, corresponding to the average width of the continental shelf, for some States had a fifty-mile-wide continental shelf, while that of others was 200 miles wide or more. Bearing in mind technological capabilities, national legislation and claims of States, it would appear that the belt should extend at least 100 miles from the coast and that, at least provisionally, it should be twice that width if agreement was to be reached. Those considerations explained the blank space in operative paragraph 1 of the Maltese resolution (A/AC.138/11). The draft resolution recommended that rocks and islands without a permanent settled population should be disregarded. In that connexion, it was important to be just and reasonable. It was natural for a coastal State to exercise sovereign rights over the resources adjacent to its coast, or for the international community to reserve the rights of islands that might one day emerge as independent States, but it was unacceptable that a remote rock such as Nightingale should be considered on the same basis as populous States. In stating its position, Malta, for its part, would disregard Fifla and Kuminett, two uninhabited islands belonging to it.

Referring to operative paragraph 1 of the draft resolution, he pointed out that both the criteria indicated (depth of 200 metres and distance of more than _____ miles) should be met. In submitting the draft resolution, Malta hoped to focus the attention of members on a question that must be solved rapidly if the

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(Mr. Pardo, Malta)

desired goal was to be reached. Any delay was likely to reduce to the vanishing point the area recognized to be beyond national jurisdiction and the chances of many States to share in the benefits to be derived from the exploitation of that area. The draft had been drawn up with an open mind, respecting both the principles of equity and reasonableness and the facts. States should be prepared to sacrifice certain real or portential interests, for it was absolutely essential to find a solution, if only a provisional one, for the problem.

It was essential for the relevant general principles to be related to a general concept. There were two possible approaches. On the one hand, priority could be given to the national interests of States and to the rapid utilization of the resources of the sea-bed for purposes of national defence. That would lead to a division of the ocean floor among the coastal States, which would threaten world peace. On the other hand, the main attention could be given to the long-term common interests of the international community, and the sea-bed could be regarded as the common heritage of mankind. In that case, the priority of objectives would no longer be established solely on the basis of national interests. An international régime for the sea-bed administered by a body representative of the world community could be set up. It would regulate the exploitation of resources by protecting the interests of all those who used the sea. Also it would guard against pollution of the marine environment and would give all countries an opportunity to benefit from resource exploitation. The common heritage concept would imply peaceful use, since any military uses would endanger the common property.

The concept of a common heritage had been regarded by some countries, particularly the socialist countries, as Utopian. It was to be hoped, however, that they would be able to reconcile socialist idealism with geographical and political realities. The socialist world did not have easy access to the oceans. It would only be able to participate in the exploitation of the mineral wealth of the sea under international auspices. By preventing the establishment of a viable and effective international régime, it might lose a unique opportunity to secure access to resources which would become increasingly valuable in the long term. While it might perhaps be difficult to accept the concept of a common heritage, that concept had to be accepted if the exploitation of the seas was to be of benefit to all concerned.

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Malta was ready to accept any set of principles which was not incompatible with the common heritage concept. At the present stage, principles should be not only well-considered, but they should also be few and flexible, since they were to be applied to an ill-defined area which was relatively unknown and all the possible uses of which could not be foreseen. It might be difficult for some States to accept the concept of an international régime. On the other hand, it was certainly premature to consider the question in detail before a decision had been taken on the approximate minimum extent of the area beyond the limits of national jurisdiction and the legal theory applicable to it. While Malta did not think that a self-regulating international régime was practicable, it did consider that machinery in the form of an administering authority would be fair, effective and perhaps politically feasible. Certain delegations might have wondered why Malta had not proposed that the General Assembly should establish an international agency for the marine environment which would keep a registry for the international allocation of rights to sea-bed resources situated beyond the limits of national jurisdiction and would collect fees which could be used to finance marine research or could be contributed to the United Nations Development Programme. Although such a solution would have helped to avoid great political difficulties, the Government of Malta had rejected it as grossly inadequate for solving the problems which the world would face in the immediate future. An international body of that kind could only deal with the economic aspects of the problem of the sea-bed; however, all aspects of that problem were interrelated and therefore must be dealt with as a whole. For example, such a body would not be empowered to oppose the proposed construction of huge oil storage tanks on the sea floor, which would involve a considerable pollution risk, nor could it deal with the dumping at sea of radioactive wastes which could lead to catastrophic contamination. It would have little possibility of providing a legal framework to diminish the potential for disaster inherent in the massive growth of activities on the sea-bed which technology was making possible.

(Mr. Pardo, Malta)

An international régime could also take the form of a consortium composed of public and private groups representing States interested in ocean mineral development. That solution had also failed to find favour with his Government because it would deal only with the economic aspects and was unlikely to be acceptable to the socialist countries or to the majority of developing countries.

It would be unrealistic to establish an international agency which would itself be responsible for the mineral resource development of the sea-bed because various States would hesitate to vest in it complete control over the production of mineral supplies which might be essential to them. Moreover, it was far from certain that such an arrangement would be efficient.

It would be neither practical nor politically feasible to entrust the United Nations with the administration of an international régime. At least two maritime Powers were not Members of the United Nations. Also, it was doubtful whether the great Powers would consent to give the United Nations considerable powers if their vote had no more weight than that of a small country. The United Nations was not in a position to give assurances that the ocean floor would be used exclusively for peaceful purposes. Furthermore, it was not certain that the Organization was capable of performing that kind of task well.

In the view of the Government of Malta, the exploitation of resources was only one of the objectives of a body administering the sea-bed under an international régime. Another priority objective would be scientific research. However, considerations arising from the balance of power between States would be of utmost significance and could militate against the establishment and smooth running of an efficient international system. The international body should therefore be equipped to prevent activities in the deep seas which might destroy present power relationships.

It should likewise not be forgotten that the oceans constituted a global biological system which did not respect boundaries. Hence, the competence of any international machinery should extend to the whole marine environment on a world-wide scale. Its powers would not necessarily be the same in all places. In waters within the territorial sovereignty of a State, it could only provide advice, and even then only at the request of the State concerned. It would have to take account of existing laws and agreements and confine itself to co-ordinating national activities. For that purpose, it would be useful to have a single body,

(Mr. Pardo, Malta)

as was recommended by the United States National Academy of Sciences. In the regions beyond the limits of national jurisdiction, the international machinery should not only allocate exclusive rights to the development of mineral resources but should also act in an administrative capacity. A substantial portion of the benefits from the development of the sea-bed should, of course, accrue to the developing countries.

It was important for the sea-bed to be devoted exclusively to peaceful purposes, and that question raised delicate and complex issues. His country noted with interest the draft convention submitted by the Soviet Union, which incorporated provisions for verification and inspection taken from the Antarctica Treaty. If the Soviet approach should be found insufficient, it was to be hoped that the major Powers would consider concluding some novel form of arms-control agreement, adapted to sea-bed conditions, in which an international body would play a vital role.

A body with diverse and wide powers could not be established unless the maritime Powers and the developing countries alike were assured that it would not act against their vital interests. The problem could perhaps be solved by giving a voice to all States, while at the same time recognizing the special role both of the States which had special responsibilities under the terms of the Charter and of two or three other States. A solution to the problem was complicated as well as facilitated by the fact that land-locked States and States confined to closed seas had common interests which cut across traditional groupings in the United Nations.

His delegation had not attempted to give an exhaustive analysis of the problem. The study of the functions that an international body would perform certainly came within the Sub-Committee's terms of reference, but it could not be undertaken until other important questions, such as the legal principles involved and the determination of the approximate extent of the area to which they were to be applied, had been studied.

Malta hoped that the members of the Sub-Committee would not become entangled in procedural discussions but would take the opportunity offered to them of making an historic contribution to world order in the interest of their own countries.

Mr. CARTER (United States of America) said his delegation, and he assumed other members of the Committee, would carefully study the important statement

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(Mr. Carter, United States)

by the representative of Malta and the proposal contained in it. His delegation continued to believe that the international community should not be subjected to a race to grab and hold the ocean floor. All delegations had admitted that there existed an area of the sea-bed which lay beyond the limits of national jurisdiction. The Committee could promote international co-operation by attempting to obtain an agreed boundary and a system of agreed arrangements for that area. In the meantime, States should exercise restraint in actions which could prejudice the eventual decisions on those issues, but nothing should be done to preclude the exploration and use of the sea-bed while the efforts to arrive at international agreement continued.

Mr. MIADEK (Czechoslovakia) said he supported the opinion that it was now possible to agree upon some basic principles with a view to encouraging international co-operation in the exploration and exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction. The Czechoslovak delegation proceeded from the basic concept of "the common interest of mankind", the term "interest" being preferable to the term "heritage", which might give rise to serious difficulties in the formulation of legal norms. That concept differed from the concepts of both "res nullius" and "res communis", since it implied that the area constituted a subject of common use by the international community which, by its collective activities, aimed at the benefit of all its members. Moreover, it excluded the direct application of current international law, which sanctioned the unrestricted exploitation of the resources of the area in question. Special importance should be attached to the principle of the use of the sea-bed exclusively for peaceful purposes. In that connexion, the General Assembly in operative paragraph 3 of resolution 2467 A (XXIII) had called upon the Committee to take into account the studies and international negotiations being undertaken in the field of disarmament. His delegation fully supported the proposal submitted by the Soviet Union in the Committee of Eighteen to prohibit any military use of the sea-bed. In the final analysis, the principle of the common interest of mankind should lead to the use of the resources of that area in the interest of mankind as a whole, irrespective of the geographical location of States and taking into account the special interests and needs of the developing countries. That called for close international co-operation. Similarly, "the common interest of mankind"

(Mr. Mladek, Czechoslovakia)

required that the results of scientific activities relating to that area should be made available to other States. Furthermore, exploration activities could not justify the appropriation of any resources that were discovered or their unrestricted exploitation. It was important to guarantee the traditional freedom of the high seas, and especially to affirm that any damage caused must entail liability because existing international instruments were inadequate in that respect. His delegation felt that the boundaries of the sea-bed area situated outside the limits of national jurisdiction should be determined as soon as possible. To prevent further expansion of continental shelfs in the meantime he supported in principle the ideas on "freezing" of claims of coastal States or surrendering them or such as were contained in the proposal submitted by the representative of Malta (A/AC.138/11).

In the light of those diverse elements, it would be desirable for the Legal Sub-Committee to adopt the following basic principles: (1) There existed an area of the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, and the boundaries of that area must be precisely defined. (2) No State could claim or exercise sovereign rights over any part of that area, and that area could not be subject to any form of appropriation. (3) The exploitation and use of that area should be undertaken for the benefit of mankind as a whole, irrespective of the geographical location of States and taking into account the special interests and needs of the developing countries. (4) The freedom of scientific research and exploration in that area must be guaranteed. (5) Activities undertaken in that area must not impair the freedom of the high seas. (6) Any damage caused by States engaged in the exploration, use or exploitation of that area must entail liability. (7) Without prejudice to its eventual delimitation, the ocean floor should be used exclusively for peaceful purposes.

Mr. HOLDER (Liberia), expressing his satisfaction that the proposal made by the Maltese delegation in 1967 had resulted in the establishment of the Ad Hoc Committee and later of the present Committee, said that immediate action must be taken to clear up the confusion and uncertainty caused by the 1958 Convention on the Continental Shelf. As his delegation had already observed in the Ad Hoc Committee, international law must develop in order to take into account any new

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(Mr. Holder, Liberia)

needs or interests which arose. At the present time, it appeared that the members of the Sub-Committee were agreed on the following points: (a) there existed an area of the sea-bed which lay beyond the limits of national jurisdiction; (b) all States, whether coastal or land-locked, developed or developing, should be able, directly or indirectly, to benefit from the opportunities and resources of that area; (c) controversy among States arising from claims to, or appropriation of, the sea-bed should be avoided; (d) steps must be taken to ensure that the area was used exclusively for peaceful purposes; (e) every kind of pollution must be avoided.

His delegation felt that the programme of work could be divided into two parts. Part I would comprise paragraph (1), concerning legal status, and part II would relate to the uses of the area in question and would include paragraphs (2) to (7). The paragraphs of part II could be subdivided into positive principles (paragraphs (2), (4), (5) and (6)) and principles involving prohibitions (paragraph (3) and the first part of paragraph (5)). Consideration of part I, concerning legal status, was seriously complicated by the lack of precision of article 1 of the 1956 Convention on the Continental Shelf; it should be remembered that, in accordance with article 13 of the Convention, that instrument was subject to review in June 1969. For the moment, delegations appeared to be agreed on the following principles with regard to part I relating to legal status: (a) there existed an area of the sea-bed which lay beyond the generally recognized limits of national jurisdiction; (b) that area was the common heritage of mankind; and (c) no State or group of States could claim or exercise sovereign rights by any means over any part of that area.

With regard to part II, it appeared that the Sub-Committee was agreed on the following principles of a positive nature: (a) the exploration and exploitation of the sea-bed beyond the limits of national jurisdiction should be undertaken for the benefit of mankind as a whole (irrespective of the geographical location of States and taking into account the special interests and needs of the developing countries; (b) activities in that area should be conducted in accordance with international law, including the Charter of the United Nations; (c) without prejudice to the provisions of paragraph (b) above, freedom of scientific research should be guaranteed without discrimination; and (d) activities carried out in that area should not infringe existing rights and freedoms of the high seas.

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(Mr. Holder, Liberia)

The following restrictive principles also appeared to have been agreed on: (a) the sea-bed beyond the limits of national jurisdiction must be used exclusively for peaceful purposes; and (b) any pollution or other hazard resulting from the use of the area must be avoided.

His delegation hoped that the Sub-Committee would, after making any necessary amendments, be able to adopt the above-mentioned principles.

Mr. CABRAL de MELLO (Brazil) proposed that the text of Mr. Pardo's statement should be circulated as a Sub-Committee document.

Mr. ZAPOZHNIKOV (Secretary of the Committee) pointed out that the proposal made by the representative of Brazil had financial implications.

Mr. YANKOV (Bulgaria) proposed that the delegation of Malta should make arrangements to have the text of Mr. Pardo's statement circulated.

Mr. PARDO (Malta) said that his delegation would endeavour to do so.

The meeting rose at 5.45 p.m.

SUMMARY RECORD OF THE EIGHTH MEETING

Held on Friday, 21 March 1969, at 3.40 p.m.

Acting Chairman: Mr. YANKOV Bulgaria

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CONSIDERATION OF QUESTIONS CONTAINED IN THE PROGRAMME OF WORK (A/AC.138/SC.1/3) (continued)

Mr. EVENSEN (Norway) said there was no doubt that the basic principles of international law were applicable to the deep ocean floor and its subsoil. However, those principles, even when supplemented by the United Nations Charter, were still too vague, rudimentary and general and must be further elaborated and supplemented to take account of the new situation resulting from current problems and technical progress. In that connexion, he recommended a cautious approach and stressed the need to begin by formulating a set of basic principles. The principles contained in the report of the Ad Hoc Committee (A/7230), and especially the set of principles on page 19 referred to as "set (b)", would serve as a useful basis for the discussion at the Committee's current session.

There were already a number of rules of international law that were applicable to the deep ocean floor and its sub-soil, and those rules showed that the occupation theory was unacceptable and untenable. It was legally untenable because it was irreconcilable with the principle of the freedom of the seas: it would be naïve to assume that occupation of the ocean floor would not extend in some form to the sea above. Like the air and the sea, the deep ocean floor had always been considered in theory and in practice to belong to mankind as a whole. The occupation theory was likewise untenable from the political point of view, for it would provoke a race to occupy strategic positions and to exploit accessible natural riches.

The same legal principles invalidated the coastal State theory, according to which the oceans would be divided among the States having access to the sea. The recently developed concept of national continental shelves giving a reserved zone of limited extension to the adjacent coastal States corroborated those conclusions. The coastal State theory was politically unacceptable, for it would lead to an unequal distribution of natural riches that might have disastrous consequences. Furthermore, it would be unacceptable to the land-locked countries and to countries which had an unfavourable geographical situation.

The legal principle which was set out in article II of the Outer Space Treaty of 27 January 1967 and which prohibited national appropriation should also be

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(Mr. Evensen, Norway)

applied to the deep ocean floor and its subsoil. That principle had always been a basic one in the law of mankind but had been explicitly formulated only as a result of the current technical revolution.

It was generally agreed that there was an area of the ocean floor beyond the limits of national jurisdiction, and the Sub-Committee should record that agreement in some suitable form. Paragraphs (1) and (4) of the "b" principles (A/7230, p. 19) could serve that purpose, particularly paragraph (4) which closely followed the wording of article II of the Outer Space Treaty.

International law naturally applied to the area thus defined. The principle of the freedom of the seas, including freedom of navigation and freedom of fishing, already existed. Interference with those activities would be contrary to international law. Other useful guidelines could be found in the United Nations Charter, particularly Article 1 (4) and Article 13, and Chapters IX and X, especially Articles 55 and 56.

At the present stage, the Sub-Committee could use the wording of paragraphs (5) and (7) of the "b" principles or that of paragraphs (3) and (6) of the "a" principles, on pages 19 and 18, respectively of the Ad Hoc Committee's report. The wording of paragraph (5) of the "b" principles corresponded closely to that of section A, paragraph (4), of the Sub-Committee's programme of work (A/AC.138/SC.1/3), and with some minor amendments could serve as the basis for the formulation of the principle. The wording of paragraphs (4) and (5) of the "a" principles was perhaps too explicit at the present stage of the debate; the wording of paragraph (3) of the "b" principles seemed more realistic. The ideas expressed in paragraph (6) of the "a" principles deserved consideration. The wording of paragraph (7) of the "b" principles could be made clearer and be used for section A, paragraphs (6), (7) and (8), of the programme of work. He would refrain from referring to paragraph (3) of the programme of work until the results of the Geneva negotiations became available.

In order to ensure the success of the Sub-Committee's work, it was first necessary to define the boundaries of the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction. That task was complicated by the ambiguous definition of the area subject to national jurisdiction given in article 1 of the Convention on the Continental Shelf.

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(Mr. Evensen, Norway)

The idea that it would be premature at the present stage to seek to define those boundaries because they would depend on the régime to which the international area would be subject might lead the Sub-Committee into the vicious circle of likewise not wanting to define the régime applicable to the area in question before having defined the boundaries of that area. In any event, caution was called for so long as the replies to that question had not crystallized.

With regard to the Maltese draft resolution (A/AC.138/11), he thought that many delegations might be opposed to the proposal that the 200-metre isobath should constitute the outer limit of the continental shelf, even if it were combined with a certain distance from the shore. Technical developments had already gone too far for that.

The idea that rocks and islands without a permanent settled population should be disregarded might not command general support, for it was contrary to the generally accepted interpretation of international law. It was perhaps premature to request the Secretary-General to undertake consultations with a view to convening an international conference, and the Committee should be given the time to complete its difficult task. His delegation doubted the advisability of adopting the Maltese draft resolution at the present stage.

In conclusion, he said that the Sub-Committee should first of all try to formulate the legal principles set out in section A of its programme of work so that they could be submitted to the General Assembly at its twenty-fourth session. The proposals submitted by Czechoslovakia and Liberia, together with the principles set out on pages 17-19 of the Ad Hoc Committee's report (A/7230) would constitute an excellent basis for that work. To that end, a formal or informal working group could be established, which would continue its work until the Committee's August session and might be able to reach a provisional agreement. Armed with those principles, the Committee could draw up draft conventions, draft recommendations and so on. Only when that had been done, would one or more international conferences be convened, after consultation with Member States.

The CHAIRMAN suggested that the list of speakers should be closed at 6 p.m. that day.

It was so decided.

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Mr. SMIRNOV (Union of Soviet Socialist Republics) stressed the need to consider the multiple legal aspects of the question of the sea-bed and the ocean floor beyond the limits of national jurisdiction in close connexion with existing international law, including the United Nations Charter. It was necessary to take account of practical requirements and of the consequences of the application in the modern world of certain concepts of Roman law. In establishing a Committee to deal with that question, the General Assembly had sought above all to contribute to international co-operation in matters relating to the ocean for the good of mankind, and to find an equitable solution to the problem.

During previous discussions, the concepts of "res nullius" and "res communis" had been mentioned (A/7230, p. 44). Some delegations had preferred the concept of a "common heritage of mankind", which precluded the appropriation by a State of any part of the ocean floor beyond the limits of national jurisdiction. The essential question was therefore to determine who owned the ocean floor.

The concepts derived from Roman law were contrary to international law. The concept of "res nullius", which denied the existence of any law applicable to the high seas, would make it possible to occupy a space which belonged to no one and to extend to that space the concept of ownership, an action that would be incompatible with the freedom of the high seas. The concept of "res communis" was inapplicable in practice, for, if the high seas were subject to the authority of all States as a whole, no step could be taken without the consent of all States.

The existing law of the sea was based on the principles and norms of international law. The International Law Commission and the 1958 Geneva Conference on the Law of the Sea had sought to define the status of the high seas without specifying to whom they belonged or who exercised authority over them.

According to the Convention on the High Seas, those seas were open to all nations, and no State could validly purport to subject any part of them to its sovereignty (article 2). That Convention allowed all States to use the high seas on equal terms, a practice which was in conformity with international law. The USSR, which was a party to that Convention, applied the principles and norms which it set out.

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(Mr. Smirnov, USSR)

His delegation believed that the Sub-Committee should not try to establish a special legal status based on the concept of the common heritage of mankind because that concept ran counter to existing norms and principles. It was incorrect to say that international law was narrow and obsolete, since, being founded on the United Nations Charter, it provided the basis for relations among States in all spheres, including outer space, the oceans and the atmosphere. To create a special legal status for the sea-bed would amount to acknowledging that a legal "lacuna" existed and that the status of the sea-bed and ocean floor should be different from that of the superjacent waters of the high seas.

The 1958 Conference on the Law of the Sea had rejected a Brazilian proposal to exclude the sea-bed and ocean floor and the subsoil thereof from the high seas and had explicitly mentioned the freedom to lay submarine cables and pipelines. The concept of a common heritage of mankind appeared to have been evolved with a view to preventing the appropriation of the ocean floor by certain States, but it was neither realistic nor practical. On the other hand, a practicable solution based on international law would be provided by applying the principle stated in article 2 of the Convention on the High Seas.

Many States were concerned about a possible de facto division of the ocean floor among coastal States, and that was why it had been thought necessary to clarify the definition of the continental shelf as set out in the 1958 Convention on that subject. His delegation believed that that question merited consideration, without necessarily agreeing with the interpretations of article 1 of that Convention which had been advanced in the Sub-Committee.

His delegation did not believe that any legal "lacuna" existed in the case of the sea-bed and ocean floor, and it had already proposed that the Sub-Committee should consider the question of the application of international law and the United Nations Charter to that environment. He wished to draw the attention of the Sub-Committee to document A/AC.135/19/Add.1, which enumerated most of the principles and norms of international law applicable to the sea-bed and the

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(Mr. Smirnov, USSR)

ocean floor, including the freedom of the high seas, which was confirmed by the 1958 Convention on the High Seas, the 1963 Treaty banning nuclear weapon tests and the Antarctic Treaty of 1959. Article 3 of the Convention on the High Seas gave land-locked States the same freedom as coastal States, and article 24 specified the signatories' obligations with regard to pollution. The same Convention dealt with the laying of submarine cables and pipelines and to freedom of scientific research.

In view of all those examples, it was impossible to say that international law was only partly applicable to the sea-bed and the ocean floor. The activities of States in that environment should not be prejudicial to the freedom of the high seas as it related to such matters as shipping, fishing, the protection of biological resources and scientific research. For safety reasons, States were required to give notice of their under-sea installations, which could not be placed on routes where shipping traffic was heavy, such as, in particular, the approaches to straits.

He pointed out that the Convention on the High Seas was not restrictive in its application to scientific research and that the International Law Commission (A/3159) had cited freedoms other than those mentioned in the Convention. Respect for international law was a prerequisite for the progress of research in the interests of mankind. That principle had been reaffirmed in the Ad Hoc Committee's report (A/7320, para. 20). The General Assembly had given the same interpretation when it had supported the idea of an International Decade of Ocean Exploration. The general principles of the United Nations Charter were also applicable.

In short, his delegation believed that the activities of States on the sea-bed and ocean floor should be in conformity with international law and the United Nations Charter. That principle had already been applied to the exploration and exploitation of outer space (1963 Declaration, para. 4, and 1967 Treaty, article III).

The same reasoning applied to the continental shelf because the rights of coastal States could not be dissociated from those of States which were acting in exercise of the freedom of the high seas.

(Mr. Smirnov, USSR)

His delegation had listened with interest to the statement by the representative of Malta and reserved the right to reply at a later stage to that representative's observations concerning the socialist States in order to avoid any misunderstanding which might arise from inaccurate interpretations.

Mr. SULEIMAN (Libya) said that the creation of an international framework for the disciplined and peaceful exploitation of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction was a matter of the highest priority in view of the potential dangers which might arise if such exploitation was conducted without legal safeguards for the interests of all countries. With regard to the legal aspects of its work, the Sub-Committee's function was, in fact, to legislate. Its activities embraced not only the definition and delimitation of the geographical area in question but also fundamental political and juridical problems which were the very foundation of the law of nations and which affected the national sovereignty of States, the direct interests of sovereign States or groups of States in the economic and political spheres and their security. His delegation hoped that the Sub-Committee would be able to reach agreement on a set of principles on the following lines: (1) the existence of an area of the sea-bed and ocean floor under the high seas and beyond the limits of national jurisdiction; (2) exploitation of the resources of that area for the common benefit of mankind, taking into account the special interests and needs of the developing countries; (3) administration and control of the resources of the area by some kind of competent world machinery under the auspices of the United Nations; and (4) use of the area exclusively for peaceful purposes. With regard to the last-mentioned principle, the Moscow Treaty of 1963 which banned, inter alia, the testing of nuclear weapons under water, was an important step towards its implementation but, in addition, would logically require the following measures: (a) prohibition of the establishment of military installations and the placing of weapons of mass destruction in the area; (b) prohibition of the emplacement of any object containing nuclear weapons and the stationing of such weapons on the sea-bed or its subsoil; and (c) prohibition of the establishment of military bases, installations or fortifications, and of the testing of any type of weapon on the sea-bed.

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(Mr. Suleiman, Libya)

Furthermore, the principle that all States had the right to carry out scientific research and exploration activities on the sea-bed and ocean floor, without thereby acquiring an exclusive right to economic exploitation of marine resources, was unquestionably valid. Also, all activities in connexion with the exploration and use of that area should be carried out in accordance with the relevant regulations on the prevention of marine pollution and the conservation of the living resources of the sea. In that respect, his delegation hoped that international measures would be taken to control pollution.

The Sub-Committee should recommend that the definition of the continental shelf contained in the 1958 Geneva Convention should be clarified under the auspices of the United Nations. The issue in that regard was a political rather than a legal one. His delegation fully supported the proposal on that subject contained in the Maltese draft resolution (A/AC.138/11).

Mr. BALLAH (Trinidad and Tobago) said that his country, which extracted sizeable quantities of oil from submarine areas, had a special interest in seeing the work of the Committee brought to fruition and therefore believed that its work should proceed with caution. His delegation had no doubt that some international arrangement or machinery would be established but was not sure whether it would come in good time or whether it would be adequate. It intended to give careful study to the proposals submitted by the Maltese delegation at the previous meeting of the Sub-Committee, and it would do so in the light of the report on the establishment of international machinery which was to be submitted by the Secretary-General in accordance with General Assembly resolution 2467 (XXIII).

The drafting of legal principles and norms for the area in question should be closely linked with consideration of the type of international machinery needed for supervision and regulation.

His delegation believed, in common with the Australian delegation, that the Committee should begin by considering principles, which, however, should not be too general in character. With regard to the two sets of principles - sets (a) and (b) - which had been submitted to the Ad Hoc Committee in 1968 (A/7230, para. 88), there seemed to be no fundamental difference between them. His delegation preferred set (a), however, because it was more comprehensive and more precise. Also it covered a wider range of contingencies than set (b), the vague and flexible

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(Mr. Ballah, Trinidad and Tobago)

wording of which might later lead to conflict. It was to be hoped that a consensus could be achieved on an acceptable formulation. As the representative of Norway had suggested, a small working group representing the different points of view could perhaps be convened for that purpose before the end of the current session.

His delegation considered it pointless to include in a draft declaration the self-evident statement that there existed an area of the sea-bed and ocean floor and the subsoil thereof under the high seas that was beyond the limits of national jurisdiction. A matter of greater importance was to embody in such a declaration the principles relating, respectively, to the concept of a common heritage of mankind; the use of the area exclusively for peaceful purposes; the carrying-out of activities in that area for the benefit and in the interests of mankind so that the results of exploitation might be used for the economic, social, scientific and technical progress of the developing countries through appropriate international machinery; and, the observance in the exercise of those activities, of certain guidelines aimed at protecting the legitimate interests of States, with due regard for the freedom of scientific research. With regard to the principle concerning the use of the area exclusively for peaceful purposes, his delegation welcomed the proposal for the demilitarization of the sea-bed, which had been made on the initiative of the Soviet Union in submitting its draft treaty to the Disarmament Committee. As to the comments made by the delegations of France and Japan concerning the concept of exploitability as defined in the 1958 Convention on the Continental Shelf, he believed that the delimitation of of the continental shelf should be made more specific, but he did not feel that the Sub-Committee's study of the appropriate international machinery should be suspended pending a review of the Convention. With regard to section A, paragraph (2) - applicability of international law, including the United Nations Charter - of the Sub-Committee's programme of work, his delegation, like the delegations of Brazil and Kenya, considered that the absence of legal provisions applicable to the sea-bed should be remedied without delay. It believed, in particular, that the principle of the freedom of the high seas could not be extended by analogy to freedom of exploration and exploitation of the sea-bed.

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Mr. ZEGERS (Chile) pointed out that the Sub-Committee, in adopting its programme of work, had confirmed the priority given by resolution 2467 A (XXIII) to the elaboration of principles and norms for a legal régime applicable to the sea-bed and ocean floor beyond the limits of national jurisdiction. It was therefore not necessary for the Sub-Committee to establish mathematically, as some delegations had suggested, an area subject to very general rules that would expose it to unrestricted exploitation by countries which were technically and economically capable of exploiting it. In his opinion, section A, paragraph (1), of the programme of work, dealing with the legal status of the area, was a logical premise for the elaboration of the principles and norms which were to be established, and not a framework for discussing the question of the limits of the area. In that connexion, he endorsed the conclusions of the Brazilian delegation, which had shown quite clearly that there was no lex lata on the subject. On the other hand, the concept of a "common heritage of mankind" applied by India and Malta to the resources of the sea-bed and ocean floor provided a basis for drawing up a legal status that corresponded in every respect to the objectives of General Assembly resolution 2340 (XXII). The corollaries of that concept were non-appropriation of the area in question and the application to the activities carried on there of an international régime defining the applicable laws and the conditions necessary for the exploration and exploitation of the area for the benefit of all mankind and, especially, of the developing countries.

He proceeded to review the provisions of the "a" principles included in the Ad Hoc Committee's report (A/7230, pp. 17-19), which were in line with the idea of a common heritage of mankind and which he considered to be much more complete than the other drafts submitted. The consequences to be drawn from the above-mentioned concept were duly defined there, first with regard to non-appropriation (principle 1), and then with regard to the application of an international régime to the activities carried on in the area (principles 4 and 5). In that connexion, his delegation felt that unrestricted exploitation of the area should not, as had been suggested, be authorized until there existed not only provisions ensuring the participation of the world community but also elementary measures for the conservation of resources and for the prevention of damage that might be caused to coastal States. The "a" principles also dealt with fundamental questions, such as international liability and the conservation of marine fauna and flora (principle 6), concerning which the Icelandic delegation had made some

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(Mr. Zegers, Chile)

very positive proposals, as well as protection of the interests of coastal States and of the producers of raw materials, who would certainly be affected by the exploitation of the sea-bed. The "a" principles also rightly stated the need for using the sea-bed exclusively for peaceful purposes, concerning which the Soviet delegation had made an important statement, and the principle of exploitation for the benefit of mankind (principles 2 and 3). In his opinion, the Sub-Committee should take the "a" principles as the basis for elaborating a set of principles.

In view of the statements made during the discussion by some delegations concerning the question of the delimitation of the area, his delegation felt it necessary to recall why that question fell beyond the terms of reference of the Sub-Committee. The delegation of Malta had, moreover, noted in its most recent statement that delimitation should form the subject of a new conference on the law of the sea with reference to the continental shelf. The limits of the existing jurisdictions were determined or could be determined, and they were set out in Secretariat documents which could, as necessary, be brought up to date. Those documents established, in particular, that his country's national jurisdiction extended 200 nautical miles from the coast. His delegation would have difficulty in agreeing to that matter being discussed by a committee whose task was to consider the area not subject to existing jurisdictions. Furthermore, consideration of the question whether or not the Committee should study the limits of the area had been prejudicial to the discussion on principles to the extent that it jeopardized the chances of achieving positive results at the present session.

One thing which was certain was that the text forming the basis of the work being carried out in that matter, namely, General Assembly resolution 2340 (XXII), established that the area under consideration was that situated beyond the limits of "present" national jurisdiction. The same wording had been adopted in the title of resolution 2467 (XXIII) and the first three preambular paragraphs of that resolution referred to resolution 2340 (XXII). If the wording used to describe the area in the operative part of resolution 2467 A (XXIII) did not include the word "present", the reason was that it was an abbreviated form, identical, moreover, to that used to describe the 1968 Ad Hoc Committee.

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(Mr. Zegers, Chile)

The drafters of the final version of resolution 2340 (XXII) had unquestionably intended to limit the scope of their text to the area lying beyond the limits of existing national jurisdiction. With regard to resolution 2467 A (XXIII), he recalled that the sponsors of the draft, numbering about sixty, had formally rejected a proposal that the Committee's terms of reference should include a study of the limits of that area. His delegation, as a sponsor of the draft, had stated in the General Assembly at the time of the vote that the expression "beyond the limits of national jurisdiction" should be understood to mean present national jurisdiction, and thus referred to the limits of existing jurisdiction. As the Committee's terms of reference had been laid down in that way, he reserved the right, if necessary, to raise the question of adhering to them, even though he did not wish to contest the right of any delegation to speak on matters which it considered relevant.

Mr. SCIOLLA-LAGRANGE (Italy) said that an equitable and reasonable solution to the problem of the exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction should be based on two fundamental principles, namely, the freedoms of the high seas, on the one hand, and a positive concept of human solidarity, which was the corner-stone of current international law, on the other. His delegation welcomed the progress made to date, and was particularly gratified to note that agreement had been reached on a number of points, including the following: that there was an area beyond the limits of national jurisdiction; that exploitation of the sea-bed and the ocean floor must take place within the framework of rules established by the international community; that there could be no claims to sovereignty by States; that international law and the United Nations Charter must be respected in that area; and that the area must be used exclusively for peaceful purposes.

His delegation believed that meaningful progress could be made with a view to expanding what might be called - using a term familiar to the Committee in another context - a "common heritage" of principles. It regarded the "b" principles set out in the Ad Hoc Committee's report to the General Assembly (A/7230, p. 19) as vital in that respect. The individual problems should not be considered in isolation; on the contrary, the question should be approached as a whole. For example, in view of the possible implications of the question for the economic, social and political interests of States, no progress would possibly be made with regard to the delimitation of the area unless the reciprocal rights and obligations

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(Mr. Sciolla-Lagrange, Italy)

of States in the area were precisely defined. The same was true of the problems to which certain delegations attached particular importance. With regard to the problem of enclosed and marginal seas, his delegation had already drawn attention to the scientific differences between various submarine areas and the need to try to establish a special régime for those areas. Although the formulation of such a régime would of course depend on the progress of work on the general régime, the search for solutions must continue.

His delegation had listened with great interest to the statement of the representative of Malta introducing the Maltese draft resolution (A/AC.138/11). Although it was not at present in a position to comment on the draft resolution, it would carefully consider the text, its scope and its possible effects on the trends of thought which his delegation had already noted with satisfaction during the Sub-Committee's proceedings, in the light of the criteria which he had stated.

Mr. OULD HACHEME (Mauritania) asked how the developing countries would fare in the future with regard to both their territorial waters and the waters beyond the limits of national jurisdiction. Those countries, many of which did not possess an adequate fleet or striking force, were often unable to enforce respect for those areas. During the debate, his delegation had already emphasized the need to take into account the needs of the developing countries. That question, which had been raised by the Kuwaiti delegation and supported by several other delegations, was now included in the Sub-Committee's programme of work. His delegation had submitted a proposal to the effect that the problem of the protection of the territorial waters and the waters beyond the limits of national jurisdiction of the developing countries should be mentioned in the relevant paragraph of the programme of work. In that connexion, he drew attention to the seventh preambular paragraph of General Assembly resolution 2467 (XXIII) and expressed the hope that the Legal Sub-Committee would mention the question of the need to protect the interests of the developing countries in its report to the plenary Committee. The legal status of the sea had always been a source of concern to mankind. Neither the League of Nations nor the 1958 and 1960 Geneva Conferences on the Law of the Sea had succeeded in formulating a definition sufficiently precise to resolve the problems involved once for all. The Legal Sub-Committee therefore had a

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(Mr. Ould Hacheme, Mauritania)

particularly important role to play, and it should make every effort to examine the question in detail before reporting to the plenary Committee.

Mr. BEESLEY (Canada) said that he proposed to make some observations in the context of the principles laid down in the Geneva Convention on the Continental Shelf, relating mainly to paragraphs (1), (2), (6) and (7) of the programme of work. Apart from the traditional concepts of res nullius and res communis, there was very little law governing the exploration and use of the sea-bed and ocean floor and the subsoil thereof. However, the Truman declaration of 1945 had begun a new trend in the field which had resulted in the formulation, in 1958, of the Convention on the Continental Shelf. With the exception of certain national laws and regulations, and a few other bilateral and multilateral conventions, that Convention was now the only coherent embodiment of international law in the field. The comments he proposed to make on the 1958 Geneva Convention would be an attempt to make a detached analysis of its strengths and weaknesses.

Article 1 of the Convention contained a definition of the term "continental shelf" which gave rise to three main problems: (a) the ambiguous nature of the concept of adjacency; (b) the lack of precision with regard to the extent of territorial waters; (c) the fact that the second criterion used to define the outer limits of the continental shelf over which a State could exercise certain rights - namely, a depth of 200 metres - did not necessarily correspond to the actual extent of the continental shelf of some countries, such as Canada; moreover, contrary to the view held by the drafters of the Convention, it now seemed that it would be possible in the near future to exploit the resources of the sea-bed at depths of more than 200 metres. If that was so, one might wonder whether the second criterion laid down in the Convention, which permitted the exploitation of the natural resources of the said areas when the depth of the superjacent waters admitted of such exploitation, did not link the delimitation of the jurisdiction of States too closely to technological progress.

The Geneva Convention on the Continental Shelf did not deal with the problem of the utilization and exploitation of the sea-bed and the ocean floor; hence, the principles it laid down were usually assumed to have a limited area of application. Nevertheless, authors, such as Professor Oda of Japan, thought it could be inferred from the principle relating to the exploitability of resources which he had

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(Mr. Beesley, Canada)

mentioned that "... all the submarine areas of the world have been theoretically divided among the coastal States at the deepest trenches". However, it would seem that that interpretation had been generally rejected and that now, on the contrary, it was generally accepted that there was an area of the sea-bed and ocean floor and the subsoil thereof underlying the high seas which lay beyond the limits of national jurisdiction. Canada whole-heartedly supported that proposition, which constituted the first of the "b" principles (A/7230, p. 19). In that connexion, he would recall the position of the Canadian Government, which was that the legal boundary of the continental shelf might be set at such a depth as might satisfy foreseeable practical prospects of exploitation of the natural resources of the sea-bed adjacent to a particular State.

In the view of his delegation, article 2 of the 1958 Geneva Convention implicitly limited the sovereign rights that could be exercised by a State over the continental shelf adjacent to its coast. The precise nature of those rights, which were sovereign and exclusive but did not give rise to ownership (although that was a right traditionally associated with effective occupation), was a difficult problem to solve and one of particular importance today, when it had political and military implications.

The exploitation of the resources of the sea-bed gave rise to another difficulty. Unless the relevant law was made clearer, it was likely that the economic benefits derived from the resources of the continental shelf would be of such a scope as to constitute a danger to the principle of freedom of the high seas. In that connexion, article 5 of the 1958 Geneva Convention on the Continental Shelf did not seem to be adequate to permit States to exercise that degree of jurisdiction and control which was necessary to protect their sovereign rights in the area of exploitation of the continental shelf. The link between that question and the problem of pollution, which was the subject of item 7 of the Sub-Committee's programme of work, was obvious.

Despite those weaknesses, the 1958 Geneva Convention unquestionably embodied a large number of essential rules which would have to remain an integral part of the law of the sea. Moreover, it must be accepted that the Convention represented existing international law in that field, however imperfect.

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(Mr. Beesley, Canada)

In the view of his delegation, the basic problems confronting the international community, and particularly the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction at the present juncture, were the following: (a) the need to redefine the area which could remain under national jurisdiction and the area which was to be placed under an international régime; in that connexion, the most difficult problem was to select a criterion more precise than those set out in the Geneva Convention, so that the limits of national jurisdiction could be determined with greater certainty. The second problem related to the legal régime to be applied beyond the new limits of national jurisdiction, once they had been established. Many theories had been advanced, the most widely accepted one being that of international control. However, that theory posed many quantitative and qualitative problems, and in any event it was still relatively abstract because, so long as there was no agreed definition of the area subject to such a régime, no State would be able to develop sufficiently concrete or specific views on the implications of that régime. As the representative of Canada had said in a statement in the First Committee on 5 November 1968, his delegation did not share the fears expressed by some delegations as to the possible consequences of such a régime. In devising the régime, however, account should be taken of the practical economic problems of concern not only to Governments but also to the private entrepreneurs who in some cases would undertake to exploit the resources of the sea-bed on behalf of States.

He wished to refer next to some questions which were both political and legal in nature and which he considered particularly important for the work of the Legal Sub-Committee. In view of the difficulties involved in the delimitation of the area to be subject to an international régime, his delegation felt that the Sub-Committee should concentrate first on defining the nature of that legal régime. His delegation also felt that it would be difficult to make progress without precisely defining the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction. It was obviously beyond the powers of the Sub-Committee, the Committee, or even the General Assembly to determine the extent of the jurisdiction of any State or group of States. For that reason, the foundations for the

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(Mr. Beesley, Canada)

elaboration of generally agreed principles for the subsequent delimitation of the area referred to in resolution 2340 (XXII). In that connexion, his delegation would emphasize the need for careful preparatory work, including studies by experts, in order to increase the likelihood of agreement in that field.

Lastly, the Committee should bear in mind that the problems with which it was dealing were of particular importance to States, which therefore were not prepared to agree to certain measures that they often regarded as an infringement of their sovereignty. His delegation had noted with great interest the resolution introduced by the representative of Malta (A/AC.38/11), but considered that the proposal was somewhat premature at the present stage, as well as going beyond the mandate of the Committee. However, it would like to hear the views of other delegations on the subject.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE NINTH MEETING

Held on Monday, 24 March 1969, at 11.5 a.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF QUESTIONS CONTAINED IN THE PROGRAMME OF WORK (A/AC.138/SC.1/3) (continued)

Mr. MARSCHIK (Austria) said that the discussion at the current session, and in particular the comments of the new members of the Committee, had increased the Committee's understanding of the problems involved in promoting international co-operation in the exploration of the sea-bed and had focused attention on additional points of interest. He recalled that his delegation had been in general agreement with the principles contained in set (b) of draft principles set out in paragraph 88 of the report of the Ad Hoc Committee. However, as his delegation had pointed out in the Ad Hoc Committee, a number of further provisions should be added in order to provide a coherent and balanced statement. Those should include the principle that land-locked States should be treated on an equal footing with coastal States and provisions embodying the principle of liability in case of damage caused by activities relating to the exploration and use of the ocean floor. He expressed the hope that the elaboration of an appropriate declaration of principles would soon be possible.

Several delegations had called attention to the problem of defining the boundaries of the sea-bed and ocean floor. It had been asserted that the only existing legal instrument dealing with the question was the 1958 Geneva Convention on the Continental Shelf, which, as a result of the somewhat imprecise definition of the continental shelf in its article 1, was not of great help in defining the boundaries of the area in question. While his delegation was aware of the importance of the problem, it was also aware of the considerable obstacles to any early agreement on precise, internationally agreed boundaries. Possible delays in defining boundaries should not, however, inhibit progress in the elaboration of legal principles to guide the activities of States in the exploration and use of the sea-bed. He recalled that similar difficulties had arisen in reaching agreement on the definition of outer space and the exact delimitation of its boundaries both in technical and in conventional terms. It had none the less been possible to adopt a declaration of legal principles governing the activities of States in outer space and to codify those principles in the form of international treaties. He hoped that it would be possible in the same way to agree on legal principles governing the sea-bed, even though its boundaries had not yet been clearly defined.

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(Mr. Marschik, Austria)

In the Committee on the Peaceful Uses of Outer Space, despite initial difficulties in agreeing on a complete set of legal principles, it had been possible, after a relatively short time, to reach agreement on two basic principles, which had subsequently been adopted by the General Assembly in resolution 1721 A (XVI). Later, as agreement had gradually become possible on a balanced and coherent set of legal provisions, the Outer Space Committee had recommended to the General Assembly the adoption of a formal declaration of legal principles; the latter had been adopted in resolution 1962 (XVIII). Still later, after several years of further study in the Outer Space Committee and in its Legal Sub-Committee, that declaration of principles had served as the basis for an international treaty on the exploration and use of outer space, while certain principles of particular importance, such as those of assistance and liability, had become the subject of separate international agreements.

The same procedure could be followed in regard to the sea-bed. The deliberations of the Economic and Technical Sub-Committee had made clear the urgent need for certain basic legal principles governing the exploration and use of the sea-bed. Therefore, even if it was as yet impossible to agree on a full declaration of principles, the Committee should at least attempt to reach agreement on certain basic principles which it could recommend to the General Assembly for formal adoption. His delegation understood the position of those who would hesitate to recommend only a few basic guidelines in the form of a formal declaration of principles; it agreed that such a declaration should be a balanced and coherent document. However, while awaiting the completion of such a declaration, the Committee could give its preliminary endorsement to those principles on which agreement was already possible.

Mr. YANKOV (Bulgaria) said that, in his delegation's view, the current session of the Legal Sub-Committee had been both useful and encouraging. The Chairman had made a valuable contribution by submitting a programme of work which drew attention to certain items of great relevance to the elaboration of legal principles that would promote international co-operation in the exploration, use and exploitation of the sea-bed beyond the limits of national jurisdiction. The Sub-Committee's method of work had brought it closer to agreement on some important questions and had put it in a better position to identify the differences of opinion

(Mr. Yankov, Bulgaria)

which still existed on other points. Efforts should be made to fill the remaining gaps without delay, but also without any over-ambitious attempts to formulate a large number of important legal rules all at once.

The programme of work contained two main classes of items, the first of which concerned the legal status of the sea-bed, and the second the legal régime to be applied to it. A number of concepts had already been advanced concerning the legal status of the sea-bed, some of which, such as res nullius, res communis and res publica, seemed excessively theoretical in nature and of little practical value. The concept of "first in time, first in right" was equally unacceptable in the view of his delegation, for it would justify the outmoded doctrine of occupation.

Much had been said about the concept of common heritage, which also represented a doctrine of civil law applied by analogy in an attempt to determine the legal status of the sea-bed. Despite the good intentions and idealistic arguments of those who advanced that theory, the concept of a common heritage could, in practice, become a mere legal and institutional cover for powerful interests and was likely in any case to lead to confusion.

The real need was for exploration of the principle of international co-operation, taking into account the realities of the international situation. It was essential to establish a framework of generally acceptable rules which would promote broad international co-operation in the exploration, use and exploitation of the sea-bed.

In his delegation's view, it would be advisable to determine which aspects of existing law, both conventional and customary, could provide a legal framework for the progressive development and codification of modern international law on the sea-bed. In that connexion, he drew attention to the applicability of the Geneva Conventions on the continental shelf and the high seas but pointed out that other applicable legal instruments and concepts should not be ignored. The United Nations Charter provided the general legal principles which should govern the activities of States in regard to the sea-bed, such as the principles of sovereign equality, maintenance of international peace and security, pacta sunt servanda, the peaceful settlement of disputes in conformity with international law and justice, and the promotion of international co-operation.

(Mr. Yankov, Bulgaria)

There was thus no justification for speaking of a legal vacuum in regard to the law relating to the sea-bed. There were, however, gaps and imperfect regulations which had to be dealt with through further efforts in the elaboration of new legal principles and norms.

A number of speakers had pointed out that there was general agreement on the existence of an area of the sea-bed and the ocean floor beyond the limits of national jurisdiction, and that idea led to the assertion that such an area could not be subject to national appropriation by claim of sovereignty or any other means. The fact remained, however, that there was still a need for internationally recognized and agreed boundaries for that area.

Turning to the legal principles which should govern the activities of States in the exploration and use of the sea-bed, he said that the main prerequisite for the orderly exploration and development of the resources of the sea-bed was the prohibition of its use for military purposes. Currently, the most vulnerable portion of the sea-bed, as far as military uses were concerned, was the continental shelf, since it was the portion most likely to be used for the placement of military installations.

In the Ad Hoc Committee, his delegation had pointed out that the Convention on the Continental Shelf determined the rights of coastal States for the sole purpose of exploring and exploiting the mineral resources of the shelf, but it did not provide for the construction of military installations there. In other words, the Convention dealt with limited sovereign rights. The use of the continental shelf for military purposes would inevitably affect the peaceful exploration and use of the sea-bed whereas any extension of the demilitarized area could not but serve to advance the peaceful uses of the sea-bed.

His delegation wished to express its full support for the Draft Treaty on the Prohibition of the Use for Military Purposes of the Sea-bed and the Ocean Floor and the Subsoil Thereof, which had been submitted by the Soviet Union to the Eighteen-Nation Committee on Disarmament at Geneva. That new Soviet initiative

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(Mr. Yankov, Bulgaria)

represented a contribution to world peace and could have a favourable effect on the work of the Committee on the Peaceful Uses of the Sea-Bed. The Soviet draft treaty referred to the prohibition of the use of the sea-bed for military purposes, including the emplacement of any kind of weapons and the construction of military bases, structures, installations, fortifications and other objects of a military nature. In other words, the prohibition was total in its scope. In addition, the draft treaty would extend the demilitarized zone to twelve miles from the coast, and it contained a special provision for verification and supervision, which would constitute an important guarantee of the treaty's effectiveness. That instrument not only embodied a general declaration that the sea-bed should be used exclusively for peaceful purposes, but it also provided a framework for the implementation of the principle of peaceful use.

There appeared to be general agreement concerning respect for freedom of the high seas, including freedom of scientific research. The application of that principle would contribute to the promotion of international co-operation and would prevent any infringement of the legally protected rights of States in regard to fishing, navigation, communications, research and other traditional uses of the high seas.

There also appeared to be considerable support for effective preventive measures in regard to pollution and other hazards. In his delegation's view, attention should be given not only to the principle of the responsibility and liability of States and to the elaboration of generally agreed standards of security and safety, but also to the question of assistance to persons in distress and to the elaboration of international arrangements for assistance to and rescue of aquanauts. The latter question could be the subject of a special study.

Still another important principle was that the exploration, use and exploitation of the sea-bed should be carried out in the interests of all nations, without any discrimination and irrespective of the geographical location of States, taking into account the needs and interests of the developing countries. The implementation of that principle would enable all nations to benefit from the development of marine mineral resources.

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(Mr. Yankov, Bulgaria)

Between the end of the current session and the beginning of the next, delegations would have an opportunity to examine the proposals which had been made and to endeavour to broaden the area of general agreement. His delegation considered, however, that it would be somewhat premature to set up a working group, either formal or informal, to elaborate further the points of general agreement or to formulate principles. The next session of the Sub-Committee would provide an occasion to explore further the possibilities of reaching agreement on generally acceptable proposals.

Mr. BADAWI (United Arab Republic) said it was his delegation's hope that the Sub-Committee would take at least one step forward in its efforts to define a legal régime governing the sea-bed. He felt that the Sub-Committee had been confined within the limits set by the Ad Hoc Committee and that, as a result, it would be difficult to achieve any concrete results at the current session. The terrain had been explored for approximately two years; the time had come for something more than exploration.

In the view of his delegation, the first two items of section A of the programme of work could not be dealt with separately but should be regarded as complementing each other. Although the definition of the legal status of the sea-bed was a new undertaking, certain rules and regulations already existed both in customary and in international law. Such regulations should not, however, be applied rigidly; a flexible approach should be adopted, and consideration should not be limited to existing rules. The provisions of the United Nations Charter were implicit in the Committee's terms of reference. The principle of international co-operation, which followed from the Charter, should be defined in the light of the special needs of the developing countries.

A distinction should be noted in the nature of the various items included in section A of the programme of work. Some of them could be regarded as general principles under which specific rules could be determined, while others were only concepts for which legal principles were still to be evolved. It was extremely important to adopt a declaration of principles, which should be in precise legal terms. Also, such a declaration would require a balance among the interests of different States, for a sound and lasting régime for the sea-bed could hardly be established without such a balance.

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(Mr. Badawi, United Arab Republic)

Turning to the two sets of legal principles, he noted that his delegation continued to favour the "A" principles and had certain misgivings with regard to the "B" principles. The latter set of principles appeared to emphasize the special interests of a minority of States and failed to reflect the interests of the great majority. For example, the fundamental principle that the sea-bed was to be considered the common heritage of mankind, which was extremely important to the developing countries, had been entirely omitted. A special effort had to be made to reconcile the different approaches represented by the two sets of principles, but it was essential at the same time to avoid achieving a compromise at the expense of one side.

The trend of the debate clearly showed that all delegations were well aware of the differences that separated them; unfortunately, it was less indicative of the common ground which could serve as a basis for agreement. While certain delegations had noted several areas of agreement, it was essential to realize that agreements in principle outside the context of a balanced and carefully drafted statement of principles could not be regarded as unqualified acceptance.

He drew attention to the need for a discussion on the organization and programme of work for the next session. Even a preliminary discussion of that sort would help to expedite the Committee's work and improve the chances of achieving progress in a highly difficult and delicate task.

Mr. SCHRAM (Iceland) said that the complex task before the Sub-Committee was of considerable urgency, since widespread exploitation of the sea-bed had already begun all over the world. The Sub-Committee should therefore proceed as speedily as possibly, avoiding delays and obstructionism based on intransigent national interests. Since the preparation of a detailed treaty would take a number of years, a start should be made by adopting certain fundamental principles for incorporation in a United Nations declaration. It would seem that a consensus could be reached on the following principles: that there was an area of the sea-bed and ocean floor which lay beyond the limits of national jurisdiction; that no State might claim or exercise sovereign rights over that area; that an international régime should be established for the area; that exploration and use of the area should be carried out for the benefit of all mankind, with special regard to the needs and interests of the developing countries; that the area

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(Mr. Schram, Iceland)

should be reserved exclusively for peaceful purposes; and that pollution of the sea-bed should be avoided and the obligations and liabilities of States in that and other respects should be specified.

His delegation attached considerable importance to section A, paragraph (7) - concerning pollution - of the Sub-Committee's programme of work, and welcomed the increasing recognition of the need for international provisions on the subject, as illustrated by recent accidents on the sea-bed. The Secretary-General of the United Nations had recently communicated with the Secretary-General of IMCO regarding the study called for in General Assembly resolution 2467 B (XXIII). It had also been agreed that the specialized agencies concerned would invite the joint group of experts on the scientific aspects of marine pollution to give preliminary consideration to the scientific aspects of the matter. When the technical aspects had been sufficiently elucidated, the question of the elaboration of an international agreement would be referred to the Legal Committee of IMCO. It was to be hoped therefore that the Sub-Committee would be able to agree on the principle embodied in section A, paragraph (7), of its programme of work.

With regard to paragraph (4) - use of resources for the benefit of mankind as a whole - it was as yet too early to work out a detailed international régime for the sea-bed. In general, however, the desired objective could probably best be achieved by establishing an international regulatory authority under the auspices of the United Nations. An arrangement of that kind would narrow the gap between the rich and the developing countries and would also help to improve the financial situation of the Organization.

Paragraph (3) was of vital importance. There should be general agreement that no nuclear weapons would be placed on or under the sea-bed, and careful study should be given to the proposal that all military activities and fortifications should be banned from the sea-bed. Mankind should take the opportunity to prevent the arms race from reaching the last frontier of the human environment.

With reference to the Maltese draft resolution (A/AC.138/11), there was no doubt about the need for a precise definition of the area beyond the limits of national jurisdiction and for a revision of the criteria of the Geneva Convention on the Continental Shelf. As, however, it did not seem to be within the

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(Mr. Schram, Iceland)

Committee's terms of reference to lay down precise delimitation criteria, further discussion of the whole issue would be required before any real agreement could be reached. Any solution should take into account the needs and interests of countries with a very narrow continental shelf, which should have exploitation rights in respect of submarine areas to a considerable distance from their coasts.

An international conference along the lines of the one proposed in the Maltese draft resolution would obviously be required for any revision of the Convention on the Continental Shelf. It should not, however, be convened too hastily or until the Committee had done a considerable amount of preparatory work. Serious consideration should also be given to the possibility of revising the related Convention on Fishing and Conservation of the Living Resources of the High Seas, which had not in any case been accepted by enough nations to be a part of international law.

Mr. CACERES (Peru) said that his delegation firmly supported the draft declaration of general principles - generally referred to as "set (a)" - which had been submitted by the Latin American delegations at the Rio de Janeiro session of the Ad Hoc Committee and had subsequently received the support of the other developing countries represented in that Committee. If the eventual result of the Sub-Committee's deliberations on legal principles was to be the establishment of a legal régime for the sea-bed area beyond the limits of national jurisdiction, then the subject merited full and detailed discussion. In his delegation's view, one of the prerequisites for the equitable and balanced utilization of the immense marine resources lying outside the limits of national jurisdiction was that any such legal régime should be reinforced by appropriate international machinery, the powers of which should be worked out in detail at a later stage. The establishment of such machinery would be a decisive step towards reciprocal understanding between the countries which already had the capability to exploit the resources of the area in question and those countries which did not.

The statement of principles to be submitted to the General Assembly should not only be an example of true international co-operation but should also embody an appropriate combination of principles which were universally applicable and principles which reflected the acute needs of the developing countries. The draft

(Mr. Caceres, Peru)

principles in set (a) incorporated most of the principles included in the Sub-Committee's programme of work (A/AC.138/SC.1/3). It explicitly mentioned, for instance, the important concept of the common heritage of mankind. It also provided for protection of the rightful interests of States - a provision which was obviously essential to successful international co-operation. The interests so protected would include not only those of the coastal States likely to be affected by exploration and exploitation activities but also those of all States that would suffer from the effects of pollution and other hazards.

The programme of work did, however, mention one topic that had been omitted from set (a): the applicability of international law. That omission had been a deliberate one; those delegations which supported set (a) did not deny the existence of universal principles applicable to the high seas, but they held that existing regulations and principles were, at most, peripheral and could certainly not provide a substantive basis for law concerning the sea-bed and ocean floor beyond the limits of national jurisdiction.

His delegation wished to stress that the frequent references which had been made to the need to determine the boundary of the area beyond the limits of national jurisdiction were, in fact, irrelevant to the Committee's terms of reference and merely served to delay its work. For that reason, although his delegation warmly commended the thoughtful statement of the representative of Malta at the seventh meeting, it did so on the understanding that that statement had not been made by way of introducing draft resolution A/AC.138/11, which related to the question of a boundary and was accordingly not within the competence of the Committee.

Mr. KOZLUK (Poland) stressed that any formulation of the legal principles applying to the sea-bed should take into account existing principles and rules of international law, including the Charter of the United Nations and such international instruments as the 1958 Conventions.

In connexion with the protection of the freedom of the high seas, it was important to ensure that activities relating to the exploration and utilization of the sea-bed and the ocean floor were not detrimental to the interests of other States. They should not, for instance, obstruct freedom of navigation, fishing or over-flight or freedom to lay submarine cables and pipelines. As illustrated by the

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(Mr. Kozluk, Poland)

recent disaster off California, it was also important to prevent pollution and other hazardous and harmful effects of activity on the sea-bed. States should therefore not be allowed to seize areas of the ocean floor for their own purposes, and the existing legal principles on the subject should be supplemented and modified in order to take into account the host of problems created by the technological revolution. The draft statement of agreed principles contained in the report of the Ad Hoc Committee (A/7230, para. 88) might provide a useful basis for the Sub-Committee's discussions.

His delegation had repeatedly stated its conviction that the sea-bed and the ocean floor should be used exclusively for peaceful purposes. Prohibition of the use of the dea-bed for military purposes was of the utmost importance and urgency and would be the first step towards peaceful international co-operation in a new and promising field. If effective action was not taken at once, it would be much more difficult to act later, when military activity on the sea-bed and ocean floor had taken on larger proportions. Important provisions concerning the demilitarization of the Antarctic and of outer space had already been adopted in the Antarctic Treaty and in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space. The Polish delegation strongly supported the draft treaty which had just been submitted by the Soviet Union to the Eighteen-Nation Committee on Disarmament and which prohibited military bases, structures, installations, fortifications and other objects of a military nature on the ocean floor or beneath the sea-bed.

Mr. KALINKIN (Union of Soviet Socialist Republics) said that the reservation of the sea-bed and ocean floor for exclusively peaceful purposes was one of the most urgent matters engaging the attention of the international community; unless steps were taken in the very near future to prevent the militarization of that area, the arms race would inevitably be extended to it, thus further heightening international tensions.

With such considerations in mind, the USSR delegation to the Eighteen-Nation Committee on Disarmament had on 18 March submitted to that body a draft treaty on the prohibition of the use for military purposes of the sea-bed and ocean floor and the subsoil thereof, the major provision of which would prohibit all military

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(Mr. Kalinkin, USSR)

activities beyond the twelve-mile maritime zone of coastal States. The effect of its article 1 would be to prohibit the emplacement of objects with nuclear weapons or any other types of weapon of mass destruction, and the setting-up of military bases, structures, installations, fortifications and other objects of a military nature. In other words, all military activities, whatever their purpose, would be banned. The adoption of such a provision would, of course, effectively demilitarize the sea-bed and its subsoil, and his delegation was gratified to note that that point had been appreciated by those delegations which had welcomed the draft treaty.

It should be noted that a draft resolution in which the General Assembly would call upon all States to use the sea-bed exclusively for peaceful purposes had been submitted to the Ad Hoc Committee by his delegation (A/7230, annex III). Coming to agreement that the sea-bed be used exclusively for peaceful purposes should mean the prohibition of any military activity on the sea-bed. At the time, however, some delegations had advanced the argument that military activities in pursuit of "peaceful aims" or in fulfilment of "peaceful intents" were not incompatible with the use of the sea-bed exclusively for peaceful purposes (A/7230, para. 47). His delegation, however, strongly believed that any such interpretation of "peaceful uses" would be a departure from the recognized international understanding which had been built up on such subjects since the end of the Second World War.

As early as the first session of the General Assembly, for instance, a resolution, adopted unanimously, had provided for the establishment of an atomic energy commission whose terms of reference had required it to make recommendations on the "control of atomic energy... to ensure its use only for peaceful purposes". In resolution 299 (IV), the General Assembly had affirmed that "atomic energy, if used for peace will lead to the increase of human welfare, but if used for war, may bring about the destruction of civilization". Similarly, in the Disarmament Commission in 1955, Canada, France, the United Kingdom and the United States had introduced a proposal for the massive destruction of all nuclear arms and fissionable material (DC/SC.1/23); the proposal had provided that any stocks of such equipment and material would be used by States signing a disarmament

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(Mr. Kalinkin, USSR)

treaty for peaceful purposes only. Moreover, international practice in regard to the interpretation of the expression "use for peaceful purposes" as applied to nuclear energy was clearly indicated by the frequency with which that phrase occurred in IAEA documents relating to applications of nuclear energy which clearly excluded all military activities.

The Treaty on the Non-Proliferation of Nuclear Weapons provided a more recent example of the international community's interpretation of the expression "use for peaceful purposes". In that instrument, the question of peaceful nuclear explosions was dealt with as the explosion of nuclear devices excluding any explosions which could be carried out for any military purposes.

The term "use for peaceful purposes" occurred on many occasions in the Soviet draft treaty on general and complete disarmament (DC/213/Add.1) and in the scheme of the main provisions of a treaty on general and complete disarmament submitted by the United States (DC/214/Add.1). On all those occasions that term meant to designate the use for non-military civil purposes.

Again, article I of the Antarctic Treaty of 1959 contained what was virtually a definition of peaceful purposes. The relevant passage read: "Antarctica shall be used for peaceful purposes only. There shall be prohibited, inter alia, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres, as well as the testing of any type of weapons." Under the Antarctic Treaty the notion "use for peaceful purposes only" was tantamount to a complete ban on any military activities in Antarctica.

The notion of peaceful uses as excluding any type of military activity was widely applied in the field of outer space activities. That occurred, for example, in article IV of the Outer Space Treaty of 1967, in General Assembly resolution 1721 (XVI), and so forth.

It was therefore clear that States had invariably understood the use of a given environment for exclusively peaceful purposes to mean its complete demilitarization. The adoption of such a principle in the practice of the United Nations meant that all military activities, whatever their purpose, were banned. There should be no departure from the meaning of that principle in the case of the

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(Mr. Kalinkin, USSR)

sea-bed and ocean floor, particularly in view of the fact that the international community was being given the opportunity to prevent the spread of the arms race to that new environment. To agree to the other interpretation of that principle would serve the interests of a would-be aggressor which thus could use the sea-bed for aggressive military purposes, asserting that such a use was carried out for peaceful purposes.

His delegation's concern to avoid ambiguity in defining the peaceful uses of the sea-bed was shared by many others. When the subject had been discussed in the First Committee at the twenty-third session of the General Assembly, the representative of Trinidad and Tobago, for instance, had pointed out that the expression "for peaceful purposes" was capable of abuse from many angles. That representative had continued: "Nuclear missiles are being installed with the declared intention that they should 'contain aggression' and 'ensure freedom', and blood is regularly shed 'for peaceful purposes'. Even microbiological warfare research is being conducted at many centres throughout the world 'for peaceful purposes' and for 'defensive purposes'.... Let us try to avoid a form of words that invites semantic wrangling and try to say clearly what we mean." (1601st meeting).

The Sub-Committee could usefully bear those words in mind in its efforts to draft a legal principle on reservation of the sea-bed exclusively for peaceful purposes. Its aim should be to prevent the use of the sea-bed not only for aggressive military purposes, but rather for any type of military purposes whatsoever.

The meeting rose at 12.45 p.m.

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SUMMARY RECORD OF THE TENTH MEETING

Held on Tuesday, 25 March 1969, at 11.5 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF QUESTIONS CONTAINED IN THE PROGRAMME OF WORK (A/AC.138/SC.1/3) (continued)

Mr. BERMAN (United Kingdom) said that his delegation had stressed that the question of the boundaries of the area beyond the limits of national jurisdiction should be considered pari passu with that of an international régime; that point of view had been supported by, among others, the French and Italian delegations. Nevertheless, as the representative of Canada had observed, the Sub-Committee should first concentrate on the establishment of an international régime, because it would be easier to reach agreement on that subject.

In the circumstances, it was difficult to determine the real scope of the proposals introduced by the Maltese delegation. In the first place, there would be difficulty about accepting, as a minimum criterion for defining the area subject to national jurisdiction, either a depth of 200 metres or a specified distance from the coast - which, according to the representative of Malta, should be 40 or 50 miles but might realistically be fixed at 100 miles and might have to be set provisionally at 200 miles. As the representative of Canada had pointed out, the depth of 200 metres was not a practicable criterion. Moreover, the proposed distance criterion was most imprecise. In any event, it was impossible to ignore the words "or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas" in article 1 of the Convention on the Continental Shelf. Similarly, in the case of the Maltese proposal on rocks and certain islands near the coast, the provision of article 1 of the same Convention specifying that the continental shelf referred to the sea-bed and the subsoil of similar submarine areas adjacent to the coasts of islands could not be disregarded. It should also be borne in mind that the International Court of Justice had recently rejected the criterion of equity, with respect to the boundary of the continental shelf, and had accepted that of the undersea prolongation of the land mass. Finally, the contention that the criterion of exploitability, formulated in article 1 of the Convention on the Continental Shelf, referred to the state of technological capability in 1964 was unsound, since that would mean that a delay in depositing the twenty-second instrument of ratification or accession would have changed the practical significance of the article, which could not have been intended. In any case,

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(Mr. Berman, United Kingdom)

only inclusion of a phrase such as "at the date of entry into force of the present Convention" could warrant the Maltese representative's interpretation of the use of the present tense. A review of the preparatory work showed that the International Law Commission had reintroduced the concept of exploitability into its third draft in order to provide a degree of flexibility. In fact, the concept of adjacency seemed to be the one by which the limits of the continental shelf could best be defined. No State had contested the existence of an area of the sea-bed and ocean floor beyond the limits of national jurisdiction which was not subject to appropriation and in which States could not claim sovereign rights. That, in itself, represented substantial progress and there was no evidence that the technologically and militarily most advanced States were intending to appropriate the most valuable areas of the sea-bed. He wished to point out, for the sake of accuracy, that geomorphology was concerned with the origin and evolution of the earth's surface and that the classification of rocks into sialic and simatic was a geological one. Furthermore, geophysics and physiography were separate sciences, the former dealing with the study of the globe by reference to its physical properties and the latter with the description of the earth's surface. Moreover, one should treat with the greatest reserve any estimate of future technological capacity for exploiting the resources of the sea-bed which was not in accordance with the data contained in paragraphs 14-16 of the report of the Economic and Technical Working Group of the Ad Hoc Committee (A/7230, annex I).

In connexion with the statment made by the representative of the Soviet Union on the previous day concerning the "reservation exclusively for peaceful purposes" of the sea-bed and ocean floor, his delegation had already stated its position on that subject and had some reservations with regard to the contention that all military activities should be prohibited in that area.

In conclusion, his delegation, like many others, believed that the Sub-Committee should formulate a statement of basic principles at the following session and maintained its support for set (b), which had been proposed at Rio de Janeiro (A/7230, para. 88).

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Mr. ODA (Japan) said that a statement of his in a New York publication which had been quoted by the representative of Canada expressed his personal opinion and not necessarily that of the Japanese Government. He had said in that statement that, as the logical conclusion to be drawn from the provision of the Geneva Convention on the Continental Shelf, all the submarine areas of the world had been theoretically divided among the coastal States at the deepest trenches. He had, however, also pointed out that, as lex ferenda, the régime of the ocean floor of the deep sea should be distinct from that of the continental shelf, thus releasing the former area from the exclusive control of the coastal States. He had therefore advocated a revision of the Convention on the Continental Shelf. He pointed out that, while all those statements were personal opinions, he had, as the representative of Japan, often said that the provisions of the Convention concerning the limits of the continental shelf might be revised.

In that connexion, his delegation had read the proposals of the Maltese representative with great interest and intended to examine them in detail before the August session. He wished, however, to make some preliminary observations on them. Firstly, it was questionable whether the Committee was competent to propose that the Secretary-General should convene a conference for the purpose of revising the Convention on the Continental Shelf. Secondly, the Committee's terms of reference included the formulation of legal norms and the convening of an international conference for that purpose (second operative paragraph of draft resolution A/AC.138/11) seemed to be premature. Thirdly, his delegation had reservations with regard to the first operative paragraph of the draft resolution: the question of rocks and islands without a permanent settled population raised some very difficult problems, particularly in the Arabian Gulf.

He said that at the Rio de Janeiro session his delegation had supported the set of principles (b) reproduced in the Ad Hoc Committee's report (A/7230, para. 88). His reason for having referred at the sixth meeting only to four of the principles in set (b) was not that he was opposed to the remaining three, but merely that he thought it would be easier to reach agreement on the four principles in question. It was advisable, in fact, that the Legal Sub-Committee should soon adopt some basic principles unanimously.

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(Mr. Oda, Japan)

He reiterated his delegation's opinion that all exploration and exploitation activities carried out on the continental shelf or on the sea-bed and ocean floor, and the potential effects of such activities on the superjacent waters should be subject to rules and regulations derived from the freedom of the high seas. Article 5 (1) of the Convention on the Continental Shelf provided that:

"The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication."

His delegation saw no reason why that rule should not be applicable to the effects of exploration and exploitation of areas beyond the limits of national jurisdiction, regardless of who held rights to explore and exploit them. Pollution of the superjacent waters and hazard to the high seas should be absolutely subject to the rule of international law. He said that while the Committee was required to discuss who was entitled to benefit from the exploitation of the resources of the deep ocean floor beyond the limits of national jurisdiction, activities carried out in connexion with such exploitation were still subject to the regulations in force, which were derived from the principle of the freedom of the high seas. To ignore that principle would inevitably result in chaos and thus inhibit the optimum use of the sea-bed and ocean floor for the benefit of all mankind.

Mr. CARTER (United States of America) said that he proposed to speak at a later stage on the question of an arms control agreement for the sea-bed and the ocean floor, at which time he would reply to the views expressed by the representative of the USSR with regard to the reservation of that area exclusively for peaceful purposes. Referring to the statement made by the representative of Malta when explaining the mileage figure which he had left blank in draft resolution A/AC.138/11, he recalled that the figure to be inserted had been intended to represent the maximum extension of the "submarine areas adjacent to the coast" mentioned in article 1 of the Convention on the Continental Shelf. In that connexion, the representative of Malta had stated that present facts (proved technological capability, national legislation and claims of States) indicated that

(Mr. Carter, United States)

any attempt to identify a minimum area of the sea-bed beyond national jurisdiction of less than 100 miles from the coast was doomed to failure and that it would probably be necessary to extend the limit to 200 miles, at least provisionally, if sufficiently wide agreement on the matter was to be reached.

He stated that it had seemed to the United States that agreement rather than interpretation was the method that should be followed in arriving at a precise boundary for the area beyond national jurisdiction. He shared the view expressed by the representative of Malta that the dictionary was of little help in interpreting the words "adjacent to the coasts". In its opinion of 20 February 1969 on the North Sea case, the International Court of Justice had commented on the meaning of the word "adjacent" in language which supported the view that the word had no immediately obvious meaning. The Court stated that a point on the continental shelf situated 100 miles, or even less, from a given coast, could not be regarded as adjacent to that coast, in the normal sense of adjacency, and that that would be even truer of localities where, physically, the continental shelf began to merge with the ocean depths. However, the fact that the word "adjacent" had no clear meaning should not lead to the definition of a minimum area beyond national jurisdiction suggested by the representative of Malta. It was unfortunate that the representative of Malta had introduced into discussion of an eventual boundary terms which seemed to accommodate the most expansive claims yet made for national jurisdiction - the limit of 200 miles. The United States did not recognize claims of 200 miles, either for the sea-bed or for the superjacent waters. It would be a mistake to use that criterion as a point of departure for international discussion. All possibilities should be carefully explored before a specific figure was set. Agreement on a boundary and régime for the area beyond national jurisdiction should be reached through orderly processes; and all States should exercise restraint in actions which could prejudice the final decisions on those issues.

Mr. PAVICEVIC (Yugoslavia), referring to the agenda, said that all those questions were under study by his Government and its precise position on them would be made known in due time.

(Mr. Pavicevic, Yugoslavia)

The task of the Committee was to study the establishment of an international legal régime for the sea-bed beyond the limits of national jurisdiction, to regulate the legal status of that region and activities among States in exploring, using and exploiting its resources, and to promote international co-operation to that end. He believed that the Committee must set up an international legal régime along the following lines: first, such a régime would govern the activities of States in a region not under the sovereignty or jurisdiction of any State, and accordingly no State would be able to claim or exercise sovereign rights over any part of that area and no part of it could be subject to national appropriation by claim of sovereignty, by use of occupation or by any other means; secondly, because the sea-bed was a "common heritage" for all mankind, the area should be explored, used and exploited equally by all, in the interests and for the benefit of all States, whether maritime or land-locked; thirdly, the special interests and needs of the developing countries should not only be recognized or taken into account, but should be built into the very fabric of that régime. It was not desirable that a new régime should become a mere copy of the relations currently existing on land between developed and developing countries, burdened with all imaginable inequalities, exploitation of the poor by the rich, and so forth. The new régime should not lead only to equality of opportunity; it must secure equality in actual use and exploitation of the riches hidden in the sea-bed. He believed that, if a way was found to construct such a régime, it would greatly help to bridge the ever-growing gap between developed and developing countries.

He stressed that the goal was clear and that the part of the sea-bed in question could not have a status based on classical concepts of either res nullius or res communis or any status that could, in any way, lead to the creation of relations burdened with inequalities among States, whether economic, military, financial or of any other nature. His delegation could accept the phrase "common heritage of all mankind" as describing its position regarding that part of the sea-bed, while recognizing that that concept had to be discussed and elaborated into an appropriate and widely acceptable legal concept, and also

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(Mr. Pavicevic, Yugoslavia)

that it would be essential to lay down basic elements of a legal régime leading to the actual achievement of the goal whereby all States must benefit equally from the exploitation of the resources of that part of the sea-bed. With that in mind, it became obvious that the crucial question of ways and means of accomplishing that goal was a very immediate one. Apart from the legal principles and norms which would be elements of the future régime, his delegation shared the opinion of the developing countries that the Committee should pay full attention to the study of international machinery which could provide a possibility for the equal international participation of all States in the regulation, exploration and exploitation of the vast resources of that part of the earth. His delegation was looking forward to seeing, as soon as possible, the report of the Secretariat on the question, as it would greatly facilitate full deliberation on the issue at the forthcoming session of the Committee in August.

His delegation fully appreciated the fact that, in addition to the existence of the part of the sea-bed beyond national jurisdiction, there was a question of the limits of national jurisdictions. It was aware that that was a very difficult problem and that the Committee was faced with the existing legal situation in the world, where the limits of national jurisdictions were established differently from State to State, reflecting different methods, criteria and interests - jurisdictions founded on national legislation, on bilateral or regional arrangements, or on the existing multilateral conventions related to the matter. In drawing attention to that problem, his delegation was not suggesting that the existing situation should be completely overturned, but rather that an internationally and nationally acceptable solution, based on mutual respect for the interests of all, should be found. Both the process of solving the problem and the solution itself would be primarily of a political nature, as had been clearly stressed by previous speakers.

He was happy to note that the Committee was not awaiting a solution of that problem - which would probably take some time, great effort and extensive preparation - but was ready to undertake the study of problems relating to the sea-bed beyond national jurisdiction. His delegation was fully aware of the relation between the question of the limits of national jurisdiction and the legal status of the region of the sea-bed beyond those limits.

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(Mr. Pavicevic, Yugoslavia)

As the first step was taken towards the regulation of the sea-bed beyond the limits of national jurisdiction, the question of a declaration of general principles arose, and he felt that a good starting-point would be the general guidelines. He recognized that sometimes the "general principles" approach could not cover the interests of all, and in particular of small and developing countries, as in the case of the process of further elaboration of the basic principles contained in the Treaty on Outer Space. For example, even if the Committee were to adopt principles to the effect that that part of the sea-bed could not be subject to national appropriation by any State and that the riches of the sea-bed would be used for the benefit of all, that in itself would not prevent those who were in a position to do so from using the sea exclusively for their own purposes. Consequently, in his view, there would be no need for that part of the sea-bed which they had actually been exploiting to become a part of their national territory, as had been so ably expounded in a statement by the representative of Malta. The intention, therefore, was not simply to create an international cover for some activities and exploitation presently carried on solely in the interest and for the benefit of those engaged in such enterprises, nor for any such activities in the future. He felt that those principles must be further elaborated and set out as norms - i.e., as declarations and conventions - and that that should be the future task of the Committee.

The general principles, in the opinion of his delegation, should spell out the basic elements of the future régime.

The first element pertained to the area of the sea-bed which would be covered by that régime. There existed an area which lay beyond national jurisdiction and which would be precisely defined by appropriate ways and means at an appropriate time after careful study and negotiation.

The second element should establish the relation of international law to the future régime. It was generally accepted that all the elements of the legal régime which would cover that region would have to be based on the principles of the United Nations Charter, i.e., on the principles of peaceful and active coexistence and co-operation among all States, whether with the same or with different social and economic systems. Where other parts of international law were

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(Mr. Pavicevic, Yugoslavia)

concerned, his delegation was of the opinion that, because the Committee was formulating a new legal régime for a new region of the earth, it must examine what principles and norms of existing international law could be applicable also to that régime, and to what extent, in order to take them into account in constructing the régime. He did not believe that it was possible to proceed successfully either from the position of absolute denial of the application of international law in general or from that of absolute reliance upon the existing norms of international law as a claim for their full and absolute applicability. It was necessary to keep in mind that the creation of an international régime for the sea-bed beyond the limits of national jurisdiction was, in its nature, a progressive development of international law.

The third element should relate to the goal that had been set, which was the exploration, exploitation and use of the resources of the sea-bed beyond national jurisdiction in the interest of all States, irrespective of their geographical situation, bearing in mind particularly the needs and interests of developing countries. That was one of the very central elements of the future régime for that region and of the work of the Committee.

The fourth element could embody principles relating to the present uses of the sea. In his view, the classification of positive uses and uses which should be prohibited was very interesting. He felt that separate principles should be elaborated for securing the uses of the sea-bed exclusively for peaceful purposes. His delegation noted with interest the USSR proposal concerning the achievement of that goal. He believed that another part of that element should relate to: (a) the present uses of the sea (navigation, fisheries, cables, archaeological exploration, etc.); (b) the effect of the present and future uses of the sea and the sea-bed upon marine life and the marine environment; (c) the responsibility and liability of States deriving from those activities, and reparation for damage caused; (d) the freedom of exploration of the sea-bed which could be accepted by all, on condition that that freedom had peaceful aims, that its goals were "beneficial to all" and that the knowledge thus acquired was made available, without discrimination, publicly to all, with particular attention to the needs and interests of the developing countries.

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(Mr. Pavicevic, Yugoslavia)

His delegation had already formulated certain principles, which were set forth in document A/C.1/PV.1593. Other sets of principles had also been enunciated - for example, those on pages 17 and 19 of the Ad Hoc Committee's report (A/7230), in the Indian draft declaration in annex III to that report, and in the working paper prepared by the Secretariat (A/AC.138/7). The Committee should therefore be in a position to take up the formulation of practical principles in the near future.

Mr. CABRAL de MELLO (Brazil) said he could not agree with the representative of the United Kingdom that the only difficulty was the delimitation of the area lying beyond the limits of national jurisdiction; problems were also raised by the question of the extent to which international law was applicable to that area. Existing law offered no specific legal rules for the sea-bed; it required only compliance with the rules governing the use of other areas of the marine environment.

It had been pointed out that the concept of the "common heritage of mankind" was not self-explanatory. However, clarification had been given by the representative of Malta in his statement in the Legal Working Group of the Ad Hoc Committee on 27 June 1968, in which he had remarked that implicit in the concept were, firstly, the notion of a trust and of trustees; secondly, the indivisibility of the common heritage; thirdly, the regulation of the use made of that heritage and the equitable distribution of benefits among all countries, whether or not they participated directly in its exploitation; fourthly, the principles of freedom of access and use; and, fifthly, the principle of peaceful use. Those five principles should be sufficient to explain the concept of the common heritage of mankind. Furthermore, the report on the establishment of international machinery, to be prepared by the Secretariat in pursuance of resolution 2467 C (XXIII), would provide an opportunity to examine in depth the elements of that concept. He hoped that that document would be ready well in advance of the third session of the Committee so that members would have ample time to study it.

Some representatives thought that the Committee should avoid discussing legal concepts, as if they were something superfluous or alien to the Committee's

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(Mr. Cabral de Mello, Brazil)

work and their introduction would complicate matters unnecessarily. Concepts had been invented to help man in understanding reality. No real progress would be made unless agreement was reached from the start on a general principle for the definition of the legal status of the sea-bed, which would serve as a guide for the formulation of other principles. The common heritage of mankind was a guiding principle, and the consideration of general principles was part of the Committee's terms of reference.

The Legal Sub-Committee had perhaps spent too much time considering the non-appropriation principle. It seemed to be agreed that no State might exercise sovereignty over any part of the sea-bed. There was no sacrifice of national interest and no generosity if a State refused to do so. The political and economic costs of any appropriation of the sea-bed would far surpass the benefits. Discussion of non-appropriation was therefore an academic exercise; the issue was whether the international community should, through a statement of principles adopted by the General Assembly, give to a few technologically developed nations, under the aegis of the non-appropriation principle, exclusive rights of exploration and exploitation without due compensation to the international community.

With regard to the Maltese draft resolution (A/AC.138/11), Brazil considered that it would be politically easier to settle the question of the outer limits of the sea-bed after a clear idea had been gained of what the legal régime for the area was going to be. In that respect, the report of the Secretary-General on international machinery should be very useful. The need for the delimitation of the continental shelf was also urgent, bearing in mind the view of the Economic and Technical Sub-Committee that exploitation of hydrocarbons in water depths up to 300-400 metres was economically feasible in a few areas. It would be a good idea to hold an international conference on the continental shelf at the appropriate time, provided that the Committee made progress on the elaboration of a legal régime for the sea-bed and that countries did preparatory work in order to ensure the success of the conference. However, the Committee should avoid establishing guidelines that would prejudge the results of the conference. The question of islands in connexion with the continental shelf was very complex and needed more thorough study.

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Mr. RAKOTONIAINA (Madagascar) said that he wished to state the views of his delegation on some of the items in the programme of work which had been mentioned frequently during the debate and which deserved some priority because technical progress might bring about a radical change in the situation overnight. It was more or less generally agreed that there was a vast area of the sea-bed not subject to the national jurisdiction of States, but such agreement was not enough to ensure the protection of that area, and the best possible definition should be found for it. The Malagasy Government had stated its position on that point in document A/AC.135/1. He was prepared to agree with the majority if it was felt that archaic legal terminology could not be applied to a completely new field. Nevertheless, not all the terminology which had stood the test of time and of interpretation ought to be discarded.

His delegation fully subscribed to the essential principle of non-appropriation of the area in question, in view of its international character, and its own definition of that principle was identical with the one given in point 4 of set (b) on page 19 of the report of the 1968 Ad Hoc Committee (A/7230). The principle could not entail any restrictions that might hamper exploration or traditional maritime activities in the area concerned. It might be thought that exploitation should enjoy similar freedom, but it would be better to wait for more precise technical data before making a decision, without in any way questioning long-standing freedoms under the law of the sea. The Sub-Committee might have time at its next session to go further into that question, which needed to be approached with caution. In any event, his delegation did not think that exploration or exploitation activities ought to give rise to national appropriation by proclamation of sovereignty, by use or occupation or by any other means, or be used as a basis for such appropriation.

While it would be wrong to have too many illusions concerning the principle that activities relating to the sea-bed should be for the benefit and in the interests of all mankind, that principle did represent an ideal which it was to be hoped would have some practical impact.

As to the delimitation of the areas within and beyond national jurisdiction, the Committee had not received a mandate from the General Assembly to consider that problem, but in the view of his delegation it was morally bound to bring to the

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(Mr. Rakotoniaina, Madagascar)

attention of the General Assembly the fact that the criteria adopted to define the continental shelf, especially on the basis of the 1958 Geneva Convention, were open to interpretations that might affect the boundaries of the area which the Committee was instructed to study. It would be better to do that than to ask the Committee to take an initiative which was in fact a prerogative of the States parties to the 1958 Convention.

Mr. EL HUSSEIN (Sudan) said that he wished to refer to the "A" and "B" principles set out in the report of the 1968 Ad Hoc Committee (A/7230, pp. 17-20). His delegation believed that the "A" principles could provide guidelines for general legal principles applicable to the exploration, exploitation and use of the sea-bed. Indeed, it would be possible, in its view, to adopt principles 4, 5, 6 and 7 of set (a), since they were to a great extent identical with principles 1, 2, 4 and 5 of set (b). He also felt that the two texts could be harmonized, in view of the similarities between their provisions.

It appeared that the deliberations of the Sub-Committee provided enough groundwork for the formulation of a draft of legal principles, and it was high time to produce such a text in order to enable the General Assembly to take positive decisions at its twenty-fourth session. His delegation was confident that that would be done, since there was an evident concurrence of views on at least four principles the adoption of which would be a step towards the formulation of a comprehensive set of principles. The principles in question were: (1) that no State should exercise or claim sovereignty over the area of the sea-bed and ocean floor as referred to in resolution 2467 A (XXIII); (2) that the exploration, exploitation and use of the area, and the subsoil thereof, should be carried out for the benefit and in the interest of mankind, taking into account the special needs of the developing countries; (3) that such exploration, exploitation and use should be carried out exclusively for peaceful purposes; (4) that activities in that area should be conducted in accordance with international law, including the Charter of the United Nations.

With regard to the delimitation of the area, his delegation wished to stress, in connexion with the comments made by some delegations, that the matter needed careful study, since it might seem to be related to an attempt to limit the

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(Mr. El Hussein, Sudan)

jurisdiction of some States that might not accept such an attempt. Furthermore, his delegation doubted whether that question fell within the Committee's mandate and whether the General Assembly was competent to act as a legislative body in the field of international law. The 1958 Geneva Convention had been criticized as being obscure, and there was a pressing need for a third conference on the law of the sea to revise the Convention.

PROGRAMME OF WORK (A/AC.138/SC.1/1, A/AC.138/SC.1/3)

The CHAIRMAN recalled, with regard to the discussion at the third meeting of the Sub-Committee, that he had been requested to prepare, in consultation with delegations, a statement concerning certain subjects which it had been proposed should be added to the programme of work. Consultations having taken place as arranged, the Sub-Committee had agreed on the following statement:

"Subjects mentioned in the report of the Ad Hoc Committee and in the relevant draft resolutions submitted to the First Committee during the twenty-third session of the General Assembly may be discussed by any delegations wishing to do so, and the Sub-Committee will give them due consideration. The programme of work, with its division by subjects, is not restrictive in nature; it does not interpret General Assembly resolution 2467 A (XXIII) and makes no prejudgement concerning the positions delegations may adopt on questions of substance."

He suggested that, with the consent of the Sub-Committee, that statement should be included in the report.

It was so decided.

The meeting rose at 12.40 p.m.

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SUMMARY RECORD OF THE ELEVENTH MEETING

Held on Wednesday, 26 March 1969, at 11.10 a.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF QUESTIONS CONTAINED IN THE PROGRAMME OF WORK (A/AC.138/SC.1/3, A/AC.138/11) (concluded)

Mr. GOWLAND (Argentina) said that the Committee should proceed cautiously in undertaking its work in view of the important national and international interests which were at stake, and should at the same time adopt an innovative approach towards the various draft principles proposed. He wished to present his delegation's views on the principles it considered most important. As most delegations had endorsed the basic concept of the existence of an area of the sea-bed beyond the limits of national jurisdiction, which was a common heritage of mankind and which thus could not be subject to appropriation or claims of sovereignty by States, the United Nations should be able to arrive at an acceptable formulation of those principles.

The first principle should call for the reservation of the sea-bed exclusively for peaceful purposes. That followed from the Charter, the major aim of which was the maintenance of peace, and from the debates which had led to the adoption of General Assembly resolutions 2340 (XXII) and 2467 (XXIII). Moreover, a number of delegations had requested that that principle should be considered as a matter of priority. In that connexion, his delegation had learned that the Soviet delegation had just introduced a draft treaty which would prohibit the use of the sea-bed for military purposes. His delegation reserved the right to speak on that question at a later date, but wished to recall that a proposal had been rejected at the Conference on the Law of the Sea in 1958 with a view to including in the Convention on the Continental Shelf provisions prohibiting the construction of military bases or installations on the shelf (A/CONF.13/42); he also recalled article I of the Antarctic Treaty, which envisaged the use of military personnel or equipment for scientific research purposes.

The second basic principle concerned the use of the sea-bed for the benefit of mankind as a whole, so as to facilitate the economic progress of all peoples. Hence, subject to the basic rights of coastal States over the resources of the sea-bed within the limits of their jurisdiction, the exploitation of the sea-bed beyond those limits should be carried out so as to ensure the maximum benefit for all. Explicit mention must be made of the right of land-locked States to share in those benefits, in conformity with the principle of international co-operation.

(Mr. Gowland, Argentina)

There was necessarily a close relationship between the principle and rules which would govern the legal régime of the sea-bed and the international machinery to be established. The study which the Secretariat was to undertake in accordance with General Assembly resolution 2467 C (XXIII) would be of the utmost importance for the Committee's work, and his delegation hoped that it would be issued as soon as possible.

He recalled the position adopted by his delegation in the Special Committee and during the twenty-third session of the General Assembly concerning (1) freedom of scientific research, bearing in mind the existing rules of international law and the need to obtain the consent of coastal States, in accordance with article 5 of the Convention on the Continental Shelf, (2) respect for the traditional freedoms of the seas and (3) the adoption of adequate measures to prevent the pollution of the marine environment.

It was not enough for the Sub-Committee to recommend to the General Assembly the adoption of a document which simply listed existing problems, as did the declaration of principles in set (b) (A/7230, para. 88). The principles concerning the sea-bed must receive unanimous support in the General Assembly or, at least, the support of a wide majority of Member States, including the maritime Powers and countries with special interests in maritime matters. A set of principles which was accepted by only certain segments of the international community would run the risk of not being fully applicable.

It was not for the Committee to propose the revision of the rules at present governing the boundaries of the area of the sea-bed lying beyond the limits of national jurisdiction; such a proposal would be premature and outside its terms of reference. The failure of the second Conference on the Law of the Sea had shown that any attempts to define marine areas required adequate technical and political preparation. With regard to the Maltese proposals, he stressed that the provisions of article 1 of the Convention on the Continental Shelf were based on the customary rules of international law. The criteria contained therein - depth of the water and exploitability - should not be pushed aside hastily, and only detailed studies could show whether they could serve as a basis for precise demarcation or if they should be replaced by other criteria. His delegation agreed with the United States representative that it would be premature to establish, as the Maltese draft resolution (A/AC.138/11) sought to do, how far from

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(Mr. Gowland, Argentina)

the coast the limits of national jurisdiction extended. However, he was surprised that the United States representative had stated that his Government did not recognize the 200-mile limit; that implied that he did not accept the first part of article 1 of the 1958 Convention in cases where depths of less than 200 metres extended beyond twelve miles.

He wondered whether it was possible to reconcile the two Maltese proposals: (1) to ask the Assembly to solemnly proclaim a precise definition of the extent of the continental shelf, without first undertaking a thorough study, and (2) to call on the Secretary-General to hold consultations on the feasibility of convening at the earliest practicable date a conference for the purpose of revising the 1958 Convention.

His delegation would continue to encourage co-operation to ensure greater utilization of the ocean floor. But the sovereignty and security of States in that sphere must be taken into account.

Mr. BRECKENRIDGE (Ceylon) felt that it was not sufficient to declare that there existed an area of the sea-bed and ocean floor and the subsoil thereof which lay beyond the limits of national jurisdiction. If the Sub-Committee's work was to progress, it must be asserted that the area had been defined. That was a very important question, in the light of the plans to explore and exploit the area which would be set forth in the relevant General Assembly resolutions. It could be asked whether the definition of the area did not entirely depend on the criterion of exploitability. If that were the case, the Sub-Committee was faced with a very complex problem, relating to the level of technology attained in countries capable of exploiting the oceans and to the provisions of the law of the sea. In that connexion, it might be necessary at the Sub-Committee's next session to consider convening another diplomatic conference.

With regard to the two declarations of principles, (a) and (b), contained in paragraph 88 of the Ad Hoc Committee's report for 1968 (A/7230), he felt that while they had helped to pave the way, they in themselves could not ensure the success of efforts undertaken. The question should therefore be given further consideration.

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Mr. PANYARACHUN (Thailand) said he fully shared the view expressed by the overwhelming majority of delegations during the twenty-third session of the General Assembly, namely, that it was absolutely essential to reach agreement on a statement of principles which could form a basis for future internationally binding agreements. Those principles should be designed to govern activities on the sea-bed, and to ensure that they really were conducted for the benefit of mankind, taking into account the special needs and interests of the developing countries. They should also foster the development of international co-operation, and guarantee that the resources of the sea-bed were used exclusively for peaceful purposes. Furthermore, the formulation of those principles should not be delayed by the search for a precise delimitation of the area concerned.

His delegation had been a sponsor of the "a" principles contained in document A/7230 (pp. 17-19), and was convinced that they offered the best hope for agreement. They were comprehensive, precise and well-balanced; they reflected the progressive development of generally accepted principles, without contradicting existing legal rules, and embodied the concepts of international co-operation, on the one hand, and the common heritage of mankind on the other. The representative of Malta had rightly stated that the latter concept implied the formulation of an international régime for the sea-bed administered by a body representative of the world community to regulate the exploitation of resources with due regard for the needs of other users of the sea. The "A" principles represented a fair balance of general principles acceptable to all and more specific principles designed to promote the concepts of common heritage and international co-operation, taking into account the special interests of all developing countries.

While not denying that the "b" principles had the merit of being more concise and of leaving aside a few highly controversial issues, he noted that their brevity might, under the circumstances, lead to future conflicts and further erosion of the interests of all the developing countries, which constituted the overwhelming majority of mankind.

The Committee should formulate forthwith a declaration containing, inter alia, the following legal principles: (1) there was an area of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas, lying beyond the limits of national jurisdiction; (2) that area was the common heritage of mankind;

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(Mr. Panyarachun, Thailand)

(3) no State could claim or exercise sovereignty over any part of that area; (4) that area should be reserved exclusively for peaceful purposes - in that connexion, his delegation had welcomed the statements made by the representative of the USSR but at the present stage, it would reserve its position on the proposals submitted by that delegation in the Eighteen-Nation Committee on Disarmament; (5) there should be agreed a precise boundary for that area; (6) the exploration, use and exploitation of that area should be carried on for the benefit of mankind, taking into the account the special needs of the developing countries; (7) there should be agreed, as soon as practicable, an international régime governing the exploration, use and exploitation of that area and ensuring the equitable distribution of profits and the freedom of scientific investigation. His delegation was awaiting with interest the study being undertaken by the Secretariat in pursuance of General Assembly resolution 2467 C (XXIII), which it hoped would be made available to delegations by the end of May 1969; (8) reasonable regard must be given to the interests of other States in their exercise of the freedom of the high seas; (9) some guidelines should be given on the question of pollution and other hazards, and also on the obligations and liabilities of the States involved in the exploration, use and exploitation of the sea-bed. The above-mentioned declaration, which was an attempt to reconcile the "A" and "B" principles submitted at Rio de Janeiro (A/7230, pp. 17, 18 and 19), could provide a basis for satisfactory agreement. His delegation supported the Norwegian proposal that a working group should be established to continue the consideration of basic principles until the August session. Such an arrangement would be of great help to the Committee.

With reference to the Maltese draft resolution (A/AC.138/11), his delegation was glad that the Sub-Committee's attention had been focused on the need to determine the minimum limits of the area lying beyond the limits of national jurisdiction. But it would not be appropriate to undertake such a task at the present stage without taking into full account the prevailing political and legal realities. The immediate task was to formulate a declaration of principles and to establish an international régime which would promote international co-operation in the area.

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Mr. ARORA (India) congratulated the Secretariat on the quality of document A/AC.138/7, and noted that the main task was to reconcile the divergent opinions expressed on certain issues. In both the First Committee and the Ad Hoc Committee, his delegation had emphasized the need to formulate a declaration of principles, and had submitted a draft declaration (A/AC.135/21) containing certain basic principles: that the sea-bed and the ocean floor beyond the limits of national jurisdiction should be used exclusively for peaceful purposes; that that area was the common heritage of mankind; that it should not be subject to national appropriation; that the exploitation of its resources should be carried on in the interests of mankind; that all activities undertaken in that area should be carried out in accordance with international law, including the Charter of the United Nations and should be under the direction of the United Nations. His delegation was prepared to accept amendments to those principles. As the representative of Malta had pointed out, the main task was to formulate a set of principles which were not incompatible with the concept of the "common heritage of mankind". That representative's statement also contained useful guidelines for the Sub-Committee's future work. Furthermore, on many points his delegation concurred to a large extent with the views expressed by, inter alia, the representatives of Ceylon, Kenya, Thailand and Yugoslavia.

He suggested that, with a view to promoting possible agreement, the following formulation could be submitted, based on the elements common to the "A" and the "B" principles (A/7230, pp. 17, 18 and 19): (1) no State could claim or exercise sovereign rights over any part of the area, and no part of it was subject to national appropriation by claim of sovereignty, by use or occupation, or by any other means; (2) the exploration and use of that area should be carried on for the benefit and in the interests of all mankind, taking into account the special needs of the developing countries; (3) there should be agreed, as soon as practicable, an international régime governing the exploitation of resources of that area; (4) there was an area of the sea-bed and the ocean floor and the subsoil thereof, underlying the high seas, lying beyond the limits of national jurisdiction. Attempts should be made to find an acceptable formula for all controversial principles.

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(Mr. Arora, India)

In his delegation's view, the Norwegian proposal merited further consideration and consultation. The Chairman might try to ascertain delegations' views on the possible establishment of a working group which would continue the consideration of basic principles until the August session.

Mr. OLISEMEKA (Nigeria) said that it would be too much to expect that agreement could easily and readily be reached on the issues before the Sub-Committee. Decisions should not be taken in a hurry, although it could be said that the developing countries did not have time on their side. It should, however, be borne in mind that the General Assembly had instructed the Committee to study the elaboration of legal principles and norms. No recommendations could be made before examining in detail the relevant issues. Moreover, in view of the crucial importance of the problems involved, his delegation supported the proposal made by the representative of Norway to set up a working group of the whole. It also felt that attention should be given to the suggestions made by the representative of Malta concerning the need to broaden consultations for the purpose indicated in operative paragraph 2 of his draft resolution. No harm could result from such consultations, and much good might result. It was perhaps premature at that stage to undertake a detailed consideration of item (iii) in the programme of work which related to the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor; however, his Government naturally supported that principle. In the matter of freedom of scientific research and exploration, States should act in accordance with the principle laid down in item 7 of the (a) list (A/7230, pp. 18-19), which provided for the fostering of international co-operation in scientific investigation so as to enable all States to have access to it, disseminate its results and provide technical assistance to the developing countries. It was important to make use of the resources of the sea-bed and ocean floor, taking into account the special needs and interests of the developing countries. As far as the legitimate interests of other States and freedom of the high seas were concerned, his delegation was satisfied with the provisions made in item 6 of the (a) list. Furthermore, should there be a question of choosing between the (a) list and the (b) list, his delegation would support the (a) list. For the time being, the draft resolution submitted by the representative of Malta (A/AC.138/11) should be given careful study.

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The CHAIRMAN reminded the Sub-Committee that a decision must be taken as to whether or not a progress report would be submitted to the Main Committee at the end of the current session. The Sub-Committee also had before it a proposal by the Norwegian delegation to establish a working group.

Mr. BADAWI (Rapporteur) said that consultations had been held and it had been proposed that a progress report should not be submitted at the current session since the Committee had not completed its consideration of the matters before it. A final report would be submitted at the end of the forthcoming session in August.

The CHAIRMAN suggested that the Sub-Committee should adopt the proposal made by the Rapporteur.

It was so decided.

The CHAIRMAN read out a draft letter which he planned to send to the Chairman of the Main Committee concerning the decision just taken. He also read out a letter he had received from the Chairman of the Main Committee, who requested that any general statements, as contemplated in paragraph 4 of document A/AC.138/8, should be made at the very beginning of the Committee's meetings which were scheduled for 27 and 28 March 1969. He expressed the hope that the progress reports of the two Sub-Committees would not require lengthy consideration since they had already been discussed in the Sub-Committees. Finally, he proposed that the Committee should consider its programme for the third session and any proposals for holding consultations in the inter-sessional period and other arrangements designed to facilitate and accelerate the proceedings of the third session.

The Chairman said that the draft letter which had been approved by the Sub-Committee answered one of the questions raised in the letter from the Chairman of the Main Committee. With regard to the Norwegian proposal, he noted that the representative of India, supported, inter alia, by the representatives of Thailand and Nigeria, had requested him to undertake consultations with a view to determining whether it would be possible to set up a working group. He suggested that the meeting should be suspended to allow time for those consultations.

The meeting was suspended at 12.50 p.m. and resumed at 1.5 p.m.

The CHAIRMAN informed the Sub-Committee that no general agreement had been reached during the consultations with regard to the establishment of a working group. Several delegations, however, had said they were prepared to meet with one

(The Chairman)

another, if necessary, between now and the third session. The possibility was not excluded that an agreement might be reached to establish a working group when the Committee resumed its work in August.

The Chairman said he intended to enter into consultations on the programme of work for the third session, which would have to be co-ordinated with the agenda of the Main Committee.

Mr. PANYARACHUN (Thailand) said he was sorry to see that the Norwegian proposal, which appeared to enjoy the support of many delegations, had not been accepted. He feared that the progress made by the Sub-Committee at the current session would be largely negated if its work was suspended until August and the discussion was renewed without any conclusions having been reached, as was indeed the case. He wondered whether it would be possible to take up that matter again during the two days of the Main Committee's meetings. If the discussions did not produce any positive results, the matter would have to be taken up again at the beginning of the third session.

The CHAIRMAN said he was willing to continue consultations, but he did not feel that delegations would change their minds in the space of two days. Representatives had to consult their Governments, and there would not be enough time for them to do so. The establishment of a working group at the beginning of the third session was still in the realm of speculation.

Mr. KHANACHET (Kuwait) said that, in his opinion, representatives could express themselves more freely in the atmosphere of a working group than in a sub-committee. He urged the delegations who had opposed the establishment of a working group to reconsider, and he requested the Chairman to continue his consultations to that end during the next two days. If those consultations were unsuccessful, delegations should meet informally before August in order to prepare a draft statement for the third session in the broadest possible terms.

Mr. ARORA (India) supported the remarks made by the representative of Kuwait and requested the Chairman to direct the discussions which might be held in the inter-sessional period so that the proposed statement of principles could be drafted as quickly as possible.

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Mr. SCHRAM (Iceland) endorsed the Norwegian proposal and joined those requesting the Chairman to continue his consultations during the next two days with a view to reaching a compromise.

Mr. BAKOTO (Cameroon) said that he appreciated the merits of the Norwegian proposal, but wished to point out that it was difficult for representatives to take part in a working group when they already had a very heavy schedule. He recommended that the Chairman should prepare a list of delegations which were willing to take part in a working group and that list would be submitted to all delegations for approval. He requested the Chairman to make informal contacts so that the matter might be settled.

Mr. PARDO (Malta) said that he shared the misgivings expressed by the representative of Thailand.

Mr. ZEGERS (Chile) said that his delegation was among those which favoured the establishment of a working group. He stressed that the Sub-Committee should urgently begin to prepare a compilation of principles and should affirm its support of the idea of consultations among delegations.

Mr. OULD HACHEME (Mauritania) said he would like to see an agreement reached on the establishment of a working group which would be entrusted with preparing a programme for the next meeting.

The CHAIRMAN said that he would continue his consultations with a view to setting up an official or informal working group.

CLOSURE OF THE SESSION

After the customary exchange of courtesies, the Chairman declared the session closed.

The meeting rose at 1.40 p.m.
