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Sea bed



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

GENERAL ASSEMBLY

OFFICIAL RECORDS : TWENTY-FOURTH SESSION

SUPPLEMENT No. 22 (A/7622)



UNITED NATIONS

(163 p.)

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New York, 1969

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

PART ONE

1. The General Assembly, by resolution 2467 A (XXIII) of 21 December 1968, established the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and instructed it:

(a) To study the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and to ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole;

(b) To study the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole;

(c) To review the studies carried out in the field of exploration and research in this area and aimed at intensifying international co-operation and stimulating the exchange and the widest possible dissemination of scientific knowledge on the subject;

(d) To examine proposed measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of the area.

2. The General Assembly also called on the Committee to study further within the context of the title of the item, 1/ and taking into account the studies and international negotiations being undertaken in the field of disarmament, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which may be agreed upon in this respect.

1/ The title of the item reads: "Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind."

3. The Committee was requested to work in close co-operation with the specialized agencies, the International Atomic Energy Agency and intergovernmental bodies dealing with the problems referred to in the resolution so as to avoid duplication and overlapping of activities; to make recommendations to the General Assembly on the questions referred to in paragraphs 1 and 2 above; and, in co-operation with the Secretary-General, to report on its activities to the General Assembly at each subsequent session.

4. By resolution 2467 D (XXIII), the General Assembly requested the Secretary-General to report to the Committee on a study, to be undertaken in co-operation with the competent bodies undertaking co-ordinated work in the field of marine pollution control, of all aspects of the protection of the living and other resources of the sea-bed and ocean floor, the superjacent waters and the adjacent coasts against the consequences of pollution and other harmful effects arising from exploration and exploitation.

5. By resolution 2467 C (XXIII), the Assembly requested the Secretary-General to undertake a study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of the area, and the uses of these resources in the interests of mankind, irrespective of the geographical location of States, and taking into special consideration the interests and needs of the developing countries, and to submit a report thereon to the Committee for consideration during one of its sessions in 1969. The Assembly called on the Committee to submit a report on this question to the Assembly at its twenty-fourth session.

6. In accordance with the decision^{2/} taken by the First Committee at its 1648th and 1649th meetings on 19 and 20 December 1968, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National

2/ In connexion with the composition of this Committee, the Chairman of the First Committee made the following statement which was accepted by the First Committee as an integral part of its decision:

"1. As far as the composition of the Committee is concerned, in view of the extensive consultations I had with the representatives of regional groups and of Member States, I take it that there is a broad consensus on the following principles:

"(a) Due regard should be given to an equitable geographical distribution;

"(b) A reasonable balance between technically developed and developing countries should be established;

"(c) Not only the interests of coastal States but also those of land-locked countries should be borne in mind;

"(d) The composition of this Committee shall not constitute a precedent for any other committee to be created in the future.

(Foot-note continued on following page)

Jurisdiction was composed of the following Member States: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Ceylon, Chile, Czechoslovakia, El Salvador, France, Iceland, India, Italy, Japan, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Malta, Mauritania, Mexico, Nigeria, Norway, Pakistan, Peru, Poland, Romania, Sierra Leone, Sudan, Thailand, Trinidad and Tobago, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Yugoslavia.

7. The following Member States which requested accredited observer status were represented at the sessions of the Committee: Barbados, Burma, Denmark, Guyana, Jamaica, Netherlands, New Zealand, Nicaragua, Philippines, Portugal, South Africa, Spain, Sweden, Turkey, Ukrainian Soviet Socialist Republic and Venezuela.

8. Representatives of the International Atomic Energy Agency and the following specialized agencies attended sessions of the Committee: the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and its Inter-Governmental Oceanographic Commission and the Inter-Governmental Maritime Consultative Organization.

9. The Committee held three sessions at United Nations Headquarters: on 6 and 7 February, from 10 to 28 March and from 11 to 29 August 1969. During the three sessions the main Committee held eleven meetings, the Legal Sub-Committee twenty-nine meetings and the Economic and Technical Sub-Committee twenty-five meetings.

10. At its first session, the Committee elected its officers and established a Legal Sub-Committee and an Economic and Technical Sub-Committee. The officers of the Committee were as follows:

(Foot-note 2 continued from previous page):

"2. In recognition of the considerable interest of Member States in participating in the work of the Committee, an understanding has been reached that its composition shall be subject to rotation.

"In principle, one third of the membership of each regional group will rotate every two years. There is however no formal provision in the draft resolution in this respect since, rather than organizing elections by the General Assembly, it is felt that informal arrangements should be worked out by the regional groups with regard to a rotating system which would be implemented on the basis of mutual agreement amongst States or groups of States, and announced by the Chairman of the First Committee every two years. The periodical rotation within each regional group will be applied without any discrimination against any Member State. Successive terms by the same State are not excluded.

"3. It has also been agreed that any Member State wishing to follow the work of the Committee shall be entitled to accredited observer status, which entails the right to be represented at all meetings of the Committee and its sub-committees and the possibility to offer its contribution to the debate..."

Main Committee:

Chairman: Mr. Hamilton Shirley Amerasinghe (Ceylon)

Vice-Chairmen: United Republic of Tanzania (Mr. Akili B.C. Danieli)
Chile (Mr. José Piñera)
Norway (Mr. Jens Evensen)
Poland (Mr. Bohdan Tomorowicz - first two sessions)
(Mr. Leszek Kasprzyk - third session)

Rapporteur: Mr. Victor J. Gauci (Malta)

Legal Sub-Committee:

Chairman: Mr. Galindo Pohl (El Salvador)

Vice-Chairman: Mr. Alexander Yankov (Bulgaria)

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

Economic and Technical Sub-Committee:

Chairman: Mr. Roger Denorme (Belgium)

Vice-Chairman: Mr. R.C. Arora (India)

Rapporteur: Mr. Anton Frohaska (Austria)

11. At its first session, the Committee considered proposals for a programme of work. ^{3/} Following discussions, the Committee at its third meeting on 7 February decided to entrust the Chairman, in consultation with delegations, with the preparation of a programme of work and the allocation of items. Following extensive consultations, the Chairman presented to the Committee at the opening of its second session proposals for the organization of work (A/AC.138/8) which were approved by the Committee at its fourth meeting on 10 March. The approved programme of work is shown in annex I.

12. In accordance with the decisions of the General Assembly and the requests of the Committee, the following documents were submitted to the Committee by the Secretary-General: a preliminary note on the economic consideration conducive to promoting the development of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction in the interests of mankind (A/AC.138/6 and Corr.1 (French and Russian only)); a working paper on

^{3/} Working paper submitted by Belgium (A/AC.138/1) and draft programmes of work submitted by Argentina, Brazil, Chile, El Salvador, Mexico, Peru and Trinidad and Tobago (A/AC.138/2); Bulgaria, Czechoslovakia, Poland, Romania, and the USSR (A/AC.138/5); United States (A/AC.138/4); and India, Kenya, Kuwait, Liberia, Madagascar, Malaysia, Sierra Leone, Sudan, Thailand, United Arab Republic and Yugoslavia (A/AC.138/5).

proposals and views relating to the adoption of principles (A/AC.138/7 and Corr.1-4); a supplement to the survey of national legislation concerning the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction contained in documents A/AC.135/11 and Corr.1 and Add.1 (A/AC.138/9); a report of the Secretary-General containing a study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction and the use of these resources in the interests of mankind (A/AC.138/12 and Corr.1 and Add.1 and Add.1/Corr.1); a note on a study on marine pollution which might arise from the exploration and exploitation of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction (A/AC.138/13). Also before the Committee were a letter dated 27 February from the Chairman of the Inter-Governmental Oceanographic Commission addressed to the Secretary-General (A/AC.138/10); a note by the Secretary-General transmitting for the information of the Committee the Draft Comprehensive Outline of the Scope of the Long-Term and Expanded Programme of Oceanic Exploration and Research, prepared by the Special Working Group of IOC (A/AC.138/14 and Corr.1 (English only)) and a note by the Inter-Governmental Maritime Consultative Organization (A/AC.138/15).

13. At the close of its second session, the Committee reached a consensus that informal consultations should be held among various delegations of the Committee, between the end of the second session and the beginning of the third session, under the auspices of the Chairman of the Legal Sub-Committee, with a view to facilitating the task of achieving a common agreement on the question of general principles to be considered in the early part of the third session. The outcome of these consultations is covered in the report of the Legal Sub-Committee.

14. At its third session on 29 August, the Committee approved the respective reports of the Legal Sub-Committee (A/AC.138/18) and of the Economic and Technical Sub-Committee (A/AC.138/17). In view of the detailed consideration and discussion that went into the preparation and adoption of the reports of the two Sub-Committees, they are incorporated in the present report.

15. The reports of the two Sub-Committees clearly demonstrate the extent of the work involved and the time necessary for the formulation of specific recommendations to the General Assembly, as called for under operative paragraph 4 (b) of General Assembly resolution 2467 A (XXIII). The time available to the Committee was necessarily limited and the subject before it extremely complex. In spite of intensive discussions, it was not found possible to arrive at the stage of making specific recommendations on the substantive matters before the Committee. The synthesis contained at the end of the report of the Legal Sub-Committee reflects the measure of progress achieved in the sustained attempt to arrive at a formulation of principles, which was one of the main preoccupations of the members of the Committee. The Committee considers that these efforts should be continued with a view to the formulation of recommendations during future sessions.

16. The report of the Economic and Technical Sub-Committee reflects the detailed consideration given, in accordance with operative paragraph 2 (b) of resolution 2467 A (XXIII), to the ways and means of promoting the exploitation

and use of the resources of this area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole. A preliminary exchange of views also took place in this Sub-Committee in connexion with the examination of the economic and technical aspects of the Draft Comprehensive Outline of the scope of the long-term programme of oceanic exploration. Comments and suggestions were made which it was agreed would be brought to the attention of IOC for its consideration when the final outline of the scope of the long-term programme was elaborated.

17. The Committee hopes to be in a position in the coming year to give further attention to the matters entrusted to it under operative paragraphs 2 (c) and (d) of resolution 2467 A (XXIII) in the light of the reports and studies expected to be available.

18. The Committee heard a number of statements with reference to operative paragraph 3 of resolution 2467 A (XXIII), under which the Assembly, inter alia, called upon it to study the reservation of the area exclusively for peaceful purposes, taking into account the studies and international negotiations being undertaken in the field of disarmament. The Committee noted that it was also requested, in accordance with operative paragraph 4 (a) of the same resolution, to work in close co-operation with other intergovernmental bodies working within its area of activity. In this connexion the hope was expressed that the Committee would be kept informed of the progress of the current negotiations in the Conference of the Committee on Disarmament.

19. In the very limited time at its disposal, the Committee was unable to finalize its study in detail of all the various aspects of the report of the Secretary-General (A/AC.138/12 and Corr.1 and Add.1 and Add.1/Corr.1) relating to the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction and the use of their resources in the interests of mankind - an item which by virtue of resolution 2467 C (XXIII) was accorded a degree of priority. The Economic and Technical Sub-Committee was however able, as its report indicates, to devote close attention to those aspects of the report falling within its competence. Statements in connexion with the Secretary-General's report were also made in the main Committee during the closing stages of its work. The Committee considers that it should place on record the view, expressed by a number of delegations in the Economic and Technical Sub-Committee, that the report of the Secretary-General constitutes a useful point of departure which can form a basis for further detailed consideration, although a number of delegations took the position that, because of the complexity and the interrelated aspects of the issues involved, Governments might require additional time to study the report. The Committee therefore proposes to consider this question further during its sessions in 1970. The suggestion was made with approval by the Committee that the Secretary-General be requested to continue in depth the study of the establishment in due course of appropriate international machinery, concentrating on the following areas: (a) status of the machinery; (b) structure of the machinery; (c) powers and authority to be given to this machinery; (d) activities and functions of the machinery. In accordance with a decision of the Committee, the report of the Secretary-General on machinery is annexed to this report (annex II).

20. The Committee considers that it would be desirable in future that it be allowed more time to carry out its programme of work under the terms of reference given to it by the Assembly, and suggests that it should be allotted two sessions of four weeks each during 1970, and a short, preliminary meeting to discuss procedural matters before the main sessions.

PART TWO

REPORT OF THE LEGAL SUB-COMMITTEE

1. At its first meeting, held on 6 February 1969, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction decided to establish a Legal Sub-Committee and a Technical and Economic Sub-Committee, both as sub-committees of the whole.

2. Also at its first meeting the Committee elected the following officers of the Legal Sub-Committee:

Chairman Ambassador Reynaldo Galindo Pohl (El Salvador)

Vice-Chairman Mr. Alexander Yankov (Bulgaria)

Rapporteur Mr. Halim Badawi (United Arab Republic)

3. At its fourth meeting, held on 10 March 1969, the Committee approved the proposal on organization of work (A/AC.138/8) submitted by the Chairman. The following items were accordingly assigned to the Legal Sub-Committee:

"(i) Operative paragraph 2 (a) of resolution 2467 A (XXIII) - To study the elaboration of legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, having regard to the economic and other requirements which such a regime should satisfy in order to meet the interests of humanity as a whole.

"(ii) Legal implications of:

(a) all other questions mentioned in the terms of reference of the Committee as contained in resolution 2467 A (XXIII); and

(b) the reports submitted by the Secretary-General pursuant to resolutions 2467 B, C, and D (XXIII) and 2414 (XXIII)".

It was agreed that the Sub-Committees would be free to determine their order of business. It was also agreed to request each Sub-Committee to prepare and adopt its report, containing its recommendations, for submission to the main Committee.

4. At its first meeting, held on 12 March 1969 the Legal Sub-Committee adopted the agenda for the session (A/AC.138/SC.1/2).

5. On the basis of a note by the Chairman (A/AC.138/SC.1/1) and proposals submitted by various delegations, the Sub-Committee adopted at its third meeting on 14 March 1969 the following programme of work (A/AC.138/SC.1/3):

"Operative paragraph 2 (a) of resolution 2467 A (XXIII) - To study the elaboration of legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, having regard to the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole.

"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) applicability of international law, including the United Nations Charter;
- "(3) reservation exclusively for peaceful purposes;
- "(4) use of the resources for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of developing countries;
- "(5) freedom of scientific research and exploration;
- "(6) reasonable regard to the interests of other States in their exercise of the freedoms of the high seas;
- "(7) question of pollution and other hazards, and obligations and liability of States involved in the exploration, use and exploitation;
- "(8) other questions;
- "(9) synthesis.

"B. Norms."

6. In adopting its programme of work, the Sub-Committee requested the Chairman to draw up a statement containing the understanding reached by the Sub-Committee with respect to the inclusion in the programme of work of certain additional items. At the tenth meeting the Chairman read out the statement requested of him, which was as follows:

"During the discussion of the programme of work, on the basis of document A/AC.138/SC.1/1, some delegations proposed that references to certain subjects should be added to the programme.

"At its third meeting the Sub-Committee requested that I should, after appropriate consultations, make a statement concerning those subjects which had not been specifically mentioned in the programme.

"Having carried out the appropriate consultations, I am in a position to state the consensus of the Sub-Committee as follows: subjects mentioned in the report of the Ad Hoc Committee and matters which appear in the draft resolutions which were submitted to the First Committee and which were passed on to the Sea-Bed Committee as background material may be discussed by any delegations wishing to do so, and the Sub-Committee will give them due consideration.

"The programme, with its division by subjects, is not restrictive in nature, does not interpret General Assembly resolution 2467 A (XXIII) and makes no prejudgement concerning the positions delegations may adopt on questions of substance.

"With the consent of the Sub-Committee, I shall request the Secretariat and the Rapporteur to include this statement in the summary record of today's meeting and in the report of the Sub-Committee, respectively."

7. As requested by the Chairman of the main Committee, the Legal Sub-Committee gave consideration to General Assembly resolutions 2478 (XXIII) and 2292 (XXII) which required the Committee to consider dispensing with summary records. In view of the delicate nature of its work and the heavy responsibilities which it entailed for the delegations concerned, the Sub-Committee decided not to dispense with summary records.

8. Following consultations with the Chairman of the main Committee, the Sub-Committee at its eleventh meeting decided to present a single report to the Committee, covering the results of its deliberations during its March and August sessions.

9. In the debates during the March session reference was made to the draft resolutions and amendments submitted to the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor or to the First Committee at the twenty-third session of the General Assembly. The text of the draft resolutions and amendments were contained in the annex to a working paper prepared by the Secretariat, entitled "Proposals and views relating to the adoption of principles" (A/AC.138/7 and Corr.1-4). A draft resolution suggested by the delegation of Malta (A/AC.138/11) was also referred to in the debates.

10. The Legal Sub-Committee met between 12 and 26 March 1969 at United Nations Headquarters in New York. It held eleven meetings; it met again at Headquarters between 11 and 28 August 1969 during which period it held eighteen additional meetings.

11. At the close of the March session, some delegations felt that a very important feature of the debate had been the widespread support for an early statement of basic principles. It was, however, emphasized that such a declaration should be a comprehensive and well-balanced one, taking into consideration the position of all members. The view was expressed that since the differences between the proposed sets of principles were not so great, efforts to reach agreement should continue. For this purpose, it was suggested that the proponents of each set of principles should establish a working group before the summer session of the Committee and try to arrive at an agreed formulation of basic principles, the consultations could take place under the direction of the Chairman of the Sub-Committee. The main Committee agreed at its sixth meeting, held on 28 March 1969,

that the Chairman of the Legal Sub-Committee would hold informal consultations with delegations with a view to reaching agreement on legal principles before the session scheduled for August. Such consultations took place during the months of June and July. In the absence of the Sub-Committee's Chairman and Vice-Chairman, Mr. Felipe Vega Gomez of the Mission of El Salvador and later Mr. Dimitar T. Kostov of the Mission of Bulgaria presided over the consultation meetings. An informal drafting group consisting of the representatives of Brazil, India, Libya, Norway, the Union of Soviet Socialist Republics and the United States of America held several meetings to consider the formulations proposed on all items of the programme of work adopted on 14 March 1969. It produced a paper entitled "Report of the Informal Drafting Group on the formulations proposed under the programme of work (A/AC.138/SC.1/3)", document A/AC.138/SC.1/4, which is annexed to this report.

12. At its twelfth meeting, commencing the August session, the Sub-Committee adopted the agenda for the session (A/AC.138/SC.1/5). At the same meeting it also adopted the following programme of work (A/AC.138/SC.1/6) which had been suggested by the acting Chairman, Mr. A. Yankov:

- "1. Consideration of the Report of the Informal Drafting Group on the formulations proposed under the programme of work (A/AC.138/SC.1/3), document A/AC.138/SC.1/4
- "2. Consideration of the legal aspects of the report submitted by the Secretary-General pursuant to resolution 2467 C (XXIII) regarding international machinery (A/AC.138/12 and Corr.1 and Add.1 and Add.1/Corr.1)
- "3. Consideration of the legal aspects of a long-term and expanded programme of oceanic exploration and research (note by the Secretary-General, document A/AC.138/14 and Corr.1 (English only))
- "4. Consideration of the report of the Legal Sub-Committee to the Committee for the 1969 period of its work."

13. The Sub-Committee, having approved its programme of work, agreed that the report of the Informal Drafting Group would constitute the basis for the discussion concerning the formulation of principles.

14. The subjects discussed by the Sub-Committee at both sessions will be dealt with in the next paragraphs of this report under the relevant items of the report of the Informal Drafting Group since, with the exception of the introductory part of the programme of work of the March session (operative paragraph 2 (a) of resolution 2467 A (XXIII)), all items dealt with therein coincide with the nine items of the programme of work for the March session.

Operative paragraph 2 (a) of resolution 2467 A (XXIII) - To study the elaboration of legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, having regard to the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole

15. Some delegations felt that at that stage of the Sub-Committee's work only basic principles should be considered as they would serve as a foundation for a more substantial structure to be elaborated upon later; initially, only those basic principles which give rise to lesser difficulties might be drafted. It was suggested that the principles should be few, broad and flexible as the Committee was dealing with an area not yet comprehensively regulated, and which some considered undefined, the possible uses of which could not yet be foreseen. On the other hand, it was stressed, principles should be comprehensive and well balanced in order to embody the aspirations of all members of the international community and avoid ambiguities which would later give rise to conflicts. It was underlined that clarity should not be sacrificed to brevity. It was generally recognized that, in any case, in the elaboration of principles particular consideration should be given to the special needs and interests of developing countries.

16. The view was expressed that from a practical viewpoint it was necessary that the adoption of principles by the General Assembly should have unanimous support or at least the support of a substantial majority, including that of the principal maritime Powers and of States having special maritime interests. A view was expressed that the declaration to be adopted by the General Assembly in the exercise of its powers under Article 13, paragraph 1 (a), of the Charter, would possess binding force. Some delegations opposed this view. It was also suggested that some or all of the principles to be contained in the General Assembly's declaration or recommendation should be eventually given form in an international convention.

17. It was also pointed out that it would be unwise to send a statement of principles to the General Assembly before the real and legitimate differences of opinion still existing were duly overcome as such a statement should be one which gives satisfaction to all nations.

18. One of the suggestions that were made was that the same procedure followed with respect to outer space might be followed by the Sub-Committee: a limited number of basic principles could at an early date be recommended for adoption by the General Assembly, while agreement was awaited on a fuller declaration of principles which would eventually provide the basis for an international treaty or treaties. On the other hand, it was suggested that it was desirable to have a meaningful and comprehensive declaration. It was also suggested that once an agreement on principles has been reached elaboration of such principles into precise legal rules shall proceed without delay.

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

(1) Legal status

(a) General discussion

19. According to many delegations both the concepts of res nullius and res communis were of little practical value for the determination of the legal status of the area of the sea-bed and ocean floor beyond the limits of national jurisdiction. It was also pointed out that the occupation and national lake theories were legally untenable and politically unacceptable.

20. It was suggested that the notion of the "common heritage of mankind" would provide the basis for specific principles concerning the area; accordingly all the rules and principles for activities in the sea-bed should be based on that notion. Its elements and consequences were: the notion of trust and trustees; indivisibility of the heritage; the regulation of the use of that heritage by the international community; the most appropriate equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries; freedom of access and use by all States; and the principle of peaceful use.

21. The same view held that the concept of "common heritage of mankind" implies an international machinery for the regulation and management of the sea-bed and ocean floor beyond the limits of national jurisdiction on behalf of the international community. A suggestion was put forward that, for purposes of exploration and exploitation, the area of the sea-bed and ocean floor beyond national jurisdiction be deemed to have been vested in the United Nations for the benefit of mankind as a whole.

22. Certain delegations expressed the view that the new legal order should be governed by the "good of mankind" or "the common interest of mankind", these phrases being preferred to the word "heritage" which might give rise to difficulties in the formulation of legal norms.

23. On the other hand, some delegations stated that the concept of "common heritage of mankind" was contrary to existing norms and principles of international law. It was also stated that it was devoid of legal content and that its discussion was not practically useful. Another view was that it was also open to various interpretations and that it could not be understood until its implications were spelled out. But it was also pointed out that, before their adoption, all legal concepts are devoid of legal content and that therefore that argument was irrelevant.

24. Some delegations considered that a practical solution based on international law would be provided by the provisions of the Convention on the High Seas according to which the high seas were open to all nations on equal terms and no State could validly purport to subject any part of them to its sovereignty.

25. Reference was also made to the principle that "no State may claim or exercise sovereign rights over any part of this area, and no part of it is subject to national appropriation by claim of sovereignty, by use or by occupation, or by any other means". This principle was recognized in the Antarctica and Outer Space

Treaties in regard to their respective fields and, according to existing rules of international law it would not preclude any nation from exploring or exploiting these areas. Therefore, it was contended, there should similarly be a clear distinction between non-appropriation of the sea-bed, on the one hand, and exploitation or use of it, on the other.

26. It was however pointed out that acceptance of the non-appropriation principle would be of no practical value if it were linked with an unqualified concept of freedom of exploration and exploitation, since it would only benefit the very few countries which have the capability of exploiting the sea-bed resources, without due compensation to the international community as a whole and the developing countries in particular.

27. The view was expressed that pending the establishment of an international régime the exploration and exploitation of the resources could be continued without being accompanied by any claim of national sovereignty over that area. This view was contested.

(b) Consideration of the report of the Informal Drafting Group

28. The Sub-Committee examined each of the eight elements listed under the item and the respective explanations included in the report. Some delegations held the view that only general principles should be included in a draft declaration: corollaries or detailed formulations inevitably gave rise to divergencies and impeded obtaining the necessary support for a draft declaration. However it was pointed out that a more comprehensive declaration was needed in order to safeguard the interest of mankind. Other delegations considered most of the elements listed as necessary to delineate the legal status of the sea-bed.

29. With regard to the concept of "common heritage of mankind", arguments for or against it were reiterated. It was said that this expression lacked legal content, was imprecise, and, being novel, could not be interpreted on any generally accepted basis. It was argued on the other hand that once it had been enshrined in a declaration the concept would have universal validity as had been the case with the similar expression "province of all mankind" used in the outer space treaty. (However, as regards the expression "province of all mankind" in the outer space treaty, it was pointed out that it does not refer to outer space or the moon but to the exploration and use of outer space and the moon.) Furthermore, new technology and problems required the development of new concepts. It was further argued that that concept was the basis on which a formulation of a declaration of principles should be elaborated. It was suggested that the concept that the area belongs to humanity as a whole is the basis for the prohibition of the exercise or claim of sovereignty and of all forms of appropriation. Some delegations doubted whether a general concept was required or desirable at that stage of the Sub-Committee's deliberations since the particular features of the régime for the area would have first to be weighed and agreed upon; such process of analysis and agreement logically preceded the question whether there is any general concept by which all the aspects of the legal status of the area may be summarized.

30. It was proposed that the concept of "common heritage of mankind" should be mentioned in the operative part of the declaration. Some delegations felt that the concept might be accepted as a synthesis of the particular principles agreed upon. It was also suggested that the concept could be included in the preambular part of a draft declaration of principles.

31. Elements (ii), (iii), (iv) and (v) (see annex to the present report) were dealt with together since they were closely interrelated. While the principle of non-appropriation and the prohibition of the exercise of sovereignty over the area were found generally acceptable, some delegations expressed the view that this acceptance would be conditional upon the general agreement on a declaration of principles. Certain doubts were expressed on the references to jurisdiction and property. Various formulations were put forward amending the wording of these four elements or eliminating ideas which appeared to be superfluous or unsuitable; one of these formulations was a synthesis of the four elements.

32. Elements (vi) and (viii) were regarded by some delegations as being more suitable for inclusion under item 4 (use of the resources for the benefit of mankind as a whole); other delegations were of the view that element (vi) was inseparable from the concept of "common heritage of mankind" and should therefore be retained in item 1.

33. Element (vii) ("this area should be considered separately from the superjacent waters of the high seas") gave rise to the observation that it suffered from obscurity and could lend itself to various interpretations. One interpretation was that the formulation would apply once a régime for the sea-bed had been established, although the existing law of the sea would continue to be relevant in so far as the régime of the sea-bed ought to respect the rules which govern human activities in the other areas of the sea. It was emphasized that the status of the superjacent waters as high seas and the air space above it should be preserved. Some delegations expressed doubts as to the adequacy of a separate treatment for the sea-bed and the superjacent waters since these areas constituted an organic unity. But it was also pointed out that in spite of also constituting an organic unity with the superjacent waters, the continental shelf had already been the object of a separate treatment for the purpose of the exploration and exploitation of its resources. For other delegations, while the régime governing the sea-bed would have to be considered in relation to the régime governing the superjacent waters, the Committee's terms of reference did not cover the superjacent waters and the status of those waters should therefore not be mentioned in the enumeration of legal principles concerning the sea-bed. It was suggested that in any event element (vii) belonged to item 2 (applicability of international law). It was also said that although element (vii) is a basic assumption its inclusion in the declaration did not seem essential. It was also suggested by some delegations that the régime of the high seas should not and indeed could not automatically be applicable to the régime of the sea-bed and ocean floor. And it was further suggested by some delegations that any freedoms laid down in the Convention on the High Seas should apply to the sea-bed only as far as provided by the régime to be set up. Other delegations pointed out that international law governing the high seas is also applicable to the bottom of the sea, beyond the limits of national jurisdiction.

34. The view was expressed that item 1 omitted two important elements: (1) the recognition that there exists an area of the sea-bed and the ocean floor and subsoil thereof which lies beyond the limits of national jurisdiction, and (2) the recognition of the need for an internationally agreed and precise boundary for the area. It was noted that existing uncertainty as to where such a boundary should be drawn may be a serious obstacle to the formulation of legal norms regulating questions concerning the exploitation of the sea-bed. However, it was pointed out that the existence of the area was the main assumption of the work

of the Committee and therefore need not be spelt out in a statement of principles. It was further pointed out that these elements had not been included because they were unnecessary and irrelevant to the item; moreover, these two elements had been dealt with extensively by the Sub-Committee under item 3 (Other questions). It was also stated that the Committee and the Sub-Committee were not competent to deal with the delimitation of the area.

35. As a corollary to elements (ii), (iii), (iv) and (v), the suggestions were made that the appropriation of the resources of this area shall be effected in accordance with the régime to be established on the basis of the principles contained in the declaration; and that the activities of non-governmental organizations and of private persons in the area must be authorized and kept under constant surveillance by a State or an intergovernmental organization. Owing to lack of time these suggestions were not discussed by the Sub-Committee.

(2) Applicability of international law, including the United Nations Charter

(a) General discussion

36. Some delegations emphasized that international law, including the Charter of the United Nations, is applicable to the activities of States on the sea-bed. It was also stated that international law by its scope was considerably broader than concrete norms applicable to the regulation of activities of States in any individual area, for instance in the various marine environments included in the high seas - the sea-bed, water column, and superjacent air space. In this connexion some general international legal principles were mentioned, such as the renunciation of the threat or use of force in the relations among States, respect for the provisions of international treaties to which they are parties, international responsibility of States, respect for territorial integrity, etc. Some delegations stressed the importance of the Convention on the High Seas, the Convention on the Continental Shelf and other international agreements, particularly the 1963 treaty banning nuclear weapon tests in the atmosphere, in outer space and under water and the 1959 treaty on Antarctica, in defining the international law applicable to the sea-bed. It was impossible to say, according to these delegations, that a legal vacuum existed and that international law was only partly applicable to the sea-bed. As applicable guidelines in the Charter of the United Nations mentioned in this connexion, reference was made to the principle concerning sovereign equality of States and the maintenance of international peace and security, the peaceful settlement of disputes and the promotion of international co-operation.

37. Those delegations which advocated the concept of "common heritage of mankind" emphasized that existing international law was mostly customary or contained only very general legal principles to regulate the conduct of States relating to the sea-bed beyond national jurisdiction, of which the relevance was not specific and only incidental. In their opinion, existing international law cannot be applied in its totality to the sea-bed and therefore existing principles which are only applicable in part or by doubtful and controverted analogy to a different environment cannot, and should not, be invoked; it is only possible to derive from the Charter of the United Nations and existing international law at most certain guidelines, but these guidelines do not suffice to constitute norms. It was controverted in this connexion which specific principles of international law were suitable for application to the sea-bed; this ambiguity required urgent

clarification; also, in some cases the application of some principles of existing international law to the sea-bed would have grave, inequitable consequences for many States. Some delegations felt that the 1958 Geneva Convention on the Continental Shelf, which related in some ways to the sea-bed beyond national jurisdiction, was inadequate and incomplete in respect to its application to this area. It was pointed out that the large and obvious lacunae in the law in this respect were best shown by the fact that the Committee had been charged with the task of elaborating new legal principles in this field; at the same time, the application of present international law would have the effect of permitting the indiscriminate exploitation of sea-bed resources and this would be contrary to the interests of the international community.

(b) Consideration of the report of the Informal Drafting Group

38. In the light of the views they had already expressed, delegations lent their support or argued against the elements set forth in paragraph 14 of the report of the Informal Drafting Group. None of them was deemed entirely satisfactory. However, it was stated that such elements did not contradict but complemented each other; this had been a necessary method for the purpose of arriving at widely acceptable formulations.

39. The discussion centred on the formulation suggested for the consideration of the Sub-Committee in paragraph 18 of the report. While some delegations expressed their readiness to accept this formulation, other delegations doubted its adequacy. Some of the delegations who doubted the adequacy of paragraph 18 argued that a distinction should be drawn between the norms applicable to the area and those applicable to the activities undertaken in the area, so that while the former undeniably applied - and a reference to them would be superfluous - the latter were virtually inexistent. Consequently and because activities had not yet been undertaken in the area, the only norms thus far existing were those concerning the laying of submarine cables and pipes. It was therefore equivocal to say that "all activities in this area shall be carried out in accordance with international law" since this would lead to the erroneous conclusion that the régime of the high seas applied to the area. The supporters of this view suggested that, by analogy with the order of priority established in Article 38 of the Statute of the International Court of Justice, the formulation should mention first the principles of the declaration and then the general principles of international law which would apply to situations not specifically provided for in the declaration. Other delegations considered that reference to Article 38 of the Statute of the International Court of Justice was irrelevant to the subject under discussion. Still other delegations questioned the desirability of the reference in the formulation in paragraph 18 to principles and norms to be agreed in the future since it could only be reasonably construed as applicable after the conclusion of an agreed régime and added nothing to the provisions of a statement of principles dealing with the question of a régime.

(3) Reservation exclusively for peaceful purposes

(a) General discussion

40. The view was expressed that the reservation of the sea-bed and the ocean floor for exclusively peaceful purposes was one of the most urgent matters engaging the attention of the international community since 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 and this would represent an obstacle to the use of the sea-bed for peaceful purposes. Various delegations emphasized the urgency of banning nuclear or other weapons as well as military bases and fortifications from the area beyond national jurisdiction. Other delegations stressed that the sea-bed and the ocean floor and the subsoil thereof beyond the limits of the maritime zone or coastal States, the boundaries of which are to be agreed upon in international negotiations on disarmament, shall be used exclusively for peaceful purposes; accordingly, all military activities shall be excluded and all forms of military use shall be prohibited. Some delegations stated that they had refrained from discussing this principle in view of the fact that discussions and negotiations were taking place on this subject in the Committee on Disarmament at Geneva. The view was expressed that while the Geneva Disarmament Committee was already considering disarmament and arms control measures in areas within and beyond national jurisdiction, the mandate of the Committee on the Peaceful Uses of the Sea-Bed was confined to the area beyond national jurisdiction and that it would therefore not be possible to accept a formulation applicable to the area over which States have sovereign rights for the purposes of exploration and exploitation of resources. Other delegations reminded the Committee of its terms of reference under operative paragraph 3 of resolution 2467 A (XXIII).

41. The initiative of the USSR in submitting a draft treaty to the Committee on Disarmament on 18 March 1969 was welcomed by some delegations. Supporters of the draft treaty stated that it went beyond a general declaration.

42. The view was expressed that any military activity on the sea-bed is incompatible with the use of the sea-bed exclusively for peaceful purposes. Reference was made to precedents and to understandings existing in this connexion since the Second World War. In this respect, mention was made of previous discussions in the Geneva Disarmament Committee, General Assembly resolutions on atomic energy, the Treaty on Non-Proliferation of Nuclear Weapons, article I of the Antarctic Treaty of 1959 1/ and article IV of the Outer Space Treaty. 2/

1/ This provision reads as follows:

"Article I

"1. 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.

"2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purpose."

2/ This provision reads as follows:

"Article IV

"States Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station weapons in outer space in any other manner.

"The Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the Moon and other celestial bodies shall also not be prohibited."

These precedents and understandings, it was contended, made it clear that the United Nations had invariably understood the use of a given environment for exclusively peaceful purposes to mean its complete demilitarization, which included the prohibition of all military activities whatever their purpose. Proponents of this interpretation stated that there should be no departure from such practice in the case of the sea-bed and the ocean floor; the expression "peaceful uses" should be defined along those lines in order to avoid ambiguity.

43. Other delegations reserved their position on this interpretation of the meaning of the expression "exclusively for peaceful uses" or stated that this expression in no way precluded military activities that are consistent with international law and the Charter of the United Nations.

44. Some delegations, while supporting the concept of the exclusion of military activities from the largest possible area of the sea-bed, pointed out that a difficulty in the realization of this desirable goal could be the interpenetration between scientific and military activities and the uncertainty as to whether it was possible to verify with present technology that certain military activities did not in fact take place on or under the sea-bed.

45. It was pointed out that the sovereign rights granted to the coastal State under the Continental Shelf Convention were limited to the purpose of exploring the continental shelf and exploiting its natural resources and therefore were quite irrelevant to its military uses; furthermore, the military use of the continental shelf would inevitably affect the peaceful exploration and use of the sea-bed. It was stated, on the other hand, that it could be assumed that States were not likely to ignore their security requirements simply because the Convention is silent or unclear on the subject.

46. It was emphasized that the implementation of the principle of peaceful uses of the sea-bed, the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, required the determination of the limits of the area to which such principle should be applied. Other delegations pointed out that given the mandate of this Committee, that view was irrelevant.

(b) Consideration of the report of the Informal Drafting Group

47. In the discussion of the principle of the "reservation exclusively for peaceful purposes", it was stated in the Sub-Committee that it was an essential or appropriate part of any declaration or statement of principles to be adopted by the General Assembly. It was stated that since the Geneva Disarmament Committee was endeavouring to elaborate detailed formulations of a treaty character in this respect, the Sub-Committee could well limit itself to principles couched in general terms, without by this detracting from its mandate under General Assembly resolution 2467 A (XXIII), paragraph 3. Such principles should avoid prejudicing positions of delegations on issues - such as that of the specific activities to be prohibited or the geographical scope of the prohibition - currently under negotiation. Some delegations supported this objective without referring to the work being done outside the Committee. However, there was a difference of opinion as to the meaning of "use exclusively for peaceful purposes". Some of the formulations suggested during the discussion referred to the question of limits which are to be agreed for these purposes. In this connexion, reference was made to paragraph 3 of General Assembly resolution 2467 A (XXIII).

(4) Use of the resources for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries

(a) General discussion

48. The view was emphasized by certain delegations that the Committee had been entrusted with the task of studying the establishment of an international legal régime for the sea-bed beyond the limits of national jurisdiction, and that that task implied in itself the use and exploitation of the area by all, without discrimination. It was further emphasized that the special interests and needs of the developing countries should, accordingly, be built into the very fabric of the régime, as this should not aim at the attainment only of equality of opportunity but provide for actual equitable sharing of benefits derived from the use, exploration and exploitation of the resources of the sea-bed. In any case, a most fundamental objective of the Committee's task was to avoid creating situations which may be detrimental to the technologically less developed countries, or in any way stifle them or destroy the incentives for their activities.

49. It was widely acknowledged that a balanced and coherent declaration of principles should recognize that land-locked States ought to be placed on an equal footing with coastal States. A view was also expressed that the exploration, use and exploitation of the sea-bed should not endanger the legitimate interests of coastal States, particularly of developing countries which do not dispose of adequate means to protect these interests.

(b) Consideration of the report of the Informal Drafting Group

50. With regard to the scope of application of the words "exploration, use and exploitation", two different views were expressed. Some delegations held the view that these words should apply to the area as a whole while others considered that they should apply only to the resources of this area. Both groups of delegations sought to justify their views by reference to the language of resolution 2467 A (XXIII). In addition, some of those who supported the second view interpreted the expression "use of the resources for the benefit of mankind" as limited to resources other than living resources, since the latter were clearly covered by the relevant provisions of international law governing fishing on the high seas.

51. It was emphasized that formulations pertaining to this item tended to consider an international régime as an essential prerequisite for the purpose of exploration, use and exploitation of this area. A difference of opinion, however, arose on whether the international régime should be qualified by the word "legal" since certain delegations argued that the term "agreed" would be sufficient. It was furthermore argued that any régime that is established has to be formulated in legal language and embodied in multilateral agreements. On this understanding a régime would be considered as a legal régime and accordingly the addition of the word "legal" was not too important.

52. During the discussion of the specific elements of paragraph 25 of the report, some delegations emphasized the contents of sub-paragraph (ii) ("Economic incentives") while considering that reference to international machinery in a statement of principles was not desirable; others emphasized the contents of sub-paragraph (iii) ("International machinery") and the central role which, in

their opinion, international machinery should play in a régime for the area, and also stressed that such a régime should provide appropriate and equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries.

53. Doubts were voiced as to the desirability in a régime for the exploitation of sea-bed resources of the provision in sub-paragraph (v) ("Take into account economic effects of exploitation, for example, to take required measures to minimize (control) the fluctuations of prices of raw materials in the world market resulting from the exploitation of the resources of this area"). Another view was that this was an essential provision of a régime, particularly as such a régime was expected to cover, according to this view, the area as a whole.

54. The view was expressed that sub-paragraph (vi) ("Accommodation among the commercial and other uses of this area and the marine environment") belonged more properly to item 6 ("Reasonable regard to the interests of other States in their exercise of the freedom of the high seas").

55. It was suggested that the provisions in paragraph 25 needed to be condensed, particularly those in sub-paragraphs (iv) to (viii).

56. Some delegations considered that the various elements of this item required a much closer examination because of their serious implications and the fact that the Sub-Committee had not studied the legal aspects of international machinery which were dealt with in the report of the Secretary-General on the subject (A/AC.138/12 and Corr.1 and Add.1 and Add.1/Corr.1). It was stressed by some delegations that the future legal régime for the exploitation of the resources of the sea-bed should not necessarily presuppose the establishment of an international machinery; it was also stressed that as the structure of resolution 2467 (XXIII) shows, the existence of a distinction between régime and machinery is established and accepted; consequently in the opinion of these delegations inclusion of a reference to international machinery in the legal principles would be unwarranted. These views, however, were contested.

57. A suggestion was made that a statement of principles should contain a commitment to the establishment of an internationally agreed régime and that it should spell out in general terms the more salient features of such a régime.

(5) Freedom of scientific research and exploration

(a) General discussion

58. The importance of this principle was emphasized in connexion with article 2 of the Geneva Convention on the High Seas and article 5 of the Convention on the Continental Shelf. Some delegations pointed out that the principle of the freedom of scientific research does not in itself give the exclusive right of economic exploitation of the resources of the area or provide the basis for freedom of economic exploration and exploitation. It was also stated that this particular freedom should entail the obligation to make results of scientific activities available to other States.

(b) Consideration of the report of the Informal Drafting Group

59. During the discussion on the elements listed in paragraph 26 of the report, the members of the Committee stressed the fundamental importance of scientific research on or concerning the sea-bed and the need to promote international co-operation conducive to such research.

60. Although the principle of freedom of scientific research was unanimously accepted, there was a difference of opinion as to establishing certain criteria designed to distinguish between pure scientific research and scientific research with commercial objectives. Thus, some delegations in supporting elements (ii) ("Communication beforehand of programmes of scientific research") and (iii) ("Communication of results of scientific research") took the position that the elements constituted either necessary pre-conditions or were an integral part of any formulation pertaining to freedom of scientific research. For these delegations an unconditional freedom of scientific research was susceptible of abuse, no freedom was absolute, and, with respect to the marine environment, freedoms must be exercised with reasonable regard to the interests of other States. Other delegations were of the view that freedom of scientific research exists and should exist as a matter of principle and not as a conditional right; they accordingly supported element (i) ("Freedom of scientific research without discrimination and avoidance of interference with such research"). Some of these delegations nevertheless supported elements (ii) and (iii) while others among them pointed out that scientific research and international co-operation in such research must not be impeded by any obstacles erected by elements (ii) and (iii). For some of these delegations a rigid prior or post dissemination or publication requirements were unrealistic since this requirement could not in all cases be imposed without disrupting, as to method and timing, the existing system for disseminating information used by the oceanographic community or without imposing unreasonable financial burdens on research institutions; also, element (v) ("Encouragement by States of their nationals to follow the practices concerning communication of information regarding programmes and results") had to be taken together with elements (ii) and (iii) since in some States private scientific institutions had a long tradition of independence.

61. Element (iv) ("Promotion of international co-operation") was found unquestionable.

62. Some delegations expressed the view that in element (vi) ("No rights of sovereignty or exploitation are implied in the carrying out of scientific research"), the reference to rights of sovereignty was unnecessary since the sea-bed and the ocean floor and subsoil thereof beyond the limits of national jurisdiction were not subject to sovereignty or sovereign rights (I. Legal Status, element (iii)). Some delegations, however, emphasized that no rights of exploitation should be implied in the carrying out of scientific research.

63. Some delegations emphasized the importance of making a distinction between scientific research of the marine environment directed to obtaining a wider knowledge of the environment and exploration as a preliminary step leading to commercial exploration. They pointed out in this respect that the title of item 5, which states freedom not only of scientific research but also of exploration, seemed to be misleading. Other delegations stated that there is no difference in concept between research and exploration and that their national legislation did not establish any distinction between the two.

64. The view was set forth that, since the marine environment constituted a whole, some rights of coastal States should be recognized with regard to research carried out in areas of the sea-bed which are adjacent to their national jurisdiction, so that research in the sea-bed is not used as a pretext for research on the continental shelf without the consent of the coastal State, as required by article 5, paragraph 3, of the Geneva Convention. This view was regarded as unacceptable by other delegations.

(6) Reasonable regard to the interests of other States in their exercise of the freedom of the high seas

(7) Question of pollution and other hazards and obligations and liability of States in the exploration, use and exploitation

(a) General discussion

65. In connexion with this concept reference to article 2 of the Convention on the High Seas was made. The protection of the interests of coastal States was mentioned in connexion with article 6 of the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas.

66. It was pointed out that the provisions of the Convention for the Prevention of Pollution of the Sea by Oil of 1954 and the Geneva Convention on the High Seas did not deal with all sources of pollution and lacked effective means of implementation against new sources of pollution. It was suggested that there exists a need to adopt new international instruments which would provide for firm obligations of States, including the incorporation of enforcement measures in national legislation. The need to establish international regulations on liability for pollution and other hazards was emphasized by several delegations. It was suggested that in order to make any set of principles more balanced and coherent it should include the principle of liability for damages caused by activities in the exploration, use and exploitation of the sea-bed and ocean floor.

(b) Consideration of the report of the Informal Drafting Group

67. The substance of elements (i) ("Reasonable regard for the interest of all States") and (ii) ("Non-infringement of the freedoms of the high seas, and no unjustifiable interference with the exercise of such freedoms") received the general support of delegations, although some of them stated that a closer consideration of the elements was necessary before legal principles were formulated. It was recalled that a formulation of the concept of accommodation between different uses of the area and the marine environment, which had been included under sub-paragraph (vi) of paragraph 25 in item 4, belonged more properly to item 6.

68. As regards element (iii) ("Adoption of appropriate safeguards against the dangers of pollution and other harmful effects on the marine environment"), (iv) ("Adoption of appropriate safeguards so as to conserve and protect the living resources of the marine environment or non-interference with the conservation of the living resources") and (v) ("Adoption of safety measures concerning all activities in the area") suggestions were made concerning the precise language in which the elements should be expressed. Emphasis was placed on the urgent need for international safeguards against pollution in the marine environment.

69. Element (vi) ("Rendering of assistance in case of mishap, distress or danger") was viewed by some delegations as probably unnecessary in the light of article 12 of the Convention on the High Seas concerning the obligation to render assistance. According to these delegations, there was no reason why such a provision should not apply to mishaps, distress or danger occurring on the sea-bed. However, other delegations felt that the elaboration of a principle governing assistance in the case of mishap, distress or danger could be justified. It was suggested that it would be useful to elaborate on this question so that international arrangements for such assistance might be worked out.

70. As regards element (vii) ("Damage caused by activities in the area (undertaken without appropriate safeguards) shall entail liability"), the view was expressed that the drafting of detailed provisions on liability, (including State liability which is dealt with under items 8 and 9 of the report) required considerable study because of its complexity. Some delegations expressed an inclination to favour strict liability, as opposed to liability arising from activities undertaken without appropriate safeguards or authorization. Suggestions were made that, pending the elaboration of a precise or detailed provision, the principle of liability for damage be formulated in general terms, or referred to in the enumeration of the features of the régime to be agreed upon. Other delegations suggested that since damages caused by activities in the area could not only affect the property of the operator or other individuals but also the common interest of mankind, as well as the economy of the nearest coastal State, due consideration should be given to the question of criminal responsibility for damages caused by such activities.

71. Some delegations had doubts concerning the meaning of element (viii) ("Consultations with coastal States closest to the area in which any activities occur, lest their rightful interest be harmed"). They stated that if the purpose of the formulation was to entitle the coastal State to a preferential share of the benefits derived from exploitation of resources discovered beyond its national jurisdiction, such purpose would be incompatible with the principle that all nations have equal access to those resources and that the resources should be utilized for the benefit of mankind. Other delegations regarded element (viii) as fully compatible with a principle of justice such as that embodied in article 6 of the Convention on Fishing and Conservation of Living Resources of the High Seas. The view was expressed that the special interests of those States should be taken into account only in the regions which are adjacent to the jurisdictional parts of the sea-bed and not in any other regions of the sea-bed and the ocean floor and its subsoil underlying the high seas.

72. Element (ix) ("Right of coastal States to take appropriate measures to protect their shores and coastal waters against pollution which has occurred outside their national jurisdiction") gave rise to misgivings expressed by some delegations concerning the possibility that the measures taken by the coastal State may result in the exercise of jurisdiction in an area beyond the limit of national jurisdiction and violate the principles of the freedom of the high seas. Other delegations considered such a concept to be a necessary element in combating and controlling pollution that has occurred in the marine environment. Others considered that such measures would not constitute a violation of the principles of the freedom of the high seas but rather of the collective competence which is to derive from recognizing or declaring that the sea-bed and the ocean floor beyond national jurisdiction are the common heritage of mankind and cannot

be the subject of national appropriation. Other delegations contested this view. Some delegations suggested that element (ix) should be considered together with element (iii) (Pollution) and element (vii) (Liability).

73. Element (x) ("Procedures to be followed in the event of anticipation of possible harmful interference with other activities") was considered unclear by some delegations. Others supporting the element suggested that if a statement of principles were shorter and less detailed, inclusion of this element would not be necessary.

(8) Other questions

(i) Existence of an area

74. Reference was made to a proposed principle which provides that: "There is an area of the sea-bed and ocean floor and the subsoil thereof, which lies beyond the limits of national jurisdiction". It was pointed out that this proposed principle appeared to merit general support and that being a far-reaching proposal the Sub-Committee should not minimize the progress which that general support represented; the principle amounted to acknowledging that claims cannot be unlimited under the Continental Shelf Convention or under general international law, and it should be recorded as agreed. On the other hand, the view was expressed that it was not necessary to state in a declaration of principles a fact which had obviously been taken for granted since the Committee was studying the elaboration of legal principles precisely for that area.

(ii) Question of boundary

75. During the discussion preceding the adoption of the programme of work for the March session, a proposal had been made to add the following item: "The 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." As a result of consultations the Sub-Committee reached an agreement as regards this item and requested the Chairman to draw up a statement embodying that agreement (see paragraph 6 of the present report).

76. Some delegations pointed out that General Assembly resolutions 2340 (XXII) and 2467 A (XXIII) instructed the Committee to study the elaboration of legal principles and norms for the sea-bed and ocean floor beyond present national jurisdiction and not to determine the limits of that area, thus excluding from the mandate of the Committee (and of the Legal Sub-Committee) the framing of recommendations concerning the question of such limits or the advocacy of the revision of such limits. For these delegations the area to which national jurisdiction applies had already been determined by the States concerned, or could be sufficiently determined in the case of the continental shelf by using the combined elements of "adjacency" and "exploitability" contained in article 1 of the Convention on the Continental Shelf which had simply embodied a principle of customary law; in any event, attempts to limit national jurisdiction infringed upon the sovereignty and security of States, matters which were of the greatest importance for the States concerned.

77. Other delegations stated that it was obviously beyond the powers of the Sub-Committee, the parent Committee or the General Assembly itself to exercise

judicial or quasi-judicial powers to determine the extent of the jurisdiction of any given State or group of States, and that for this reason such functions had been excluded from the mandate of the Sub-Committee and that of its parent Committee. It was further stated, however, that there was an intimate relationship between the question of the nature of the régime to be established and that of the limits of the area to which it is to apply and, accordingly, real progress would not be made unless work proceeded simultaneously on both questions. In support of this view, it was suggested that the position of many countries concerning the nature of the solutions envisaged for the régime may be governed to a large extent by the determination of the actual area in question. It was also pointed out that no international régime could be effective unless it were precisely established in advance what area it would cover; it would therefore be necessary to refer to the need for a precise boundary in the context of the need for an international régime. It was also stated that special situations, such as that of internal and marginal seas, should be considered. The Sub-Committee, it was further stated, should lay the foundations for the elaboration of generally agreed principles for the subsequent delimitation of the area. It was suggested by some delegations that the previous establishment of an international régime would facilitate the task of determining the limits of the area; on the other hand, it was pointed out that the existing uncertainty as to where this boundary should be drawn may be a serious obstacle to the formulation of legal norms regulating questions concerning the exploration of the sea-bed. It was also suggested that, while 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 and to draw the attention of the General Assembly and of Governments to the problem; the Committee was at least morally bound to call the attention of the General Assembly to the fact that the definition of the continental shelf contained in the Geneva Convention lent itself to interpretations susceptible of affecting the limits of the area which the Committee had been entrusted to study. In this connexion, certain delegations stated that such recommendations could appear in the preamble of the declaration of principles in the same manner as any other general concept. A view was expressed that while the Sub-Committee was not competent to decide on questions concerning limits, it should recommend that action be taken to cordon off the territorial sea either within an internationally uniform width or, alternatively, taking into account the different geographical features of particular coastal regions. Other delegations considered that the discussion on the question of delimitation was only to distract the Committee from questions constituting its real mandate.

78. On the other hand, it was pointed out by some delegations that the obstacles to an early agreement on internationally agreed precise boundaries should not inhibit progress in the elaboration of legal principles guiding the activities of States in the exploration and use of the sea-bed beyond national jurisdiction and the exploitation of their resources; similar difficulties in reaching agreement on the definition of outer space and the exact delimitation of its boundaries had not prevented the adoption of a declaration of legal principles governing the activities of States in outer space and the partial codification of these principles. Some delegations expressed the view that although there do not exist internationally agreed boundaries to any maritime space, including the territorial sea and the continental shelf, these maritime spaces do have a legal régime which in some cases is even embodied in international conventions.

79. It was suggested by some delegations that an international conference may be required to work out agreed principles for the delimitation of the area beyond national jurisdiction. One view was that the conference should consider only the revision of the Continental Shelf Convention and the legal régime for the area beyond the continental shelf, entirely excluding questions relating to the living resources of the high seas. Another view was that the conference should consider the revision of both the Geneva Convention on the Continental Shelf and the Geneva Convention on Fishing and Conservation. The view was also expressed that the question of revising the Convention on the Continental Shelf could be solved only in accordance with the provision supplied by the Convention itself. The view was emphasized that a conference convened to determine principles for the delimitation of the area beyond national jurisdiction should be preceded by careful preparatory work to enlarge the prospects of agreement on this question. It was stated in this connexion that a substantial body of national and international law, including the 1958 Geneva Convention on the Continental Shelf and customary international law, could not be ignored nor could political realities be disregarded without increasing disagreements and conflicts since both States parties to the Geneva Convention and those not parties to it had been guided by this body of law in enacting national legislation or concluding bilateral agreements. Thus, the Sub-Committee should concentrate on elaborating legal principles on the basis of which further work could proceed.

80. It was suggested that, pending clarification of the boundaries of the sea-bed area situated outside the limits of national jurisdiction, a moratorium or freezing of claims over the sea-bed beyond national jurisdiction might be desirable. The view was expressed that such a moratorium or freezing would lack legal foundation. The view was emphasized that such a moratorium or freezing would not in any event imply a prohibition of exploration or exploitation.

(iii) State responsibility

81. The discussion on this question was of a general character. Some delegations dealt with this question within the framework of element (vii) of items 6 and 7. The view was expressed that it was essential that States bear responsibility for the activities of their nationals. It was suggested that several factors would have to be taken into account to give the formulation a more precise form: the case of persons carrying out activities under the authorization of a State other than that of their nationality; activity in the area carried out by international organizations; and the existence of rules of international law concerning the international responsibility of States for the actions of their nationals.

(iv) Implementation of the principles of the declaration

82. While this element was supported by some delegations, the suggestion was made that it was premature to consider proposals concerning this question; on the other hand, it was stated that the formulation should be included in the legal principles.

83. The debates during the two sessions of the Legal Sub-Committee and the informal consultations that have taken place during the intersessional period have been useful inasmuch as they have contributed towards the clarification of positions on legal principles. They have furthermore, in what in fact should be considered a significant progress, been instrumental in steering the discussions of the Legal

Sub-Committee away from a generalized approach towards the task of devising specific formulas for a number of defined ideas. It is to be noted, however, that the multiplicity of formulations on a single point, whether those in the report of the Informal Drafting Group or those suggested by various delegations during the course of the August session, could prima facie be construed as denoting differences of opinion. While this might be the case with regard to certain elements, it is not so for a number of others; various formulations contain similar ideas and do sometimes overlap. The variety of formulations is due in this connexion to differences in emphasis and as to scope. In certain instances it is to be observed that part of the membership of the Committee finds itself attached to particular concepts with which in varying degrees the other part does not concur.

84. At this stage of the Sub-Committee's deliberations, the practicability of underscoring "areas of agreement" or "areas of disagreement" might be questioned, since none of the formulations have so far been endorsed. Yet it could be considered suitable to attempt a synthesis of the related formulations in order to determine in so far as possible common denominators. These denominators could in no way be construed as an acceptance by the Sub-Committee that they constitute an adequate basis for the elaboration of a balanced and comprehensive declaration of principles.

85. It appeared at the outset that the Legal Sub-Committee accepted as implied in resolutions 234. (XXII) and 2467 A (XXIII) that there is an area of the sea-bed and ocean floor and the subsoil thereof which is beyond the limits of national jurisdiction. There was, however, no agreement on the inclusion in the draft of a reference to the establishment of a precise boundary for this area.

Legal status

86. A common denominator on this item would be the concept that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, shall not be subject to national appropriation by any means and that no State shall exercise or claim sovereignty or sovereign rights over any part of it.

87. This concept though acceptable to all was considered by some as not sufficiently comprehensive. For the latter, the following idea should be included that except as may be provided in a régime, no State shall claim or exercise or grant exclusive rights over any part of this area, but there was no agreement as to the inclusion in the draft that no one may acquire property rights over any part of the area by use, occupation or any other means.

88. The over-all concept that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction are the common heritage of mankind (or part of the common heritage of mankind) was widely supported but not acceptable to all.

Applicability of international law, including the United Nations Charter

89. On this item it has been possible to detract as a common denominator that there are principles and norms of international law which apply to the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.

90. There was however no agreement as to the extent to which the rules of existing international law apply or should be applied in the future or as to whether any rules of existing international law apply to economic activities in the exploration and exploitation of the area.

Reservation exclusively for peaceful purposes

91. A common denominator in this regard has emerged in the sense that a declaration of principles would contain, in accordance with resolution 2467 A (XXIII), the idea that the sea-bed and ocean floor shall be reserved exclusively for peaceful purposes.

92. There was, however, no agreement on the nature of the references in the declaration to the geographic limits of application of this principle or to the scope of the prohibition of activities.

Use of the resources for the benefit of mankind as a whole irrespective of the geographical location of States taking into account the special interests and needs of the developing countries

93. An agreement seems to have emerged on the need for the establishment of a régime as well as on the use of the resources for the benefit of mankind irrespective of the geographical location of States and taking into account the special interests and needs of the developing countries. The qualification of that régime is still to be agreed upon as well as the scope of the applicability. Whether the régime shall be characterized as legal, international or agreed remains to be decided on, but it was agreed that the régime should be legally binding. Similarly, whether the régime shall apply to the area or only to resources is a matter still to be settled. No agreement has yet been reached on the main features of such a régime. Thus, for example, the question of the most appropriate and equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries, which was underlined by a number of delegations, is still under consideration.

Freedom of scientific research

94. This principle was acceptable in general, as well as the notion of the promotion of international co-operation in the conduct of scientific research. The idea that freedom of scientific research in this area shall be assured to all without discrimination and that States shall promote international co-operation in the conduct of scientific research and that there shall be no interference with fundamental scientific research carried out with the intention of open publication appeared able to command agreement, on the understanding that it would be necessary to be able to distinguish clearly scientific research from commercial exploration. One element in this distinction was agreed to be the subsequent making available or communication of results.

95. Differences still remain as to the relation between freedom of scientific research and the possible obligations regarding prior communication of programmes and subsequent communication of results, as well as differences as to whether the notions of accessibility or availability on the one hand or dissemination on the other should be employed. There is still no agreement on the inclusion of the

idea that such research should not be the basis for claims for rights to exploitation. The suggestion regarding strengthening the research capabilities of the developing countries is still to be further considered.

Reasonable regard for the interests of States in their exercise of the freedom of the high seas

Question of pollution and other hazards and obligations and liability of States involved in the exploration, use and exploitation

96. It can be assumed that the concepts of reasonable regard for the interest of all States and non-infringement of the freedoms of the high seas and no unjustifiable interference with the exercise of those freedoms are not contested. Furthermore, there exists general acceptance of the necessity for the adoption of appropriate safeguards against the dangers of pollution. The adoption of appropriate safeguards to protect the living resources of the marine environment as well as of safety measures concerning activities in the area were not objected to.

97. On the extent of the rights of coastal States with regard to activities, including scientific research and exploration undertaken in the area, there is yet no agreement. The question of liability for damage caused by activities in the area is still under consideration.

Item 2 of the programme of work: Consideration of the legal aspects of the report submitted by the Secretary-General pursuant to resolution 2467 C (XXIII) regarding international machinery (A/AC.138/12 and Corr.1 and Add.1 and Add.1/Corr.1)

Item 3 of the programme of work: Consideration of the legal aspects of a long-term and expanded programme of oceanic exploration and research (Note by the Secretary-General, document A/AC.138/14 and Corr.1)
(English only)

98. Owing to the insufficiency of time the Sub-Committee decided to postpone consideration of these two items until its next session.

ANNEX

Report of the Informal Drafting Group on the formulations proposed under the Programme of Work (A/AC.138/SC.1/3) a/

1. The Informal Drafting Group, consisting of Brazil, India, Libya, Norway, the Union of Soviet Socialist Republics and the United States of America, met a number of times to consider the formulations proposed on all items.
2. In the listing of formulations and elements, parentheses have occasionally been employed to indicate language as to which certain questions were raised or reservations expressed.
3. The listing of formulations and elements does not necessarily constitute an endorsement of them by the members of the Informal Drafting Group for inclusion in a declaration; and at times the Group has set forth contending views as to some formulations and elements.

Item 1. Legal status

4. All formulations presented on this item were considered.
5. The main elements in these formulations are as follows:
 - (i) The sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction are the common heritage of mankind;
 - (ii) This area is not subject to national appropriation by any means whatsoever;
 - (iii) No State may exercise or claim over any part of this area sovereignty or sovereign rights;
 - (iv) No State may exercise or claim over any part of this area sovereignty or sovereign rights; or jurisdiction; nor grant exclusive rights;
 - (v) No one may acquire property over any part of this area whether by use, occupation or by any other means;

a/ This paper was prepared by an Informal Drafting Group following informal consultations pursuant to a decision of the Committee at its sixth meeting on 28 March 1969 to conduct informal inter-sessional consultations among the various delegations represented on the Committee.

- (vi) All States shall participate in the administration and regulation of the activities in this area as well as in the benefits obtained from the exploration, use and exploitation of the resources of the said area;
- (vii) This area should be considered separately from the superjacent waters of the high seas;
- (viii) There shall be no discrimination in the availability of this area for exploration and use by all States and their nationals in accordance with international law.

Element (i)

6. (a) Those supporting this idea were insistent that it was the basis on which a formulation regarding item 1, and for that matter the statement of principles, should be based. Therefore, its inclusion in the formulation under consideration would be essential. Others believed that this concept should not be included in the declaration.

(b) Under item 9, a formulation regarding the subject of this element had been suggested for inclusion in the preambular portion of a declaration, which reads as follows:

"Asserting that this area shall be considered as part of the common heritage of mankind."

Element (ii)

7. This element was considered to be acceptable.

Elements (iii) and (iv)

8. The concept in element (iii) was considered unexceptionable but there was a point of view that it was not sufficiently comprehensive, therefore the language of element (iv), which by this point of view was regarded as adequate and comprehensive was suggested instead. There was also a suggestion for a provision to the effect that, except as might be provided in an international régime, no State shall claim or exercise exclusive rights or jurisdiction over any part of this area.

Element (v)

9. Those who supported this element insisted on the need for clearly stating the non-appropriation of this area by private persons or entities. A view was expressed that the question of the suitability of the concept of "property" for the purposes of a declaration required further consideration.

Element (vii)

10. Differing views were expressed on this element.

Element (vii)

11. Those who favoured this idea wanted that the separate status of the two areas should be spelt out to avoid confusion. However, for the sake of clarity they were prepared to put it as a preambular paragraph, if that was considered necessary. Others were of the view that this idea was not justifiable from the legal point of view.

Element (viii)

12. Those who favoured this element would want to include it in the declaration under consideration as, according to them, this was their understanding of present international law or, in any event, it was a necessary principle of State conduct. On the other hand, it was pointed out that such an element could be included in a formulation regarding item 4.

Item 2. Applicability of international law, including the United Nations Charter

13. All formulations presented on item 2 were considered.

14. The following elements were studied:

- (i) Activities in this area shall be carried out in accordance with the Charter of the United Nations, in the interest of maintaining international peace and security and the promotion of international co-operation;
- (ii) Activities in this area shall be carried out in accordance with (the relevant principles of) international law;
- (iii) The exploration and exploitation of the resources of this area shall be carried out in accordance with an international régime to be established. In the elaboration of the said international régime, the existing norms of international law shall be duly taken into account.

15. It was considered that the Charter of the United Nations had to be mentioned in the context of international law and could not be separated from international law. A view was expressed that the scope of the applicability of the two did not fully coincide.

16. Concerning 2 (ii), a view was expressed that international law applies to the area only in a subsidiary way since it regulates mainly the use of the other areas of the marine environment. On the other hand, a view was expressed that a declaration should make clear that existing international law applies to the area.

17. Regarding 2 (iii), a view was expressed that it would not be appropriate to refer in this context to an international régime to be established.

18. The following formulation was suggested for consideration:

"All activities in this area shall be carried out in accordance with international law, including the Charter of the United Nations, and the

principles of this declaration as well as (in due course) the legal principles and norms to be internationally agreed upon for the exploration, use, and exploitation of this area."

Item 3. Reservation exclusively for peaceful purposes

19. The following elements were identified in the various formulations concerning this item:

- (i) Reservation exclusively for peaceful purposes;
- (ii) Prohibited activities:

Alternatives included:

- (a) Use for military purposes;
- (b) All military activities and all military uses;
- (c) Use for other than peaceful purposes;

- (iii) Area of the sea-bed and ocean floor to which the prohibition applies:

Alternatives included:

- (a) Beyond the twelve-mile maritime zone of coastal States;
- (b) Beyond the limits of national jurisdiction;
- (c) Beyond a coastal strip the limits of which are yet to be agreed upon.

Item 4. Use of the resources for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries

20. The first part of some formulations deals with the need to carry out exploration, use and exploitation for the benefit of mankind as a whole, etc. It was contended that the words "exploration, use and exploitation" should apply to the area as a whole and not only to the resources of this area. On the other hand, it was contended that these words should apply only to the resources of the area in this context. Nevertheless, a general formulation, as given below, was considered:

"The exploration, use and exploitation (of the resources) of this area; and its subsoil shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, and for the promotion of economic development, taking into account the special interests and needs of the developing countries."

21. Those who wanted that the words "exploration, use and exploitation" should apply to the area as a whole suggested the following language based, according to them, on the wording of paragraph 2 (a) of resolution 2467 A (XXIII):

"The exploration and use of this area and the exploitation of resources of this area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, and for the promotion of economic development, taking into account the special interests and needs of the developing countries."

This language was not acceptable to others.

22. All the formulations regarding this item called for the establishment of an international régime for the purpose of exploration, use and exploitation (of the resources) of this area. The following omnibus formulation regarding the establishment of an international régime was considered:

"An (agreed) international (legal) régime shall be established for the exploration and exploitation (of the resources) of this area and its subsoil. Such a régime shall reflect the other principles contained in this declaration and shall include, among others, provision for:"

23. A view was expressed that the word "régime" should be qualified by the word "legal". Others did not see the need or relevance of this addition and suggested that the qualifying word "agreed" would be sufficient. Again, a view was expressed that it was premature to spell out "provisions" which should determine the features of a régime and an enumeration of the provisions should not be made at this stage. On the other hand, it was mentioned by the others that a statement of principles which did not include the main features of a régime would be inadequate. The points of view regarding the words "of the resources" as stated above were expressed in this respect too. Those who wanted that the words "exploration, use and exploitation" should apply to the area as a whole, suggested the following language, based, according to them, on the wording of paragraph 2 (a) of resolution 2467 A (XXIII):

"An (agreed) international (legal) régime shall be established for the exploration and use of this area and in particular for the exploration and exploitation of the resources of this area and its subsoil. Such a régime shall reflect the other principles contained in this declaration and shall include, among others, provision for:"

This language was not acceptable to others.

24. It was suggested that a general purpose of the régime should be to secure rational development and equitable management of this area.

25. The following provisions, which are contained in the various formulations, were considered:

(i) Application of benefits:

- (a) Provide for the most appropriate equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries;
- (b) Dedication as feasible and practicable of a portion of the value of the resources recovered from this area to international community purposes;

- (c) Dedication of a portion of the financial proceeds resulting from the exploitation to international community purposes;
- (ii) Economic incentives:
 - (a) Conditions conducive to the making of investments necessary for the exploration and exploitation of the resources of this area;
 - (b) Provide economic incentives to encourage the necessary investment;
 - (c) Ensure that the burdens assumed by the operator be matched by corresponding rewards;
- (iii) International machinery or organ (or administrative arrangements):
 - (a) Establish an international machinery for the regulation of activities in this area, in particular to control the development of the resources of this area and its subsoil;
 - (b) Entrust the management of the resources of this area to an organ which should be representative of the international community;
- (iv) The orderly development of the resources of the area in a manner reflecting the interest of the international community in the development of these resources;
- (v) Take into account economic effects of exploitation, for example, to take required measures to minimize (control) the fluctuations of prices of raw materials in the world market resulting from the exploitation of the resources of this area;
- (vi) Accommodation among the commercial and other uses of this area and the marine environment;
- (vii) Promote effective international co-operation in the exploration, use and exploitation of this area;
- (viii) Provide due protection for the integrity of investments in the exploitation of this area undertaken prior to the establishment of its boundary.

Item 5. Freedom of scientific research and exploration

26. After consideration of the several formulations, it was decided to separate the main elements which are:

- (i) Freedom of scientific research (for peaceful purposes) without discrimination and avoidance of interference with such research;
- (ii) Communication beforehand of programmes of scientific research. Different methods were mentioned in the proposals: (a) publication; (b) accessibility; and (c) dissemination;

- (iii) Communication of results of scientific research. The different methods mentioned under (ii) were also suggested for (iii);
- (iv) Promotion of international co-operation. Two suggestions were made: (a) participation of nationals of different States in common research programmes; and (b) strengthening of the research capabilities of the developing countries.
- (v) Encouragement by States of their nationals to follow the practices concerning communication of information regarding programmes and results;
- (vi) No rights of sovereignty or exploitation are implied in the carrying out of scientific research.

27. The examination of the proposals indicated the existence of three different approaches as to the relationship between element (i) and other elements. The first approach would state independently the freedom of scientific research and such other elements as may be agreed upon. The second approach predicated that these other elements should be stated as necessary consequences of the freedom of scientific research. The third approach would make freedom of scientific research conditional upon publication beforehand of research programmes and upon the accessibility of the results of these programmes with the least possible delay.

Items 6 and 7

- 6. Reasonable regard to the interests of other States in their exercise of the freedoms of the high seas
- 7. Question of pollution and other hazards, and obligations and liability of States involved in the exploration, use and exploitation

28. Under these items the following elements from the various formulations concerning the activities in this area were identified:

- (i) Reasonable regard for the interest of all States;
- (ii) **Non-infringement** of the freedoms of the high seas; and no unjustifiable interference with the exercise of such freedoms;
- (iii) Adoption of appropriate safeguards against the dangers of pollution and other harmful effects on the marine environment. Among particular harmful effects mentioned in the proposals were:
 - (a) radioactive contamination;
 - (b) interference with the ecological or other processes or balances of the marine environment;
 - (c) damage to the flora and fauna;

- (iv) Adoption of appropriate safeguards so as to conserve and protect the living resources of the marine environment or non-interference with the conservation of the living resources;
- (v) Adoption of safety measures concerning all activities in this area;
- (vi) Rendering of assistance in case of mishap, distress or danger;
- (vii) Damage caused by activities in the area (undertaken without appropriate safeguards) shall entail liability;
- (viii) Consultations with coastal States closest to the area in which any activities occur, lest their rightful interests be harmed;
- (ix) Right of coastal States to take appropriate measures to protect their shores and coastal waters against pollution which has occurred outside their national jurisdiction;
- (x) Procedures to be followed in the event of anticipation of possible harmful interference with other activities.

Items 8 and 9

8. Other questions

9. Synthesis

29. Under these items the following matters were considered:

- (i) Existence of an area: The Drafting Group considered the various formulations and affirmed that there is an area of the sea-bed and the ocean floor and subsoil thereof underlying the high seas which lies beyond the limits of national jurisdiction.

However, a view was expressed that the above statement is a fact and not a legal principle and therefore should not be included in a declaration of principles.

- (ii) Question of boundary: The proposals which were made in this regard are listed below:
 - (a) "Taking into account the relevant dispositions of international law there should be an agreed precise boundary for this area;"
 - (b) "There is an area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction, a more precise boundary of which shall be established;"
 - (c) "Taking into account the Geneva Convention of 1958 on the continental shelf, there shall be established, as soon as practicable, an internationally agreed precise boundary for the deep ocean floor and sea-bed and subsoil beyond that over which coastal States may exercise sovereign rights for the purpose of

exploration and exploitation of its natural resources;
exploitation of the natural resources of the ocean floor that
occurs prior to establishment of the boundary shall be understood
not to prejudice its location regardless of whether the coastal
State considers the exploitation to have occurred on its
'continental shelf'."

(d) A

"Considering that the Geneva Convention of 1958 has given an
open-ended definition of the continental shelf";

B

"Concerned that such open-ended definition might be interpreted
as permitting coastal States to extend their national jurisdiction
without any distance limitation";

C

"Believing that in order to avoid such extensive interpretation,
a precise seaward limit should be established as soon as
practicable by means of international agreement".

A view was reiterated that the question of boundary does not fall under the
competence of the Committee and should be properly considered in another forum.
It was also stated that the determination of the boundary should be decided
after an agreement had been reached on the legal status of this area. A view
was also expressed that agreement on the question of clarifying the boundary was
a necessary concomitant of agreement on other aspects of the declaration of
principles. A view was also expressed that an effective attempt was necessary
to come to an agreement on the limits of national jurisdiction in keeping with
international law.

(iii) State responsibility: A proposal made in this respect is listed below:

"States shall bear international responsibility for the activities
of their nationals in this area and for assuring that such activities
are carried out in conformity with the principles set forth in the
present declaration, and the principles and norms of an international
régime to be established."

A view was expressed that due account should be taken of the case of persons
carrying out activities under the authorization of a State other than that of
their nationality.

(iv) Implementation of the principles of declaration: A proposal made in
this regard is given below:

"The United Nations, in co-operation with the specialized agencies
and the IAEA, shall take adequate measures to ensure the observance
of these general principles and guidelines and the implementation of
the objectives set forth in this declaration."

PART THREE

REPORT OF THE ECONOMIC AND TECHNICAL SUB-COMMITTEE

1. The Economic and Technical Sub-Committee, established by the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction, was entrusted with the consideration of the following topics:

- (i) Economic and technical requirements which such a régime as is referred to in operative paragraph 2 (a) of resolution 2467 A (XXIII) should satisfy in order to meet the interest of humanity as a whole.
- (ii) Operative paragraph 2 (b) of resolution 2467 A (XXIII) - to study the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole.
- (iii) Economic and technical implications of:
 - (a) all other questions mentioned in the terms of reference of the Committee as contained in resolution 2467 A (XXIII); and
 - (b) the reports submitted by the Secretary-General pursuant to resolutions 2467 B, C and D (XXIII) and 2414 (XXIII).

It was, furthermore, requested to prepare and adopt its report, containing its recommendations, for submission to the main Committee.

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

Chairman:	Mr. Roger Denorme (Belgium)
Vice-Chairman:	Mr. Ramesh Arora (India)
Rapporteur:	Mr. Anton Prohaska (Austria)

3. In 1969 the Economic and Technical Sub-Committee held two series of meetings in New York from 11 to 27 March 1969 and from 12 to 28 August 1969. The meetings were attended by the representatives of the forty-two member countries of the Committee. Also present were the observers of the following countries: Barbados, Burma, Denmark, Guyana, Jamaica, Netherlands, New Zealand, Nicaragua, Philippines, Portugal, South Africa, Spain, Sweden, Turkey, Ukrainian SSR, Venezuela, and the representatives of UNESCO-ICC, WMO, IMCO and FAO.

4. At the end of its 14th meeting held on 27 March 1969 the Sub-Committee adopted its interim report, and at the end of its 25th meeting, on 28 August 1969, it adopted its final report to the Committee.

5. As a background for discussion, the Economic and Technical Sub-Committee had at its disposal the report of the Economic and Technical Working Group of the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the Limits of National Jurisdiction 1/, and the preliminary note by the Secretariat entitled "Economic considerations conducive to promoting the development of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction in the interests of mankind" (A/AC.138/6 and Corr.1), the Draft Comprehensive Outline of the Scope of the Long-Term and Expanded Programme of Oceanic Exploration and Research (A/AC.138/14 and Corr.1 (English only)) and the report prepared by the Secretary-General on "Study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction, and the use of these resources in the interests of mankind" (A/AC.138/12 and Corr.1 and Add.1, and Add.1/Corr.1). The introductory remarks made by the Chairman on 11 March and on 12 August 1969 were also circulated as official documents (A/AC.138/SC.2/3 and A/AC.138/SC.2/8), as well as his concluding remarks made on 28 August (A/AC.138/SC.2/9).

6. In accordance with its programme of work (A/AC.138/SC.2/2 and A/AC.138/SC.2/5) the Economic and Technical Sub-Committee gave consideration to the following items:

- (i) Consideration of progress achieved in the exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and in the techniques used for their development:
 - (a) Hydrocarbons and soluble minerals; drilling;
 - (b) Surficial deposits and deposits within bedrock; dredging and mineral extraction.
- (ii) Preliminary study of the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, bearing in mind the fact that such exploitation should benefit mankind as a whole:
 - (a) General considerations;
 - (b) Establishment of basic documents;
 - (c) Exploration of mineral concentrations;
 - (d) Evaluation of mineral concentrations or deposits which have been ascertained: technical feasibility and economic exploitability;
 - (e) Exploitation of mineral deposits.

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

- (iii) Examination of the economic and technical aspects of the report submitted by the Secretary-General pursuant to resolutions 2414 (XXIII) and 2467 D (XXIII): comprehensive outline of the scope of the long-term programme of oceanographic research of which the International Decade of Ocean Exploration will be an important element.
- (iv) Examination of the economic and technical aspects of the report submitted by the Secretary-General pursuant to resolution 2467 C (XXIII); study of the possible régimes for the exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction.

CHAPTER I

Consideration of progress achieved in the exploration and exploitation of the sea-bed resources and in the techniques used for their development

Exploration and exploitation of marine hydrocarbons a/ and techniques used for their development

7. During its meetings of 12 and 13 March 1969, the Economic and Technical Sub-Committee gave consideration to this item. It based its deliberations on national experiences in this field and on various sources of relevant information, and had particular regard to the technical and economic facts of work at sea and on the ocean floor. Taking into account the conclusions reached in paragraphs 11-29 of the Economic and Technical Working Group's report, it reviewed the advances of the past year in the exploration and exploitation of marine hydrocarbons.

8. The study and analysis of activities presently carried out in off-shore areas was considered particularly useful with respect to projections and forecasts regarding the eventual development of marine mineral resources beyond the limits of national jurisdiction.

9. The limited extent of our knowledge in the field of exploration and exploitation of marine mineral resources was again emphasized. Even though considerable progress has been achieved - the Glomar Challenger was able to core samples at depths below 5,000 metres of water - most of the geological and topographical structure of the sea-bed and ocean floor beyond national jurisdiction is still unknown in sufficient detail to permit full appraisal of its resource potential. For example, although it appears that sediments thick enough to contain large quantities of petroleum are mainly confined to the continental margin and the small ocean basins, the occurrence of thick layers of sediment containing appreciable accumulations of petroleum in some parts of the abyssal plain cannot be excluded.

10. In connexion with the task undertaken by the Glomar Challenger, it was noted with appreciation that the results of this programme are being made available to the world scientific community.

11. Progress achieved in petroleum exploration and exploitation has been significant during the last year in almost every respect: in the development of exploration methods, in extending the capability for drilling to greater depths, in adding new producing areas, in increasing production and in improving facilities for storage and transfer of petroleum at sea and on shore.

a/ The term "marine minerals" used throughout this report includes all minerals on or under the sea-bed but excludes minerals in solution in sea water. The terms "hydro-carbons" and "petroleum" will be used interchangeably in this report to include crude oil, natural gas and gas condensate.

12. Although technological advances were regarded as satisfactory and justifying the conclusion of the Ad Hoc Committee "that a cautious optimism is appropriate as to the technical achievements that may be expected", reference was made to serious accidents which occurred in the process of off-shore drilling. In this context two points were stressed: (a) that improvements and refinements to present technology are still needed; (b) that a high degree of technical competence is required not only by the off-shore operator but also by the responsible authority.

13. Interest in the essential services and equipment which are necessary to increase the scale and extent of off-shore exploration and production has considerably increased during the last year. Such equipment includes underwater navigation equipment, acoustic and seismic penetration survey devices, measuring and recording devices for use under water, acoustic telemetry, command and release systems, diving and underwater living equipment, submersibles, underwater cameras and television, etc. Developments during the past year in reflection seismic devices using non-explosive energy sources and in continuous recording and computerized analysis of the data have been of an incremental rather than a revolutionary nature but have helped to bring these methods to a higher level of effectiveness.

Several submersibles, some of new design and construction with greater depths capability and endurance, allowing access to larger areas of the ocean floor, were completed during the last year. The technology for undersea habitats and work units has also been advanced.

14. Hydrocarbons may be the most valuable economic resources of the subsoil of the ocean. Many of the most promising regions for oil and gas are related to off-shore zones of the continental margin and small ocean basins adjoining oil or gas-bearing regions on the continent.

15. New ground for off-shore oil production has been gained both in new areas of the shelves now shown to be productive or promising and in deeper waters made accessible by advancing technology.

16. At present commercial exploratory drilling of hydrocarbons in water depths up to 300-400 metres has been achieved in one area. It is significant in this connexion that work towards the development of a system with re-entry capability in deep water is at the problem definition stage. Such a system could conceivably be operational by the end of this year.

17. During the last twenty years world consumption of energy in all its forms has doubled. It has been estimated that in the next fifteen years world energy consumption will double again. Nevertheless, the vastness of the continental shelf areas, which for their greatest part have not yet been explored, suggest that for the next decade or so world supply of petroleum appears to be sufficient even if for economic and technical reasons exploration and exploitation of marine hydrocarbons remain confined to these areas.

18. How much of the anticipated increase in world demand for hydrocarbons will be met in the future by off-shore petroleum sources will depend, inter alia:

- (i) On the availability and cost of synthetic fuels.
Synthetic hydrocarbons (derived from tar sands, oil shales and coal) are not expected to have a significant influence on the market for petroleum during the next decade; the costs of extracting hydrocarbons from these sources are not much above those of natural petroleum, which, on the one hand, means that there is some incentive for the research and development that may make them competitive in the future and, on the other hand, means that they provide a ceiling on petroleum prices, which would prevent them from rising to the high level that might be required at first to support petroleum production from the deep ocean floor.
- (ii) On future discoveries of oil on land.
Off-shore costs are higher than on-shore costs under comparable conditions of drilling depth and field size. Virgin off-shore ground offers, however, a better opportunity to find giant fields producible at costs low enough to offset the difference in development expenses, but large on-shore discoveries such as those recently made in Alaska could retard growth in off-shore production.
- (iii) On policies affecting the supply of energy.
Since economic policies on a national and international level are subject to change they also appear likely to affect the competitive position of various sources of energy.

Recognizing that such uncertainties may invalidate any forecasts made now, present trends suggest (i) that off-shore production might supply approximately 30-35 per cent of the world market by 1980 as compared with 16 per cent at the present time; (ii) that, until such time, off-shore production will not exceed depths of 600 metres below sea level (a) because it will take time to develop appropriate deep sea drilling systems and (b) because less expensive on-shore and shallower off-shore sources appear ample enough to meet the demand until 1980 and somewhat beyond.

19. Expenditure related to oceanography has sizably increased in many countries in recent years, in particular in some highly developed countries. Ten years ago only five countries carried out off-shore exploration programmes, but at present these activities are in progress in more than sixty-six countries. Every year, increasingly large sums are spent by Governments and private companies on projects in this field. This trend and its beneficial effects on marine petroleum development may decrease if future regulations of oil exploitation in deeper water do not take into account the appropriate requirements.

20. At the end of the discussion of this item, the following observations were made:

(a) To a large extent the geological structure of the sea-bed, prerequisite to further exploration and exploitation, remains unknown. Accordingly, at the present moment, the existence of thick sediments even at great depths which might contain accumulations of petroleum and gas cannot be excluded.

(b) The technical progress achieved during the past months does not to any appreciable extent change the conclusions of the report of the Ad Hoc Committee but has justified the prospects which were envisaged and the cautious optimism voiced in that report. The present available data generally confirm the figures put forward last year.

(c) Technical improvements should be coupled with greater efforts to prevent accidents such as those which have recently occurred. Such accidents illustrate the difficulties inherent in off-shore developments and the necessity of a very high degree of scientific and technical competence of those concerned with such operations.

(d) Several factors have a bearing on the further development of off-shore drilling and related research, inter alia: the over-all demand for hydrocarbons; the possibility of new oil discoveries on land; the possibility of greater development of synthetic hydrocarbons; the possibility of harnessing other sources of energy competing with hydrocarbons, the hazards connected with under-sea exploitation; finally, economic policies which may have a delaying effect.

(e) Large investments in oceanographic research programmes are being made in several countries, mostly highly developed. This fact might warrant continued efforts to expand the international co-operation in this field.

(f) Hydrocarbons appear to constitute the most promising resources of the ocean floor. It would not be surprising, therefore, if their exploitation would be the first successful mining operation at great depths.

(g) While from a technical standpoint, exploration and exploitation of petroleum and gas may soon be possible at great depths, such operations may not be economical for some time. Regulations in this field should be realistic so as not to hinder continued investment and progress.

Exploration and exploitation of marine surficial and sub-surface deposits and techniques used for their development

21. During its meetings of 13 and 14 March 1969, the Economic and Technical Sub-Committee gave consideration to this item. It took into account the conclusions reached in paragraphs 11-29 of the report of the Ad Hoc Committee's Economic and Technical Working Group as well as the most recent developments in the exploration and exploitation of surficial and sub-surface hard mineral deposits of the ocean floor.

22. At present, off-shore mining operations are carried out in water depths of less than sixty metres by several countries. The exploratory activities now under way may eventually lead to the development of off-shore mining in new areas. None of the recent developments, however, point to break-throughs that may substantially enlarge the scope of marine mining in the near future.

23. Advances in off-shore mining of hard minerals have not been as rapid as those relating to hydrocarbons. However, in line with the increasing emphasis being placed on off-shore mining by both Government and industry throughout the world, the present limited stage of development of off-shore mining technology may be expected to change in the years to come.

24. Mining in deeper water appears to advance on a slow pace. This might be explained, inter alia, by the following:

(a) Knowledge of the regional geology necessary to guide prospecting is still fragmentary;

(b) Exploration techniques are poorly developed especially for sub-surface minerals;

(c) Evaluation technology for most of the minerals considered is both weak and expensive;

(d) Low-cost mining and dredging systems at greater depths have not yet been developed;

(e) The development of some surficial deposits may be delayed by the need to develop beneficiation processes;

(f) Finally, low-cost on-shore sources of most sea-bed minerals are ample for the foreseeable future.

25. Nevertheless, there is much interest in economic recovery and production of manganese nodules, particularly for their content of nickel and copper, and a recent announcement of progress in this field suggests that production of metals from them may begin by the early 1970s.

26. Industry continues to investigate the potential of the ocean floor as a source of a variety of minerals on account of the large quantities which might be found to be economically exploitable, although the costs of exploitation, except in the long term, may be generally higher than on land.

27. At the end of the discussion of this item, the following observations were made:

(a) Progress has been made in the field of dredging and mining of surficial and sub-surface hard minerals. However, no breakthroughs have occurred which would change the conclusions reached by the Ad Hoc Committee last year.

(b) This somewhat slow development is mainly due to the technical problems involved in prospecting and recovery under water of surficial and sub-surface deposits and to the economic inadequacy of the processes for upgrading surficial deposits.

(c) At this stage, industry is becoming increasingly aware of the vast mineral deposits contained in the ocean floor which could in the future become technically recoverable and economically exploitable.

CHAPTER II

Preliminary study of the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, bearing in mind the fact that such exploitation should benefit mankind as a whole

28. During the discussion of item (ii) on the programme of work, several examples were given of national experience in regulation of the mineral resources of the continental shelves and suggestions were made concerning the requirements to be met by any régime devised to promote the development of sea-bed resources beyond the limits of national jurisdiction. Many of the suggestions are alternatives which the Sub-Committee considered relevant to the item, and no attempts were made to recommend which examples were most relevant to the sea-bed beyond the limits of national jurisdiction. Thus many of the following paragraphs consist of expert opinions which were not fully debated or agreed upon.

General considerations with respect to the ways and means of promoting the exploitation and use of sea-bed resources

29. During its meetings of 17, 18 and 21 March 1969, the Economic and Technical Sub-Committee gave consideration to this item. It had before it the report of the Ad Hoc Committee's Economic and Technical Working Group (A/7230, annex I, paras. 18-29 and 39-61), and the preliminary note prepared by the Secretariat on "Economic Considerations Conducive to Promoting the Development of the Resources of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction in the Interests of Mankind" (A/AC.138/6 and Corr.1). It based its deliberations, inter alia, on national experiences as reported by various delegations.

30. The report of the Ad Hoc Committee's Economic and Technical Working Group (paras. 49-61) has established that the conditions which should be met by any régime of sea-bed resources management can be studied without prejudging the subsequent legal considerations. Drawing upon the experience of the Ad Hoc Committee, the Economic and Technical Sub-Committee based its deliberations on economic and technical requirements and in no way dealt with legal aspects of this question which should be properly considered in the Legal Sub-Committee and in the main Committee. It was pointed out that the problems raised during the discussion of item (ii) on the programme of work would have to be considered further in the light of the forthcoming report of the Secretary-General pursuant to resolution 2467 C (XXIII) and subsequently in the devising of an international régime.

31. In the past ten years, man's knowledge of the sea-bed and its environment has considerably increased, but must still be considered inadequate and of an approximate nature. Basic data or documents relating to some regions of the ocean floor are practically non-existent or are sparse. Hence, substantial improvement of our knowledge of the sea-bed and ocean floor is an urgent necessity. In this context, reference was made to the usefulness of the long-term programme of

oceanographic research which is to be based on national programmes prepared by Governments and to the efforts of the ICC of UNESCO in the preparation of the comprehensive outline of the scope of the programme.

32. The importance of scientific co-operation on a regional and international level was stressed. An important element of such co-operation would consist in training national experts, in particular of developing countries, and in providing them with basic equipment to carry out research and investigation in this field. Such measures would lay the ground for the future direct participation of the countries concerned in the exploration and exploitation of the sea-bed and ocean floor beyond the limits of national jurisdiction.

33. It was stressed that for the development of the resources of the ocean floor new forms of international co-operation should not reflect present inequalities and differences between developed and developing countries. They should provide not only for equality of opportunity, but also for equality in the actual enjoyment and equitable sharing of benefits derived from exploitation of the resources of the ocean floor. A primary goal should be to ensure maximum benefits for mankind as a whole compatible with minimum impairment of marine flora and fauna.

34. It was widely emphasized that benefits derived from any such co-operation should, furthermore, contribute to closing the existing gap between developing and developed countries. In this regard it was pointed out that many ways were possible to realize the common endeavour of exploitation for the benefit of all mankind and that all avenues which might lead to that end should be carefully explored.

35. Any study of ways and means which are to ensure that the resources of the sea-bed beyond national jurisdiction be developed without conflict in an orderly manner and in a way not interfering unjustifiably with the other traditional uses of the sea must take into account that eventual arrangements would be applicable to a vast area, encompassing the larger part of the world's surface.

36. Unless the resources of the sea-bed and ocean floor and subsoil thereof are extracted and brought to the market places of the world on a basis competitive with minerals from land, there is no prospect of any tangible benefit to mankind as a whole.

37. There is no difference in principle between the factors which determine the economic viability of mineral exploitation on land or beneath the sea. Therefore, experience gained on land is generally relevant and should be studied.

38. It was pointed out that agreement on arrangements which meet the criteria of effectiveness, credibility and impartiality is one of the first vital steps in creating an economic environment that will encourage and promote the use of the sea-bed resources; they must instil confidence in the minds of potential operators that rights granted will be, and can be, upheld. They must command the support and respect of all the nations of the world - developing and developed, socialist and capitalist, large and small, coastal and land-locked.

The arrangements should also be effective. For example, the economics of an operation can be drastically changed, or even destroyed, if there are delays in taking decisions which result in excessive dead time for an operating rig. On the other hand, risks of blow-outs, pollution and waste or destruction of resources exist if the wrong decisions are taken.

Thus the skill of many experts (geologists, geophysicists, geochemists, petroleum engineers, mining engineers, safety experts, marine biologists, lawyers, administrators, etc.) will be needed if exploration and exploitation of ocean floor resources are to be both encouraged and effectively controlled. Any international arrangements must therefore provide for a high degree of technical and professional expertise. Such arrangements must provide the necessary competence to cope with new and complex situations, and the sensitivity to react quickly and decisively.

39. It was pointed out that adequate and reasonable economic incentives must be provided by such arrangements if sea-bed resources are to be exploited. At the same time the interests of the world community must be safeguarded.

40. Stability of the basic rules is also important. To assess the economics of a project the potential operator has to be assured that the conditions under which he will work are clearly set out, and that they will not be subject to arbitrary changes during the life of his title.

41. It was suggested that it would be advisable to keep fees and other payments required from operators at a modest, or low level at the exploration stage, and then, looking to mankind as a whole, to provide for a sharing in the benefits through appropriate provisions at the time of production. In any event, due allowance should be made in devising any scheme to take into account the difficulties and therefore the high costs and risks inherent in the marine environment.

42. The view was expressed that from the point of view of operators, the size of the areas should allow for efficient and economic exploration. Equally, it is important that areas be effectively and energetically worked and not allowed to lie fallow. In this connexion, it was also noted that this objective might be achieved in various ways; for example, by a sliding scale of fees and/or work requirements which increase over time, by requiring the surrender of portions of the area after stipulated periods, or by stipulating that a concession will lapse if the mineral is not exploited within a defined period, or by a combination of all three.

43. Drilling and mining activities carried out on land present hazards requiring strict and adequate safety measures. This is all the more true for all phases of marine mineral resources development, owing to the hostile environment in which it takes place. Mineral exploration and extraction may interfere with fishing, while the use of dynamite in seismic exploration may kill fish locally. One single blow-out may pollute vast expanses of the ocean, and even spread to neighbouring countries, significantly upset the ecological balance and damage the traditional maritime activities. Since only a few countries have so far adopted national safety codes for oil drilling within their continental shelf area, the necessity of adopting such appropriate legislation in the interest of the world community was urgently stressed. It was also pointed out that, although the establishment of sea lanes and use of modern aids to navigation have largely eliminated hazards

to navigation, the increase in the number of fixed or stationary installations multiplies the number of obstacles shipping must face and calls for appropriate safeguards to prevent such hazards as well as specific measures to solve conflicts arising from different uses of the sea and to protect the interests of coastal States.

44. Pollution stemming from sub-sea mineral exploitation is essentially of two types, namely (a) oil, gas, brines or fluids released directly from the well, from production or storage facilities, and from pipelines and (b) particulate matter stirred up from the sea bottom in mining or discharged as waste in the course of on-site beneficiation. The potential ill effects of mineral exploitation in waters beyond the limits of national jurisdiction are little understood at this stage, and will require both further study and caution in undertaking exploitation.

45. With regard to the problem of safety of personnel, sub-sea mineral development combines some of the hazards related to shipping and fishing and other hazards associated with dredging or on-shore drilling. Even though experience seems to be sufficient to form the basis for adequate safety regulations and practices, this aspect deserves continued review and improvement.

46. The opinion was expressed that in the foreseeable future only a limited number of countries will be in a position to participate actively on the basis of their own technological capability in the exploitation of the sea-bed and ocean floor beyond the limits of national jurisdiction. This should, however, not preclude the others from benefiting from this development. In view of this consideration and pending the establishment of an appropriate international régime it was suggested that it would be timely and appropriate to focus on interim steps to facilitate development of sea-bed resources: these should be simple and pragmatic in nature and not prejudice the eventual régime which may be established. They might include the registry of activities carried out beyond the limits of national jurisdiction, as well as scientific technical co-operation, training of personnel, safety measures, etc. The opinion was also expressed, on the other hand, that such interim steps are unnecessary, since no activities should be permitted prior to the establishment of an international régime and that efforts should be concentrated on the establishment of such a régime.

47. The importance of international co-operation with regard to submarine archaeology dealing with sunken cities and wrecks on the bottom of the sea was also mentioned. Apart from increasing historical knowledge, progress in that field will also provide appreciable information on sea-level changes having occurred thousands of years ago, thus establishing a link between archaeological and geological evidence.

48. At the end of the discussion of this item, the following observations were made:

(a) Once again, it was emphasized that our knowledge of the ocean is still fragmentary and perhaps too scant to provide a basis for economic exploitation of the sea-bed and its resources beyond the geophysical continental shelf.

(b) New forms of international co-operation should be considered to ensure the rational and equitable exploitation of the resources of the sea-bed.

(c) The fact that the exploitation of marine mineral resources is only in its very early stage provides a good opportunity to draw up, in good time, an international régime for operations on and under the sea-bed.

(d) A main objective of an international régime in this respect should be that all countries, whether coastal or land-locked, benefit from such a development and that the special interests and needs of developing countries be taken into account.

(e) The international régime should be effective, equitable and trustworthy. It should provide economic incentives for the development of marine mineral resources, particularly at the exploratory phase.

(f) Operations beyond the limits of national jurisdiction should be conducted in such a way as to reduce to a minimum the danger to human life, pollution and interference with the traditional maritime activities.

Particular problems related to the first phase of marine mineral resources development: the establishment of basic documents

49. During its meeting of 19 March 1969, the Economic and Technical Sub-Committee gave consideration to this item. It had before it the preliminary note by the Secretariat on "Economic considerations conducive to promoting the development of resources of the sea-bed and ocean floor beyond the limits of national jurisdiction in the interests of mankind". It based its deliberations also on the letter dated 27 February 1969 addressed by the Chairman of ICC to the Secretary-General (A/AC.138/10).

50. In the report of the Ad Hoc Committee's Economic and Technical Working Group (A/7230, annex I, para. 19) four phases were distinguished in the process of mineral development, the first of which deals with the acquisition of the basic knowledge through systematic area surveys and research, necessary to understand the character, distribution and variation of the mineral resources.

51. Basic documents, especially bathymetric, geophysical and geologic maps are needed to help identify areas favourable for the occurrence of various minerals and to appraise their potential resources, and, as such, are a prerequisite for the development of marine mineral resources. Such data also help to define properties of the sea bottom that need to be known to predict the hazards to mining operations and the effects of mining on other uses. Owing to the vastness of the area - approximately 360 million square kilometres are covered by water - the systematic mapping and charting of the ocean floor is a long-term and costly endeavour. Although widely spaced geophysical and sampling traverses and special purpose mapping provide some information on the geology of the ocean floor, systematic geological mapping of the oceanic basins has not yet begun. Geophysical mapping is in its early stage.

52. Practical considerations suggest that parts of this enormous task be undertaken by means of co-operative planning. Such a procedure would avoid overlapping and duplication of national efforts, lead to results in the shortest possible time and allow for a pooling of facilities and qualified personnel.

53. In order to achieve effective and rational co-operation, there must be agreement on co-ordinated planning of scientific research, on standardized measuring techniques and data processing as well as common understanding on the areas which would deserve priority investigation.

54. In the context of co-operative planning the co-ordinating role played by the ICC of UNESCO in the past was mentioned and the hope was expressed that it will continue and strengthen its activity in this field.

55. The need to standardize and calibrate instruments used at sea and in the laboratory was especially stressed; repeated slight errors in measurements could give rise to large-scale erroneous conclusions and seriously hamper progress. It was also pointed out that the reliability of bathymetric and geological maps of the ocean floor depend on the accuracy of the navigation systems with which they were recorded. In the last thirty years the development of electronic navigation has contributed to considerable progress. Today this is enhanced by the precision attained on the high seas with the artificial satellite navigation system. Additionally, the VLF continuous wave system promises vast coverage, range, and precise navigational resolution capacity. The need to support marine exploration surveying by means of precise navigation is world wide.

56. In the field of international co-operation, reference was also made to the regional economic commissions of the United Nations and the valuable assistance they could provide, in particular with regard to the selection of appropriate areas for the purpose of such oceanographic expeditions.

57. At the scientific level of investigation where research consists of an inquiry by scientists into the basic nature of the sea and the sea floor with no economic goal in mind, it was pointed out that there should be the least possible restriction on the movement of oceanographic vessels, and no unnecessary hindrance placed in their way. The idea was put forward that if coastal States limit excessively the freedom of research they may undermine the scientific basis upon which future progress will depend for all countries.

58. The question was raised of how the basic documents resulting from expeditions at sea were to be made accessible to the world community. The results of research in the areas of the sea-bed beyond national jurisdiction should be freely accessible to all.

It was also pointed out that if a system of concessions is adopted, it appears feasible to reconcile this principle with the proposition that prospectors be given exclusive rights to explore an area for a specified period. In return for the grant of exclusive exploration rights, operators might be required to make the basic data obtained in the course of the operation freely accessible after the lapse of a suitable period of time. This could be considered in the framework of the arrangement to be agreed upon for the granting of exploration rights.

59. Existing international exchange of information and data is limited to scientific data. There is a need for an international exchange of applied technological data. A fundamental problem with such information is the task of interpreting and processing the data for publication and retrieval. Standardizing the methods of storing oceanographic data so that they are permanently and swiftly

available to scientists everywhere is of primary importance. It was mentioned in this context that World Oceanographic Data Centres operate in Moscow and Washington. It was further suggested that a register of existing publications, maps and relevant documents be established and that new publications could be registered.

60. Systematic mapping as indicated above will eventually provide the broad base of understanding needed for full use of the ocean floor and efficient development of its resources. The view was however expressed that the prospector and developer may precede the topographer and survey geologist at sea as they may have on land. It was also pointed out that the development of ocean floor mineral deposits will therefore not have to await completion of the enormous and comprehensive task of a relatively detailed basic survey.

61. The question arises whether priority could or should be given to certain areas for which the establishment of basic documents might be promoted. In this respect, it might be better to pursue the systematic gathering of basic knowledge of areas which show signs of potential mineralization in preference to areas where preliminary surveys offer no encouragement.

62. Similarly, technical possibilities and economic prospects of such undertakings should be kept in mind: for some minerals it would seem prudent to proceed progressively oceanwards from the shelf towards greater water depths. Other criteria might be, inter alia, the availability of markets for given minerals and prevailing weather conditions. The importance of certain areas or resources for developing countries should also be taken into account.

63. At the same time, however, it is desirable to pursue purely scientific sea-bed exploration, for large areas of this vast domain are not well enough known to understand its potential even qualitatively. It is also desirable to continue research on crustal and oceanologic processes of the deep ocean, for an understanding of these processes is fundamental to science and to learning what mineral concentrations are likely to exist in this environment.

64. The scientific results of the co-operative programmes prepared and co-ordinated regionally and internationally by Governments and/or governmental and non-governmental organizations and by the UNESCO Intergovernmental Oceanographic Commission could prove a useful guide in determining these priorities.

65. The need to associate developing countries more fully and without delay in this new venture was stressed. It is of primary importance to make the Governments and people of those countries aware of the vast possibilities inherent in the development of the ocean floor and to provide for necessary means and for the training of national experts.

66. At the end of the discussion of this item, the following observations were made:

(a) Before us is the task of conducting a systematic geological survey of the sea-bed and the ocean floor. It is an enormous task, very expensive and will involve many years of work.

(b) The object of such a survey is not confined to the search for economically valuable mineral deposits, but is broader in scope.

(c) It requires international co-operation in the planning of research programmes, in the standardization of the methods used for survey and analysis, etc. The active participation of all countries should be sought in bringing about such co-operation.

(d) It should be governed by the principle of freedom of scientific research, in accordance with the relevant provisions of international law and the results obtained should be freely accessible to all.

(e) However, development of some of the mineral resources of the ocean floor does not have to await complete topographic and geologic knowledge of the whole of the area.

(f) The question arises whether or not certain priorities could be devised in the selection of areas for which the establishment of basic documents should be promoted. In this regard, attention could be focussed on areas which seem to offer an economic potential for exploitation and where development techniques would be available in the near future, such as the continental margin.

(g) The need to support marine exploration surveying by means of precise navigation is world-wide.

(h) In the interests of effective dissemination of all available information, prospectors who are granted exclusive exploration rights might also be required to make accessible freely, after the lapse of a suitable period, the basic data they have gathered.

(i) It is important to make the Governments and people of developing countries aware of the opportunities of this new venture so that they may participate in it without delay.

Particular problems related to the second and third phase of marine mineral resources development: the exploration of mineralization zones and the evaluation of their exploitability

67. During its meeting of 20 March 1969, the Economic and Technical Sub-Committee considered jointly the second and third phase of marine mineral resources development: the exploration of mineralization zones and the determination of the economic value of the mineral concentrations or deposits which have been discovered. It had before it the preliminary note by the Secretariat on "Economic considerations conducive to promoting the development of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction in the interests of mankind" (A/AC.138/6).

68. It was suggested that experience gained in various countries in relation to the development of mineral resources under national jurisdiction should be taken into account when considering the measures which might be conducive to promoting the development of the resources of the ocean floor beyond the limits of national jurisdiction. An appropriate adaptation of the existing practices might be envisaged with a view to ensuring the optimum efficiency. The identification of common denominators amongst these practices might facilitate the acceptance by the international community of an agreed procedure. But it should also be recognized

that the terms appropriate for mineral resource allocation and development vary from place to place and time to time. Various views were expressed with regard to promoting the development of marine mineral resources beyond the limits of national jurisdiction.

(a) According to one, the operator would be called upon to make a declaration of intent to undertake exploration in a certain area. The registration of such a declaration would be made subject to certain conditions such as respect of international law, reasonable regard for the marine environment, etc. No exclusive exploratory rights would, however, be granted.

(b) A more formal system would entail the issuance of an exploration permit. Such a permit would be granted for a given area and for a relatively short period of time. It would give no exclusivity to the operator nor rights to exploitation. The operator might, however, enjoy preferential treatment when applying for an ensuing exploitation permit and would receive some compensation if this application were rejected.

(c) Under a third system, an exclusive exploration licence would be granted for a more limited area and a longer period of time. Such a licence would entail exclusivity in the search for specified minerals and would carry the right to future exploitation of the deposits discovered. It might be awarded on one of several alternative bases, including the first to file, a lottery, or a judgement of the operator's financial and technical capabilities and his proposed programme. Competitive bidding is another possible basis for awarding title, although it may be less applicable to the totally unexplored resources of the deep ocean floor than it is in already producing provinces.

69. It was suggested that individual Governments are in the best position to judge the suitability of their own nationals as potential operators applying for permits and leases, and it is advisable that they be directly involved in such arrangements.

70. It was further suggested that any such lease-system would also have to contain provisions which would ensure that the interests of all countries were equitably respected.

71. Reference was made to the importance of preventing oil and gas blow-outs and storm breaks which may endanger human safety and result in pollution and other damage as well. Fortunately, such accidents have been rare because of the general effectiveness of prevention equipment. Thus, out of 7,642 wells drilled for oil and gas on the outer continental shelf of the United States until the beginning of February 1969, only twenty-three resulted in blow-outs and only one of these - the recent Santa Barbara Channel blow-out - resulted in an oil spill that led to significant environmental damage. The study of the origin, effects and means of prevention and control of such accidents, however, deserves high priority owing to their potential danger to human life and the marine environment. Nevertheless, it was recognized that it may not be possible to eliminate completely such accidents because of the difficulty of overcoming once and for all the possibility of human error and/or equipment failure.

72. It was urged that, without prejudice to the establishment of an international régime for the exploitation of the sea-bed resources, measures which would further international co-operation in the interests of mankind as a whole might be strengthened. It was suggested that such measures would include technical assistance to developing countries comprising the training of qualified personnel, the establishment of reference services which could provide easier access to basic data, the provision of capital needed to undertake sea-bed resources development operations, etc.

73. Further description of the different structural units underlying the seas and oceans was advocated including, inter alia the continental shelf, the continental slope, margin and continental terrace, the abyssal plain and other important features.

74. The importance was also stressed of taking into account the characteristic differences between the oceans and internal and marginal seas.

75. At the end of the discussion of this item, the following observations were made:

(a) It would seem appropriate to study procedures and practices at present used on a national level in order to assess their suitability to concessions granted beyond the limits of national jurisdiction.

(b) Various types of arrangements are feasible. These should provide that the obligations assumed by an operator are matched by appropriate opportunity for reward.

(c) A régime should serve the interests of mankind as a whole and should take into account the special interests and needs of developing countries.

(d) Although accidents in offshore drilling cannot be completely eliminated, their number can be reduced by means of improved safety measures and practices.

Particular problems related to the fourth phase of marine resources development - the exploitation of mineral deposits

76. During its meetings of 21 and 24 March 1969, the Economic and Technical Sub-Committee considered this item. It based its deliberations on the report of the Ad Hoc Committee's Economic and Technical Working Group (A/7230, annex I, paragraphs 30-38), on the preliminary note by the Secretariat on "Economic considerations conducive to promoting the development of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction in the interests of mankind" (A/AC.138/6 and Corr.1). The Sub-Committee was also informed on methods applied by various Governments at the national level.

77. Attention was called to the fact that the geologic characteristics of minerals that may be exploited from the sea-bed differ from one mineral or group of minerals to another, and influence the size of the area required for viable operation and the time required to achieve production. For nearly all minerals, a far larger area may need to be explored to find a deposit suitable for mining than is finally selected for exploitation.

Exploration of concealed deposits and the evaluation of the precise amount and quality of both exposed and unexposed deposits can only be determined by extensive and expensive forms of sampling and may even require some production experience. At the stage when such expensive forms of exploration are reached, the operator needs an exclusive right to explore and to produce if workable deposits are found. Because the value of such deposits cannot be determined in advance, particularly in wholly unexplored areas, the basis for payment for such rights should be one that is related to actual production rather than a pre-determined estimate of the value of an unexplored area.

78. It was mentioned that the high investment risks characteristically associated with mining should be compensated for by the opportunity for higher profits than are acceptable in many other enterprises. The risks stem from uncertainty of discovery, uncertainties concerning the feasibility of mining and recovery systems, possibility of loss from mining accidents, storms, and so on, and from uncertainties concerning future prices, demand, and other external circumstances. Although the high risk in mining cannot be eliminated altogether, it tends to diminish with increasing knowledge about the occurrence of recoverable minerals in a given area and with increasing experience in producing them. Net resource value - the surplus remaining when the mineral has been sold and after production costs and profits on risk investment have been paid - is the amount which would be received from the granting of a concession for the production and sale of these resources. Limited as it is on one side by production costs and endangered by the risk involved and on the other by a price that is fixed externally, net resource value varies considerably from place to place and time to time. At the outset of sea-bed exploitation it may be nearly zero, but if exploration shows the existence of workable deposits, if production costs can be reduced, if environmental hazards can be controlled, and if prices do not decrease, net resource value may increase over time.

Direct revenue from the production of minerals is welcome to all Governments, and to developing countries it may be the principal benefit to be derived from production of sea-bed resources initially. An important consequence of the availability of minerals, however, is in the chain of economic activities that surround their production and follow on their use, and in the future these benefits should come to be shared by all the people of the world.

It was suggested, therefore, that, in the long run, the goal should be not only the direct revenue that may come from the sale of the sea-bed resources, but also to encourage sub-sea production of the raw materials which will thus be made generally available.

79. The Economic and Technical Sub-Committee was informed of various methods applied nationally to regulate mineral exploration and exploitation with a view to examining whether common denominators could be arrived at which could serve as examples for similar regulations when such an international régime is envisaged.

80. The view was expressed that any exclusive rights that might be granted should be over areas large enough and for periods long enough to enable the operator to carry out exploration and exploitation with the benefit of economies deriving from the scale of activities. According to this view, these rights should only be given over such an area and for such a period as will ensure that the area is effectively and energetically worked during the life of the title.

81. It was also suggested that production titles should specify the minerals which they cover: as a general rule, all embracing titles should not be contemplated. Subdivision into hydrocarbons and other minerals should be considered at the least. The possibility was mentioned, however, that hydrocarbon titles might be extended to cover other substances which may be recovered by drilling: e.g., sulphur, in some forms of its occurrence, and helium. Consideration should be given to whether hard minerals might also be grouped in ways corresponding to the mode of occurrence: e.g., it is impossible in the case of typical lead and zinc occurrences to extract the one without the other. Also, nickel and copper occur with manganese, as all may be present in the same nodules.

82. It was pointed out that the need for stability in the basic rules would not imply that conditions should be immutable and that production rights should be granted for an adequate specified period of time, at the end of which the title holder should have the opportunity to renew his title, subject however to review of the conditions for the renewed title. Such a way of proceeding would allow for long-term planning on the part of the operator and induce him to apply sound exploitation methods. Since sea-bed mineral resources were non-renewable, responsible development was imperative. On the other hand it would permit a review of the portion of the benefit from production which should accrue to mankind as a whole - that is to say, the renewed title could carry a higher rate of royalty or tax, or a lower rate could be imposed to ensure more complete mining of the resource.

83. It was emphasized that promotion and success of international co-operation in the development of marine mineral resources will be dependent on the régime which will be devised.

84. It was pointed out that operators exploiting ocean floor resources within the framework of an international régime should do so (a) in a way which conforms with good mining practices and makes the best use of these resources, (b) without unjustifiable interference with other activities on the sea-bed or on the superjacent high seas, (c) with constant vigilance to guard against marine pollution and the disturbance of the ecological balance. Ways would have to be devised, therefore, by which the quantities and grade of minerals mined or extracted could be measured and their value assessed in order that mankind, as a whole, may receive its just and equitable due. It was pointed out, as well, that the requirements of competence and efficiency should be balanced with the need to keep costs and personnel within manageable proportions so that a bureaucracy not be created which would absorb the financial benefits which might accrue from ocean floor production.

85. It was pointed out that, under any régime, operators should be required to:

- (i) submit advance notices of proposed programmes;
- (ii) provide information and appropriate materials on a current basis as well as furnish comprehensive technical reports;
- (iii) assist in the carrying out of appropriate inspections by authorized officials.

86. With particular regard to the technical aspects, reference was made to arrangements which should be designed so as to reflect adequately such requirements and factors arising from the exploratory techniques necessary to find the various types of deposits, the evaluation procedures required to justify their development and the equipment and methods for their extraction.

87. With particular regard to the economic aspects, it was also noted that allowance should be made for the economic realities and provide adequate economic incentives to attract the necessary investment capital, protecting at the same time the interests of the international community as a whole. Rights should be granted in a manner devoid of political or other discrimination, for specified periods of time, and oblige the holder either to pursue resource development actively or to relinquish the rights granted.

88. Mankind as a whole should benefit from the production of sea-bed resources: once discovered and produced they will add to the existing inventory of minerals which are a wasting and non-replaceable asset, as distinct from other natural resources available for use by mankind.

In this connexion, the view was expressed that the international community would benefit from sharing financially with the operator, be it a private company or a State-owned enterprise, in the proceeds from the sale of his product. In this, the special interests and needs of developing countries would have to be taken into account.

89. It was pointed out that if royalties are imposed they should not be so high as to discourage exploitation or to promote irresponsible methods of exploitation. They should be modest at the initial stages of exploitation, since the returns will then also be small, and they could vary with the difficulties and costs of the exploitation.

90. It was suggested that, in providing exploitation rights for particular minerals, account would need to be taken of the availability on the world markets of the same minerals produced from land, the demand position and the other relevant factors.

The promotion of an exploitation of specific sea-bed minerals which could entail a drop in price of corresponding land minerals, on the export of which some or many developing countries rely, is a matter for careful consideration by the world community. In this context, it was considered over-optimistic to expect, as was suggested in paragraph 36 (b) of the report of the Ad Hoc Committee's Economic and Technical Working Group, that "the economies of the developing countries will be more diversified and consequently less dependent on raw materials exports" by the time sizable exploitation of marine mineral resources will be achieved.

91. Reference was made to marine mineral deposits, in particular hydrocarbons, located partly within the zone of national jurisdiction and partly outside this area. Two ways were suggested to reconcile the interests of the coastal State and the interests of the world community in exploiting these deposits.

- (i) to establish an intermediate buffer zone contiguous to the outer limits of national jurisdiction where the coastal State would enjoy priority of rights or exclusive rights of exploitation, depending on the extent of the overlapping of the deposit;
- (ii) to consider a joint exploitation of such resources by the coastal State and the entrepreneur operating within the envisaged international arrangement.

92. It was noted that international co-operation in the field of sea-bed resources development would benefit from the participation of all States, developed as well as developing. One form of promoting the participation of developing countries which lack the necessary capital and technological skill would be in the training of their nationals. It was therefore advocated that the existing training programmes in this area be enlarged and more widely publicized, and that new programmes be created at the national, regional and international levels, so as to attract and encourage the potential scientists and research students from developing countries.

93. In this context, it was further suggested that operators should accept among their personnel, trainees from developing countries in order to assist them in the training of national experts, and that nationals of developing countries, where similar types of deposits as are looked for by the operator are identified, should thereby enjoy priority.

94. At the national level, measures are taken for the protection of installations used for exploration and exploitation on the continental shelf, as well as measures to avoid such installations constituting a danger to the environment or an impediment to other activities.

In this context, the view was expressed that these measures could be carried over into an international agreement which, inter alia, might provide for the establishment of "safety zones" around such installations, without giving the installations the status of islands.

95. Personnel engaged in off-shore operations should be given guarantees commensurate with the risks they take. In addition, safety codes should be adopted to ensure the best possible protection of this personnel.

96. Safeguards against potential hazards inherent in exploitation activities and provisions for the prevention of marine pollution and damage to coastal States should also be considered in this context.

97. The activities of the Inter-governmental Maritime Consultative Organization were mentioned. It was proposed that the international conventions under its auspices, i.e., the International Convention for the Prevention of Pollution of the Sea by Oil (1954), as amended, and the International Convention for the Safety of Life at Sea (1960) be complemented so as to take into account problems relating to:

- (i) the safety of construction, equipment and operation of drilling rigs, production platforms, submersibles, and other devices used for the exploitation and transportation of sea-bed resources;

- (ii) the safety of the people working on them;
- (iii) the danger arising from ships navigating in the area where underwater operations take place;
- (iv) the spillage of oil and other noxious or hazardous substances into the sea owing to the exploitation of sea-bed resources.

98. Any international arrangement for the exploitation of marine mineral resources might also include provisions relating to the liability for accidents occurring during the operation of off-shore ventures. In particular, the necessity of considering a régime of compensation for damages to third parties was stressed.

99. Following a proposal by the delegation of India, the Sub-Committee decided that the Secretariat be requested to prepare, as a follow-up to the preliminary note A/AC.138/6 and in the light of the deliberations held in the Economic and Technical Sub-Committee during its session of March 1969, a study which would include a review of the measures taken by various Governments with regard to the development of their continental shelf mineral resources, in particular oil and gas, and the denominators which are common to these measures.

100. At the end of the discussion of this item, the following observations were made:

(a) In order to promote the exploitation of the resources of the sea-bed beyond the limits of national jurisdiction, it will be necessary to encourage the capital investment and to further and protect the interests of the international community.

(b) The necessary scientific, technical and economic expertise must be available if the task is to be accomplished efficiently.

(c) Various formulas regarding the granting of exploitation titles on a national level have been discussed. It will be useful to determine the common denominators of these national formulas, and to examine their respective advantages and drawbacks.

(d) Mankind as a whole stands to benefit from the development of sea-bed resources in two ways: from the increase of world inventory of mineral resources; and by financial sharing in the benefits resulting from their exploitation.

(e) There was common understanding that all countries should participate to the extent possible in the exploration and exploitation of the resources of the ocean floor and share equitably from their exploitation.

(f) It was therefore considered important (i) to promote international co-operation providing for the training of nationals of developing countries with a view to enabling developing countries to participate directly in such undertaking and (ii) to provide for international arrangements which will benefit all mankind, taking into account the special needs and interests of developing countries.

(g) Since the economy of certain developing countries is very much dependent upon the export of certain primary commodities it will be necessary to study in detail the economic impact of exploitation of marine mineral resources on the world market.

CHAPTER III

Examination of the economic and technical aspects of the draft comprehensive outline of the scope of the long-term programme of oceanic exploration

101. During its meetings of 12, 13, 14 and 21 August 1969, the Economic and Technical Sub-Committee gave consideration to this item. It based its deliberations on the Draft Comprehensive Outline of the Scope of the Long-Term and Expanded Programme of Oceanic Exploration and Research, including the International Decade of Ocean Exploration, prepared by the Special Working Group of the Intergovernmental Oceanographic Commission (IOC) (A/AC.138/14 and Corr.1 (English only)).

On 21 August, Admiral Langeraar, Chairman of IOC, addressed the Sub-Committee, elaborating on the Draft Outline and explaining several issues raised by delegations. In its deliberations the Sub-Committee also took into account a report of a joint working party on the scientific aspects of international ocean research "Global Ocean Research" (Ponza report), from which the Draft Outline was developed and the report prepared by the Secretary-General on "Mineral resources of the sea" (E/4680). 3/

102. In his interim report to the Economic and Social Council at its forty-seventh session in response to General Assembly resolution 2414 (XXIII) (E/4672), the Secretary-General reported that the Draft Outline had still to be further considered and that he therefore felt it appropriate to wait for the conclusions to be reached during the sixth session of IOC before presenting a report outlining the scope of the long-term programme.

103. Document A/AC.138/14 thus contains only a draft which is still subject to modification, but even so it was felt to be of interest to the Economic and Technical Sub-Committee and was forwarded to it for information.

3/ The delegations also had at their disposal four documents distributed by the United States delegation:

- (i) Preliminary maps of "World Subsea Mineral Resources" by V.E. McKelvey and Frank F.H. Wang, Department of the Interior U.S. Geological Survey Map I-632, 1969.
- (ii) The International Decade of Ocean Exploration, "An Oceanic Quest" - An Appraisal by Committees of the National Academy of Sciences and the National Academy of Engineering of the United States.
- (iii) "Subsea Mineral Resources and Problems Related to Their Development" - Geological Survey Circular 619, U.S. Department of Interior, U.S. Geological Survey Circular 619, 1969.
- (iv) AIAA Student Journal, April 1969. (Publication of the American Institute of Aeronautics and Astronauts).

104. It was pointed out in the Sub-Committee that the differences which existed between the Ponza report and the Draft Outline were inevitable, since the former was prepared by a panel of scientists who tackled the problem from the standpoint of what it would be desirable to undertake; whereas the latter was prepared by government representatives who had to limit the development of the programme to what their Governments would be able to support.

105. The Draft Outline was generally welcomed as a very useful indication of the scope of the expanded programme. Furthermore, it was considered valuable to have a preliminary exchange of views on the draft at this stage since the results of this discussion might prove helpful to IOC when adopting its final report.

106. It was felt that the Draft Outline covered virtually all those aspects of the scientific investigations of the ocean and its floor that seemed on the one hand desirable in the light of present scientific knowledge and on the other hand feasible in terms of current instrumentation and technology. The part of the Draft Outline referring to the ocean water itself, its organic populations and its pollution might not at first sight be particularly relevant to the exploitation of the sea-bed and its minerals. However, the ocean, the atmosphere, and the sea-bed were interdependent and interacting, and phenomena and processes in one influence those in the others.

107. In this context, it was also recalled that initially the proposal for a long-term programme of oceanic research to be organized under the aegis of a broadened IOC had been proposed by the Secretary-General in his report on marine science and technology following the adoption by the General Assembly of resolution 2172 (XXI). This explains why the expanded programme is comprehensive in scope and not limited to the sea-bed and the ocean floor.

108. It has been pointed out that the long-term programme is scientific in nature, and hence immediate economic benefits should not be expected. However, the programme will offer the scientific basis necessary to evaluate potential resources and discover new resources.

109. In the Draft Outline it is pointed out that an understanding of the character and evolution of the earth's crust beneath the ocean can

"provide a basic scientific framework within which prediction, evaluation and exploitation of material benefits from the sea floor can be made, and without which these benefits can result only from haphazard exploration and empirical studies".

It was therefore suggested that section 4 of part I of the Draft Outline setting forth projects relating to "geology, geophysics and mineral resources beneath the sea" should be reconsidered by IOC with a view to elaborating these projects more fully and perhaps giving them greater emphasis.

110. It was further felt that the special working group of IOC had perhaps interpreted too narrowly the mandate given to it by the General Assembly since the Draft Outline did not contain enough operational elements which would allow a clear assessment of the task lying ahead. In particular, no indication was given in the Draft Outline as to the time-limits within which the many valuable

proposals would have to be implemented. In addition, the Draft Outline omitted establishing priorities and did not give estimates regarding the costs involved and the likely availability of funds.

111. It was explained, however, that the Special Working Group in drafting the Outline felt that it should list the problems and proposals as far as possible in a logical order, leaving it to the United Nations and related organizations to deal with questions of priority. It was argued in the same context that research projects in all fields must be encouraged, for it was highly difficult to forecast their future interaction. It was noted that the Executive Council of ICC would convene as often as necessary as a follow-up of the Outline to develop from time to time the details and steps to be taken in the implementation of the expanded programme.

112. As regards the question of financing, it was recalled that the expanded programme would be, in essence, a programme of co-ordination, of national research projects, and activities of Member States. Funds would therefore be almost exclusively those allocated to marine research in national budgets. The Outline therefore was not intended to project the cost of an international operation but to recommend a broad and ambitious pattern of research into which national activities should be fitted.

113. National programmes should be designed in a way that other nations - developed or developing, coastal or land-locked - can become associated with them and be afforded the possibility of actively participating in the common endeavour to increase our knowledge of the ocean, its floor and the subsoil.

114. In considering the Draft Outline, special attention was given to the possibilities it offered to developing countries in the field of improving their research capabilities and direct participation. It was felt in this context that the Special Working Group might have taken into account to a greater extent elements which would be conducive to arriving at this goal.

115. The primary objective of the expanded programme is the enhanced scientific knowledge of the ocean with an ultimate goal of the utilization of its resources for the benefit of mankind. The developing countries have a special interest in fully participating in the expanded programme and in seeking to apply its results to further their own development. They would need scientific, technical and material assistance, especially in training of specialists, equipment and facilities as well as assistance in the design and organization of scientific programmes. It was hoped that adequate funds would be made available for developing plans to meet the interests and needs of the developing countries arising from the expanded programme.

116. It was remarked that all studies and activities relating to the better understanding and use of the sea-bed resources would call for a full and unreserved implementation of the principle of international co-operation. This co-operation should be universal in order to ensure that this new area be developed for the benefit of all mankind.

117. It was further observed that the complex and important task lying ahead does not only call for universal co-operation but in addition for systematic information:

information flowing from the obligation to inform and not as an act of courtesy. In this context, it was also stated that freedom of research would only serve mankind as a whole if its results were systematically made known to the international community.

118. It was also emphasized that developing countries which do not possess the technical know-how to participate in the exploitation of sea-bed resources and also lack the scientific training to take part in the exploration of the area should benefit from such international co-operation. The necessary programmes should therefore be provided so that all countries which so desire can train their own experts.

119. The practical value of the suggestions on specific international regional investigations was also stressed, whether they concern specific portions or regions of the world ocean or cover co-operative action undertaken by countries of a specific geographic area, e.g., by nations adjacent to a marginal or internal sea. It was suggested, however, that more attention should be given in these programmes to studies relating to the sea-bed and its mineral resources.

120. There was agreement that the observations and suggestions which had been made during the debate on the item should be brought to the attention of ICC, for its consideration when the final outline of the scope of the long-term programme of ocean exploration was elaborated. Accordingly, the summary records of the meetings of the Economic and Technical Sub-Committee covering the discussion of this item will be forwarded to ICC.

121. At the end of the discussion of this item, the following observations were made:

(a) The draft outline, which still has to be examined and approved by IOC was generally considered as a useful indication of the scope of the expanded programme. Several suggestions for its improvement have been made.

(b) The importance of an adequate scientific basis for locating mineral deposits and preventing pollution was pointed out and the interest of these data for all countries reaffirmed.

(c) Even though certain aspects dealing with the superjacent waters were not strictly within the purview of the Committee, the interdependence and interaction of all processes and phenomena concerning the ocean were stressed. It was urged that within the framework of the expanded programme, research on the sea-bed and the ocean floor should be developed further.

(d) Certain operational elements were considered lacking in the Draft Outline, since priorities were not indicated and financial estimates of the programmes not made. It was pointed out, however, that such information could be provided at the stage of programming when funds were allocated in the framework of national budgets.

(e) Regrets were also expressed that developing countries had not been sufficiently associated with the expanded programme in the Draft Outline and that too little account had been taken of their needs and interests. In this respect stress was laid on the importance of international co-operation.

(f) The importance of training of personnel and experts and other forms of technical assistance was emphasized.

CHAPTER IV

Consideration of the economic and technical aspects of the report submitted by the Secretary-General pursuant to resolution 2467 C (XXIII): study of possible régimes for the exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction

122. During its meetings of 15, 18, 19 and 20 August 1969, the Economic and Technical Sub-Committee gave consideration to this item. It based its deliberations on the report of the Secretary-General "Study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction and the use of these resources in the interests of mankind" (A/AC.138/12 and Corr.1 and Add.1 and Add.1/Corr.1). 4/

123. The report of the Secretary-General was generally commended as an excellent analysis of the various forms of machinery which could be set up to govern exploration and exploitation of sea-bed resources. It was felt, however, that the economic and technical aspects of the machinery could have been elaborated more fully and that, from the three alternatives considered (registry, licensing and operational agency), only the first and to a lesser extent, the second alternative had been covered in an over-all comprehensive manner. It was suggested in this context that the analysis contained in the study be followed up in order to render the report more complete.

124. During the discussion of the report of the Secretary-General it was generally observed that the consideration given to this item could at this stage only be of a preliminary and tentative nature, owing to the complexity and importance of the problem and the lack of time which was afforded to delegations and Governments to study the documentation.

125. It was widely emphasized that international machinery should be established and that it should be a part of an international régime governing the exploration and exploitation of the resources of the sea-bed beyond the limits of national jurisdiction. The view was expressed that such machinery should act as a trustee for the international community.

On the other hand, it was strongly argued that the establishment of an international régime did not necessarily imply the setting up of international machinery and that, pending further study of all aspects of the problem a decision on the establishment of international machinery was premature.

4/ References were also made to "The report of the Commission on Marine Science, Engineering and Resources" (Stratton Commission report), and to the final report of the New England Assembly on uses of the seas.

126. The terms used in the report of the Secretary-General describing different models of international machinery, namely the system of registration, the licensing system and the operational agency, were considered useful to categorize alternatives within a spectrum which ranges almost continuously from mere registry of claims with no agreed-upon criteria all the way to very complex machinery at the other extreme.

127. In view of the possibility, as mentioned in the Secretary-General's report, of devising a wide range of solutions involving elements and combinations of each of the three models described, it was suggested to avoid fixed or immutable positions on what system is, or is not, suitable, but rather to concentrate on specific elements that appear to be necessary for acceptable and effective international machinery.

128. The view was expressed that part of any international machinery will have to be an international registry of claims. This registry would neither have to be complicated nor costly and would meet substantial prerequisites for the orderly development of sea-bed resources.

129. It was suggested that a mere registry system would lack the authority necessary to protect the interests of mankind as a whole and of the developing countries in particular, since it would be confined to the purely passive role of recording activities which were initiated and notified by States. Furthermore, a mere registration of activities on a "first come, first registered" basis, would favour the technically most advanced countries and overlook the interests and needs of developing countries. It would lead to a confused race for claims and would also be likely to give rise to disputes. The view was therefore expressed that other elements in addition to registration would be needed such as: internationally agreed criteria; responsibility of Governments for adherence by their nationals to these criteria; adequate procedures for verifying compliance.

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

131. During the consideration of the second alternative, namely the licensing mechanism, it was suggested that the international machinery should not be set up for the sole purpose of licensing the development of sea-bed resources, but rather should regulate, co-ordinate, supervise and control all activities relating to the exploration and exploitation of the resources of the sea-bed beyond national jurisdiction. According to this view, it might, inter alia, set up safety standards for the exploration and exploitation of the sea-bed resources, propose development plans and make its own budget, providing for its own administrative and other expenses, settle disputes between Member States, provide technical assistance to the developing countries so that they may participate in the actual exploration and exploitation of the resources of the sea-bed, apportion revenues accruing from fees, royalties or grants and take appropriate measures to protect the developing countries against the fluctuation of world prices of primary products.

132. It was suggested that the international machinery should have the right to grant or refuse a licence depending on the extent to which the application

conforms to the criteria laid down. But, it should also be in a position of bargaining to ensure that the maximum possible is obtained by way of royalties for channelling to the developing countries. The attractiveness of a bid must be evaluated to a great extent in the light of what the operator is willing to pass on to the institution as royalty.

133. It was also stated that the possibility of operations by an international agency carrying out itself marine mineral development should be kept in mind as a future possibility. The advantages of operations by an international organization were emphasized.

134. On the other hand, a view was expressed that the concept of an international agency empowered to explore, exploit, refine and market sea-bed resources itself or through sub-contractors would be harmful to the interests of developed and developing countries alike. To support this opinion it was stated that such an operating organization would, among other things: (a) require a large initial capitalization; (b) meet, and even generate, conflicts in the marketing of its mineral products, since it would act as a producer and an exporter only and hence might influence prices under the pressure of the international community to return a profit, with unfavourable consequences for either world consumers in the higher costs they would have to bear or for land producers in loss of markets; (c) present problems regarding the distribution of profits to investors vis-à-vis the international community; (d) present problems with respect to the use of patents and industrial or trade secrets; (e) force the international community into taking huge risks instead of allowing the risks to be taken by others and benefiting from success where it is achieved; (f) essentially deny to developing countries the benefits of service and supply industries surrounding the mining and refining activity, the technologic spillover, social benefits coming from developing skills and knowledge, as well as manufacturing industries, while delaying at the same time their participation in sea-bed exploration.

135. The view was expressed that consideration would have to be given to the question of the participation of the international community in the administration of this area and its resources. Attention was also called to the need for all States, coastal and landlocked, to participate in the benefits to be derived from the exploration and exploitation of these resources, taking into account the special interests and needs of the developing countries.

136. A view was expressed that an international régime of which the international machinery will be a part should provide, inter alia, the essential working guidelines for its operation. These might include provisions regarding:

- (i) criteria establishing the eligibility and capability of the claimant to exploit sea-bed resources beyond national jurisdiction and criteria governing minimum performance requirements;
- (ii) criteria covering such matters as the types of resources to be exploited under a title, the size of the claim, the duration and termination of the title, the accommodation of multiple uses of the sea-bed and the water column, and the relation between exploration and exploitation rights;
- (iii) procedures to verify compliance with the established operational standards;

- (iv) criteria governing conservation, safety and anti-pollution measures;
- (v) the equitable application of benefits and the channelling of royalties;
- (vi) the negotiation and conclusion of lease contracts;
- (vii) international control of the activities and the effects of violations, including cancellation of title;
- (viii) solution of problems where a deposit extends across borders;
- (ix) effective procedures for settlement of disputes;
- (x) rules governing the liability for damages arising from exploitation of sea-bed resources beyond national jurisdiction;
- (xi) the preservation of the freedom of scientific research;
- (xii) active participation of developing countries.

137. The view was expressed that the régime should ensure:

- (i) a rationally planned exploitation of sea-bed resources influencing, by way of its licensing programme, the over-all volume of production so as to maintain stability of prices and market conditions for land and sea producers alike;
- (ii) an equitable distribution of income according to the principle of maximum benefit to mankind;
- (iii) a fair return to investors and adequate remuneration to concerns engaged in various operations;
- (iv) the allocation of a certain percentage of income to the United Nations in order to increase its resources and enable it to expand its technical assistance activities.

138. The objectives of the international régime and international machinery are to serve mankind as a whole: a view was expressed that it should therefore, inter alia, meet the following criteria:

- (i) promote sea-bed exploration and development beyond the limits of national jurisdiction;
- (ii) provide protection for the integrity of investments as well as an opportunity for a reasonable return on risk investments;
- (iii) provide for the payment of royalty on production, thus allowing the international community to share in the benefits;
- (iv) help the developing countries acquire the capabilities that will enable them to participate directly in sea-bed development;
- (v) be accepted by the nations of the world.

139. The view was expressed that a flexible concept of international machinery would be a realistic approach at this stage; and it was further suggested that a simple and effective machinery could be designed to serve anticipated needs and offer the best possibility for the development of revenue for international purposes. A more sophisticated machinery may need to be established later in the light of subsequent developments. But the need for the establishment of effective machinery at an early date was emphasized.

140. The view was expressed that at the outset the organization would be able to do no more than act as a registry of activities and at the very most as a licensing agency. Other delegations voiced the feeling that the international machinery at the beginning could have the expertise and technical competence to undertake activities other than those undertaken under the registry system. But even if the new authority in the beginning might lack the expertise, the equipment and the financial backing to conduct its own exploration and exploitation of the sea-bed, this would be no argument against giving it the powers needed to discharge other functions. It was therefore suggested that the international machinery should be constituted so as to be able to undertake the most diverse tasks, including functions with regard to adoption and implementation of appropriate standards and other regulatory matters. Therefore, in this view, the instruments constituting the new international machinery should establish it in such a way as to be legally, organizationally and technically equipped to perform its function as trustee or administrator of the common heritage of mankind.

141. It was suggested that the question of international machinery needs to be considered simultaneously with, and in the light of, the legal régime which will have to be elaborated to govern activities on the sea-bed beyond national jurisdiction. It was suggested that the type of machinery will be closely related to the provisions of the régime agreed upon. A view was furthermore expressed that the nature of the régime or machinery to apply in the area may be affected by the eventual determination of the limits of the area beyond national jurisdiction and that final decision on the exact scope and functions of the machinery may have to wait until a solution to the problem of an international régime governing the development of marine mineral resources in the interests of mankind is in sight. It was further suggested that existing uncertainty as to where a boundary of the area should be drawn might be a serious obstacle to the solution of the question of the setting up of international machinery. Discussion, as distinct from decision, on the question of machinery should however not be held up until these complex problems are settled.

On the other hand, the view was expressed that the discussion of the limits of the area is unnecessary, irrelevant, not covered by the mandate of the General Assembly and would be a serious obstacle to progress. In this context, it was also pointed out that references to this problem would be likely to delay the work of this Sub-Committee.

142. It was pointed out that even the implementation of the very modest functions attached to the concept of a registry of claims would require some sort of international machinery.

It was also mentioned that the concept of the sea-bed and ocean floor as a common heritage of mankind is in fact compatible with various forms of machinery and is not necessarily to be identified with the exercise of rights by an

international body only. International machinery will be required, but one should avoid the degree of complexity which would, on the one hand, consume almost entirely the part of the proceeds from the production of sea-bed resources which are destined for the world community as a whole and, on the other hand, might make it irresponsive to the aspirations of States.

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

143. It was suggested that an international machinery must command the support and confidence of the Governments of all the nations of the world which create it. Equally, the régime must instil confidence in the minds of operators - be they public or private - that titles granted or registered are effective and can, and will, be supported, and that decisions (both administrative and operational) are given justly, impartially and with proper expedition. It was also suggested that the international machinery should ensure rights for the operators.

144. A suggestion was also made that, in order to ensure the viability of the proposed international machinery within a legal régime, it will be necessary to insulate as far as possible the sea-bed and the ocean floor from all power rivalries.

145. In order to avoid extensive claims, it was suggested that international machinery for the sea-bed could perhaps devise a system of quotas of registration or a predetermined ceiling on the number of registrations each State is entitled to make.

It was, however, also suggested that instead of limiting the number of claims or the total acreage to be held by an organization or a nation - which would discourage exploitation - provisions should discourage a producer from holding more ground than he needs and require him to achieve production if he wants to hold his claims after a reasonable period.

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

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

147. It was suggested that preferential rights should be granted to the coastal State with regard to mineral deposits lying within a zone beyond its jurisdiction but adjacent to it. The granting of preferential rights of that kind should however in no way prejudice the delimitation of the area of national jurisdiction or be used to reduce the area of the sea-bed where the coastal State exercises sovereign rights.

148. The view was expressed that supervisory procedures should allow for the participation of the coastal State in the case of activities in areas adjacent to the limits of national jurisdiction.

In this context, it was also said that the coastal State should be recognized as having special rights within a zone lying beyond its national jurisdiction but adjacent to it, with respect to the supervision and regulation of activities within this zone, in view of the adverse effect that such activities might have on the coastal environment.

149. The possibility of registration of claims by intergovernmental agencies referred to in the Secretary-General's report was felt especially important for developing countries, which could through such a procedure pool their resources in regional ventures.

150. It was suggested that until the establishment of international machinery, adequate guarantees should be agreed upon to ensure that no exclusive rights be acquired and that the exploration and exploitation of the sea-bed resources beyond national jurisdiction be carried out in the interest of mankind, taking into account the special needs and interests of developing countries. In this regard, it was argued that the promotion of exploitation without proper guarantees would not necessarily work in favour of developing countries. It is true, of course, that only a few countries now possess the financial and technologic capability to work in this environment. A view was expressed, however, that if those willing to undertake sea-bed exploration and exploitation were inhibited, no income would accrue to the international community, and the technological capability that could eventually be shared by all of the countries of the world would not be developed.

In any event, there should not be interference with scientific investigation and the development of technology carried out for the benefit of all mankind.

151. It was suggested that any future regulation should include an obligation on the part of the operator to provide the most detailed possible scientific and technical information; in that connexion the precedents established in article XI of the Outer Space Treaty and article III of the Antarctica Treaty were recalled.

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

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

154. In this connexion, consideration might be given to channelling the proceeds to developing countries as project assistance through existing international or regional agencies which already have developed expertise in the field of project evaluation, implementation and supervision. It was stressed, however, that since the benefits should accrue to developing countries as a consequence of the concept of the common heritage of mankind, they should not be considered as a form of economic assistance.

155. It was suggested that this Sub-Committee should identify as one of the main tasks of its next session that of devising a code regarding conditions of title arrangements (area, period of tenure, royalties, etc.) and a system of operating and supervisory procedures. National experience shows that the development of such a code will be an arduous and time-consuming task.

156. It was also suggested that the Sub-Committee examine further the criteria and mechanisms covering the obligations of the operator toward the international community and especially the sharing by the international community of benefits derived from exploration and exploitation. It was further suggested that the Sub-Committee devote more study to criteria and machinery covering the distribution of benefits, taking into account the urgent needs and interests of the developing countries.

157. The opinion was also expressed that reference might usefully be made to already existing conventions covering subjects related to exploitation of the sea-bed (prevention and limitation of pollution, protection of installations and workers) and it was suggested that the Secretariat of the United Nations, at some stage of the Committee's work, should extract relevant material from those texts, which, if they were adapted or amended, might in some cases make new international instruments unnecessary. It was also suggested that the Sub-Committee at its next session should formulate criteria with regard to international recognition of any exclusive rights concerning the use of sea-bed resources.

158. At the end of the discussion of this item, the following observations were made:

(a) The report of the Secretary-General in so far as it gave an analysis of the various forms of international machinery was commended as an excellent study. Most delegations stressed that they could offer only preliminary views. It was suggested that this analysis be followed up in order to render the report more complete.

(b) On the matter of international machinery, one point of view was that it should be established as part of an international régime. Another point of view contended that an international régime did not necessarily imply machinery and that pending further study, a decision was premature.

(c) It was stressed that any international machinery - which will have to be acceptable to the world community as a whole and should be set up after thorough and comprehensive study - should strengthen international co-operation and not give rise to a heavy international bureaucracy which would offset the expected advantages.

(d) It was emphasized that any international machinery which may be devised should be assessed from the viewpoint of efficiency, impartiality and equity.

(e) Amongst the three systems listed in the Secretary-General's report, the concept of an operational agency was considered in a separate context. Some delegations felt strongly that this system was not feasible practically; others insisted that it deserved careful consideration and should be studied and discussed in depth at a later stage.

(f) One view was that the two other alternatives, registry and licensing systems, were to be considered as elements within a broad range of possibilities, the latter being a more refined version of the former. A registry system with additional functions would closely resemble in character and operation a licensing system. Other delegations maintained that there was an essential difference between a registry system and a licensing authority.

(g) The registry was advocated by some delegations as an acceptable system on the understanding that it would be complemented by internationally established criteria to be adhered to, and adequate procedures to verify compliance with such criteria.

(h) Other delegations felt that a registry system would lack the necessary authority to protect the interests of mankind as a whole. According to their view, even a licensing system would only be adequate if it were endowed with the powers to regulate, supervise and control all activities relating to the exploration and exploitation of the resources of this area.

(i) Several economic and technical requirements, criteria and procedures which would have to be covered by any international machinery were put forward. In this context several proposals regarding the future work of this Sub-Committee were advanced.

(j) It was felt that the study of the question of international machinery should progress simultaneously with the consideration of other related problems.

(k) Reference was made to the importance of the problem of defining the limits of this area, a problem which will have to be considered in the appropriate forum.

(l) It was suggested - though contrary views were expressed - that final decision on the question of establishing international machinery would have to wait until it is possible to view a solution to such problems.

(m) A flexible concept of the international machinery was suggested: a system which could be adapted to future needs as they arise.

ANNEX I

ALLOCATION OF SUBJECTS AND FUNCTIONS COVERED BY RESOLUTIONS 2467 A, E, C AND D (XXIII) AND 2414 (XXIII)

There is no order of priority nor any question of interpretation implied or contemplated in the proposed allocation.

MAIN COMMITTEE

- (i) (a) Operative paragraph 2 (c) of resolution 2467 A (XXIII) - To review the studies carried out in the field of exploration and research in this area and aimed at intensifying international co-operation and stimulating the exchange and the widest possible dissemination of scientific knowledge on the subject.
- (b) Consideration of the report submitted by the Secretary-General pursuant to resolution 2467 D (XXIII) regarding the International Decade of Ocean Exploration.
- (ii) (a) Operative paragraph 2 (d) of resolution 2467 A (XXIII) - To examine proposed measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of this area.
- (b) Consideration of the report submitted by the Secretary-General pursuant to resolution 2467 B (XXIII) regarding marine pollution.
- (iii) Operative paragraph 3 of resolution 2467 A (XXIII) - To study further, within the context of the title of the item, and taking into account the studies and international negotiations being undertaken in the field of disarmament, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which may be agreed upon in this respect.
- (iv) Political implications of operative paragraphs 2 (a) and 2 (b) of resolution 2467 A (XXIII) and of all other questions mentioned in the terms of reference of the Committee as contained in resolution 2467 A (XXIII).
- (v) Consideration of the report submitted by the Secretary-General pursuant to resolution 2467 C (XXIII) regarding international machinery.
- (vi) To consider the reports of the two Sub-Committees.

- (vii) To make recommendations to the General Assembly on the questions mentioned in paragraphs 2 and 3 of resolution 2467 A (XXIII) as required by operative paragraph 4 (b) of resolution 2467 A (XXIII).
- (viii) To adopt its report for submission to the General Assembly as required by operative paragraph 4 (c) of resolution 2467 A (XXIII).

LEGAL SUB-COMMITTEE

- (i) Operative paragraph 2 (a) of resolution 2467 A (XXIII) - To study the elaboration of legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, having regard to the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole.
- (ii) Legal implications of -
 - (a) all other questions mentioned in the terms of reference of the Committee as contained in resolution 2467 A (XXIII); and
 - (b) the reports submitted by the Secretary-General pursuant to resolutions 2467 B, C and D (XXIII) and 2414 (XXIII).

ECONOMIC AND TECHNICAL SUB-COMMITTEE

- (i) Economic and technical requirements which such a régime as is referred to in operative paragraph 2 (a) of resolution 2467 A (XXIII) should satisfy in order to meet the interests of humanity as a whole.
- (ii) Operative paragraph 2 (b) of resolution 2467 A (XXIII) - To study the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to the end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole.
- (iii) Economic and technical implications of -
 - (a) all other questions mentioned in the terms of reference of the Committee as contained in resolution 2467 A (XXIII); and
 - (b) the reports submitted by the Secretary-General pursuant to resolutions 2467 B, C and D (XXIII) and 2414 (XXIII).

Each Sub-Committee is also required to prepare and adopt its report, containing its recommendations, for submission to the Main Committee.

ANNEX II

STUDY ON THE QUESTION OF ESTABLISHING IN DUE TIME APPROPRIATE INTERNATIONAL MACHINERY FOR THE PROMOTION OF THE EXPLORATION AND EXPLOITATION OF THE RESOURCES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION, AND THE USE OF THESE RESOURCES IN THE INTERESTS OF MANKIND

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INTRODUCTION

1. The present report has been prepared pursuant to General Assembly resolution 2467 C (XXIII), in which, having referred to the establishment of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, the General Assembly requested the Secretary-General:

"to undertake a study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of this area and the use of these resources in the interests of mankind, irrespective of the geographical location of States, and taking into special consideration the interests and needs of the developing countries, and to submit a report thereon to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration during one of its sessions in 1969".

In operative paragraph 2 of resolution 2467 C (XXIII) the General Assembly called upon the Committee to submit a report on this question to the General Assembly at its twenty-fourth session.

1. Preliminary considerations

2. In order to explain the nature and scope of the study, some of the over-all assumptions upon which it has been based are indicated below. It has been assumed, first, that Member States will wish to give due weight to the principle that the resources of the sea-bed and ocean floor should be developed so as to serve the interests of mankind, taking into special consideration the interests and needs of the developing countries, and, too, that appropriate regard should be paid to questions of economic and technical efficiency. It may be emphasized that the study does not, however, attempt to state which particular means should be adopted in the common interest, or to enter into detailed economic and technical questions. The study is primarily analytical and explanatory in nature in that it seeks to set out the range of functions which international machinery could perform, and the issues which would have to be considered if the international community decided in due course to establish some form of international machinery. The study is not concerned therefore to argue the merits and demerits of particular proposals, but to show how those proposals might operate and what they would entail.

3. Secondly it has been assumed, as is implied in various General Assembly resolutions, that an area for the sea-bed and ocean floor does exist beyond the limits of national jurisdiction. ^{1/} This assumption does not appear to have been questioned by any of the representatives who have addressed United Nations bodies

^{1/} The existence of such an area was expressly recognized by the Ad Hoc Committee; see Report of the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, Official Records of the General Assembly, Twenty-third Session, agenda item 26, document A/7230, para. 86.

dealing with the subject of the development of the resources of the sea-bed and ocean floor. The study does not, however, examine the question of where the exact boundary line is between the areas within and without national jurisdiction, or where that line should be drawn.

4. As regards the nature of the resources in question, it has been assumed that these will be minerals of basically two classes, either petroleum (oil or natural gas) or so-called hard minerals, in particular submarine phosphorite or manganese nodules and crusts, situated either as surficial deposits or as deposits within bedrock in areas beyond national jurisdiction. ^{2/} The methods of exploitation would presumably be either drilling, in the case of petroleum, or various dredging or other systems, in the case of hard minerals. ^{3/} Whatever its nature, it will be necessary that any international machinery should take into account the various phases of mineral resources development. There are broadly four such phases:

(a) the establishment and diffusion of basic data, in especial geological data, on the basis of which mineralization areas can be outlined;

(b) the exploration of mineralization areas, designed to locate mineral concentrations or deposits of one or more minerals;

(c) the evaluation of any particular mineral concentration or deposit found, and feasibility studies relating to the exploitability; ^{4/} and

(d) the exploitation of any particular mineral concentration or deposit.

In describing the various functions which international machinery might undertake the study does not, however, endeavour to relate, except in general terms or by necessary implication of the nature of the function, each of those functions to the different phases.

5. It may be pointed out that the contents of the study must also reflect the fact that a given area of the sea or sea-bed ^{5/} may simultaneously be used, or be sought to be used, for more than one purpose. Thus it is evident that conflicts of interest may arise if different resources are sought to be exploited in the same vertical segment between the ocean floor and ocean surface; if, for example,

^{2/} For further geological information, see "Resources of the sea: part one; mineral resources of the sea beyond the continental shelf. Report of the Secretary-General: Addendum (E/4449/Add.1), p. 5.

^{3/} Ibid., pp. 56, ff.

^{4/} In the case of certain minerals (notably oil and gas), phases (b) and (c) are combined.

^{5/} Here and elsewhere in the study reference is made in a simplified form to the area of the sea-bed and ocean floor beyond the limits of national jurisdiction, or to the resources of that area. This is done, in accordance with the practice followed in previous studies, solely to make the study easier to read and to save space. Where reference is made to areas within national jurisdiction this is stated in the text.

mineral deposits and submarine cables lie in the same area, with a shipping lane or fishing ground above them. Whilst the present study is concerned primarily with machinery relating to the development of mineral deposits, comment has been made, where appropriate, regarding the need that the interests of different users should be borne in mind. It may be noted in this connexion that any decision regarding possible international machinery will need to take account of the fact that certain functions relating to uses of the sea and its mineral resources are now being carried out by existing bodies. Such functions include, in particular, the exchange and dissemination of scientific information, 6/ and the prevention and regulation of marine pollution.

6. In concluding this introductory section, it may be pointed out that the preparation of the study has presented a number of difficulties. The relevant principles of international law do not provide detailed guidance and regulation as regards the exploration and exploitation of the mineral resources of the area of the sea-bed and ocean floor beyond the limits of national jurisdiction, nor has the precise legal status of that area been decided or its exact boundaries set. While the main types and functions of international machinery can be illustrated, it is possible to devise a wider range of solutions, involving elements and combinations of each. Furthermore, the means used to effect any possible change have not yet been decided upon. The eventual outcome might thus be influenced by whether the regulation of the development of marine mineral deposits is considered as a single issue or is treated together with other questions relating to the sea and its resources; and by whether the matter is considered by an international conference of plenipotentiaries or is placed before various expert bodies as a series of particular problems. In these circumstances, therefore, there are limitations on the conclusive nature of any study which can be produced. The present study is accordingly designed, not as an exhaustive statement of the matters involved, but as a document to assist Member States in their deliberations by setting out before them the various alternatives and the major issues which will need to be considered, if the international community decides to establish some form of international machinery to regulate the exploration and exploitation of the resources of the sea-bed and ocean floor.

2. Other documentation

7. It may be noted that a number of documents previously prepared by the Secretariat relate to aspects of the matters considered in the present report. These documents include, in particular, the following: "Survey of existing international agreements concerning the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction" (A/AC.135/10/Rev.1); "Survey of national legislation concerning the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction" (A/AC.135/11 and Add.1); "Summary of views of Member States" (A/AC.135/12); and "Legal aspects of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind" (A/AC.135/19 and Add. 1 and 2). In addition, the Economic and Technical Sub-Committee during its meetings from 11 to 27 March 1969,

6/ See section II, paras. 33-38, below.

requested the Secretariat to prepare "a study which would include a review of the measures taken by various Governments with regard to the development of their continental shelf mineral resources, in particular oil and gas, and the denominators which are common to these measures". i/

i/ See report of the Economic and Technical Sub-Committee, part three of the present report, para. 29.

I. ADOPTION OF RESOLUTION 2467 C (XXIII) AND VIEWS EXPRESSED BY
REPRESENTATIVES OF MEMBER STATES

A. Discussion in the General Assembly at the twenty-third session

8. By its resolution 2467 C (XXIII), adopted at the 1752nd plenary meeting on 21 December 1968 by a roll-call vote of 85 to 9, with 25 abstentions, 8/ the General Assembly, referring to its consideration of the item; reaffirming that exploration and exploitation of the resources of the area and its subsoil should be carried out for the benefit of mankind as a whole, taking into special consideration the interests and needs of the developing countries; recalling that international co-operation in this field is of paramount importance; and bearing in mind its resolution 2467 A (XXIII) establishing the Standing Committee and the mandate entrusted to it; requested the Secretary-General to undertake the present study. The Committee was requested to submit a report on the question to the Assembly at its twenty-fourth session.

8/ The voting in the General Assembly was as follows:

- In favour: Afghanistan, Algeria, Argentina, Austria, Barbados, Bolivia, Brazil, Burma, Burundi, Cameroon, Central African Republic, Ceylon, Chad, Chile, Colombia, Congo (Democratic Republic of), Costa Rica, Cyprus, Dahomey, Denmark, Dominican Republic, El Salvador, Equatorial Guinea, Ethiopia, Finland, Gabon, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Iceland, India, Indonesia, Iran, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Laos, Lebanon, Lesotho, Liberia, Malaysia, Maldives Islands, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Nepal, Netherlands, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Southern Yemen, Spain, Swaziland, Sweden, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia.
- Against: Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Mongolia, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.
- Abstaining: Australia, Belgium, Cambodia, Canada, China, Congo (Brazzaville), Cuba, France, Guinea, Ireland, Israel, Italy, Jordan, Luxembourg, Madagascar, Malawi, New Zealand, Portugal, South Africa, Sudan, Syria, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta.

(Subsequently, the delegation of Ireland informed the Secretariat that it had intended to vote in favour.)

9. The draft resolution (A/C.1/L.441) had been introduced in the First Committee on 11 November following consultations among the developing countries. It was ultimately sponsored by thirty-nine countries ^{9/} and was adopted in the First Committee by a roll-call vote of 77 to 9, with 18 abstentions.

10. Prior to the introduction of the draft resolution, the substance of the proposal had been included in amendments submitted by Kuwait and Venezuela (A/C.1/L.426), subsequently revised (A/C.1/L.426/Rev.1) and with the added sponsorship of Saudi Arabia (A/C.1/L.426/Add.1) and Niger (A/C.1/L.426/Rev.1/Add.1), to the draft resolution (A/C.1/L.425 and Rev.1) providing for the establishment of the standing committee. In their revised form (applying to the first revision of that draft resolution) the amendments would, inter alia, have provided that the standing committee "examine the advisability of establishing in due time an appropriate international machinery for the exploration and exploitation of the resources of this area, in accordance with the principles mentioned in the previous two sub-paragraphs ^{10/} of draft resolution A/C.1/L.425/Rev.1 and the use of these resources in the interests of mankind, and especially those of developing countries, and the land-locked countries". A sub-amendment by Cyprus (A/C.1/L.438) proposed a rewording of the last phrase, beginning "and especially those of developing countries ..." to read "including the land-locked countries and with special consideration to the needs and interests of the developing countries", so as to make it clear that the land-locked countries should have equal consideration but that special consideration should be given to the developing countries. In their original form, the amendments would have had the standing committee "examine the establishment of international machinery" rather than "examine the advisability of establishing in due time an appropriate international machinery". The amendments were first revised, and then withdrawn in favour of draft resolution A/C.1/L.441, after appeals had been made to the sponsors not to jeopardize the large area of agreement that had been reached following months of consultation among the different groups in the Assembly on the establishment and terms of reference of the proposed standing committee.

11. During the general debate in the First Committee and in the discussions relating to the adoption of resolution 2467 (XXIII) it was held that there should be some "international régime" or "internationally agreed arrangements" to apply to the activities of States in the area (which it was agreed in principle did exist) that lay beyond the limits of national jurisdiction. The term "international régime", as was pointed out, however, was used in various different senses, some delegations appearing to mean merely the elaboration of a body of principles or norms which States should adhere to in the area, whereas to other delegations the phrase implied the idea of an international institution, imbued with some regulatory authority over the activities of States in that area. It was also held

^{9/} The countries sponsoring the draft resolution in the First Committee (A/C.1/L.441 and Add.1-5) were the following: Barbados, Brazil, Cameroon, Congo (Democratic Republic of), Costa Rica, Cyprus, Dahomey, Ecuador, Ethiopia, Ghana, Guatemala, Guyana, Honduras, Indonesia, Ivory Coast, Jamaica, Kenya, Kuwait, Lebanon, Libya, Malaysia, Mauritania, Mauritius, Nicaragua, Niger, Peru, Philippines, Rwanda, Saudi Arabia, Somalia, Southern Yemen, Thailand, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Uruguay, Venezuela, Yemen and Yugoslavia.

that there was need for developing, after due consideration, international principles and norms to apply to the area but wide differences of view were expressed regarding the possible creation of international machinery to regulate activities in the area.

12. Among the considerations advanced in support of the creation of international machinery were the following. The concept of the "heritage of mankind" implied some kind of institutionalized procedure to supervise and regulate the use of this "common heritage". Such a procedure was necessary to ensure that the resources of the area were exploited for the benefit of all mankind, and particularly in the interests of the under-developed countries. Under-developed countries, which did not have the technological capability to exploit the resources of the area, would be placed in an even more disadvantageous position vis-à-vis the developed countries, which did have this capability, unless there were international arrangements to regulate the use and distribution of these resources. The recognition of the existence of an area beyond national jurisdiction must be linked to some international machinery which would ensure or facilitate the exploitation of that region for the benefit of mankind, and particularly for the benefit of the developing countries, including the land-locked countries. Such machinery was necessary for the orderly management and just distribution of the resources of the area, and to enable all countries to play a role in the exploration and use of the area. The question of the international legal régime to govern the area was closely linked to that of the international machinery to be established for using the resources in the interests of mankind; it would not be enough to state principles without providing procedures for their specification and implementation; international machinery should be established within the framework of an appropriate international legal régime. Some delegations considered that the establishment of international control and jurisdiction was necessary or would ultimately be necessary and it was suggested that this should be exercised through a competent agency under the aegis of the United Nations. It was suggested that arrangements should be created for the exploitation and administration of the area and for the equitable and progressive distribution of its wealth. International control was also necessary to avoid conflicts and a new era of a kind of colonial exploitation.

13. Those opposing the creation of international machinery advanced the following considerations. Legal principles should be worked out to foster the development of international co-operation on an equal footing in the exploration of the area and the exploitation of its resources in the interests of all peoples, while ensuring the legitimate rights and interests of all States and taking duly into account the needs of the developing countries. However, the creation of any supranational régime of common ownership, based on the concept of a "common heritage of mankind" was unrealistic and would not assist international co-operation in the area. Such proposals disregarded the existence of States with differing social systems and differing systems for the ownership of property. Attempts to create international machinery based on the principle of common ownership could, if carried out in practice, lead to a complete breakdown of international co-operation or to actual control of the resources falling into the hands of large-scale imperialistic capitalist monopolies, even if the forms of common ownership and that international machinery outwardly seemed to be most democratic. This would only serve to widen further the gap between the developed and the developing countries.

14. A number of representatives, while not dismissing the idea of the establishment of some form of international machinery for the exploitation of the resources of the area, considered that much further study of the question was required. Any arrangements for the area, it was stated, would be effective only if they were generally agreed. The negotiations among the great Powers had not yet reached a stage at which joint efforts could be made to establish a new legal régime and adequate world machinery. The Assembly, it was suggested, might agree on the principle of the need to establish such an international authority in the future, leaving aside for the time being the details concerning powers, mandate, structure and competence of the proposed authority; meanwhile, States might promote international co-operation in the area by increasing the effectiveness of the international structure for managing the oceans. While the creation of international machinery for the exploration and exploitation of the resources of the sea might seem premature, it was stated, it would be just as premature to reject it a priori. The standing committee should be free to examine all conceivable types of régime. The principle of an international régime for the area, some delegations considered, did not ipso facto imply the idea of supranationality.

15. Some delegations emphasized that the study of the various questions relating to international co-operation in the area should proceed with the broad agreement of all Members. The studies to be undertaken by the new committee should not be oriented towards the question of international machinery, on which agreement did not exist. It would be premature, it was also stated, to orient studies towards the need for creating international machinery for exploitation of the resources of the area and would be tantamount to prejudging the studies which the committee would propose. That committee should be free to establish its own priorities. Should any delegation wish, it could, of course, raise the question in the committee. Various delegations, while considering that the questions involved might properly be considered in the standing committee, were of the opinion that that committee's terms of reference were sufficiently broad to encompass the whole range of questions, including the elaboration of an international régime, however the term was interpreted, and that the committee's mandate should be kept flexible; in the interests of broad agreement they opposed the specific inclusion in the committee's terms of reference of a study of international machinery for the exploitation of the resources of the area. The view was also expressed that it was incorrect to request the Secretary-General to undertake such a study, particularly in view of the conflicting views of States on the matter. It was also stated that it was inappropriate to request a study without the full discussion among Member States that could help the Secretary-General in preparing such a study.

16. In proposals regarding the legal principles which should be adopted to govern the exploration, use and exploitation of the area and in subsequent discussions, some delegates instanced requirements which they maintained an international régime or internationally agreed arrangements should satisfy in relation to the exploitation of the resources of the area. These included provisions for: the orderly and efficient development of resources in a manner reflecting the interest of the international community; guarantees for research and investments; the appropriate and equitable application of benefits from the area for the economic, social, scientific and technological progress of the developing countries; dedication, as practicable, of a portion of the value of the resources for international community purposes; accommodation among commercial and other uses of the deep sea floor and marine environment; adoption of appropriate safety

measures; preservation of animal and plant life and avoidance of pollution; liability for damages; adequate protection of the special interests of coastal States and arrangements for their participation and/or for consultation with them; that the new régime should complement but not cramp development within areas of national jurisdiction - a balance should be set between common interest and a reasonable freedom for States to reap the benefits of their natural environment; an equitable role for all countries in the international régime to be established; a balance to be struck between the needs of mankind and the increasing needs of developing countries and land-locked States; avoidance of adverse effects on world market patterns and prices to the detriment of the economy of developing countries which were the producers of land-based minerals. It was also suggested that special consideration might be given to the needs of regional areas neighbouring the areas of exploitation, and that the special problems of internal and marginal seas should also be considered.

17. It was held that the form of any future international machinery for the exploitation of the resources of the area required considerable further study but certain suggestions were made in this regard. Thus the view was expressed that such machinery might take a limited form at first and gradually be expanded and strengthened as need and requirements dictated, and work on the basis of a series of procedures of pragmatic and flexible application. Such machinery might, it was further suggested, take the form of registration of exploration and exploitation projects with some central registry, or the reporting of such activities to the Secretary-General who could then register them. This might be regarded as a first step towards an international régime for the area, and, pending agreement on some form of international arrangement might to some extent halt an occupation race. It was suggested that a system might be based on the concept of ownership in trust as distinct from actual or beneficial ownership. A number of delegations suggested some form of international regulation or administration and the view was expressed that an international authority or agency should be established to regulate and supervise and/or administer the exploration and exploitation of the resources of the area and the distribution of its resources for the benefit of the developing countries.

18. Certain more detailed arrangements were suggested. Thus it was suggested that an international authority or agency should be created under the aegis of the United Nations which would issue licences for exploration and exploitation of the resources and that the profits from such licensing would provide revenue for the United Nations; a great part could, it was stated, be used in a development fund for the benefit of developing peoples and another part for a United Nations peace fund; it was envisaged that the United Nations and the specialized agencies could train representatives of many countries to participate in the task. The view was also expressed that the situation called for internationalization of the area in the long run under the auspices of the United Nations and it was envisaged that royalties should be paid to the controlling body for international community purposes, including the economic growth of developing countries, and that all States should be treated equally and without discrimination in the exploration and exploitation of the area. A "model" was suggested primarily, it was stated, in order to stimulate a study of a possible international régime to ensure that the resources of the area would be exploited in the interest of humanity as a whole. According to this scheme, the United Nations would grant concessions to States which would act as "administering authority" in respect of

any exploitation concession they might in turn grant to enterprises; a "government take" would be levied by the United Nations from the concessionary State for the benefit of developing countries. Under this scheme, it was stated, allowance could also be made for the position and legitimate interest of the nearest coastal State; and there might have to be some provisions for certain priorities, for instance a right of option, for privileges or for special rights or titles of the nearest coastal State or States.

B. Views expressed in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction

19. References were also made at the second session of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, 10-28 March 1969, in the two Sub-Committees and in the main Committee, to various aspects of the question of possible international machinery to govern activities in the area.

1. Views expressed in the interim report of the Economic and Technical Sub-Committee

20. The Economic and Technical Sub-Committee, in its interim report (A/AC.138/SC.2/6, para. 30), 10/ stated that the report of the Ad Hoc Committee's Economic and Technical Working Group had established that the conditions which should be met by any régime of sea-bed resources management could be studied without prejudging the subsequent legal considerations. It also stated that its own deliberations had been based on economic and technical requirements and that the problems raised during the discussion of operative paragraph 2 (b) of resolution 2467 A (XXIII) would have to be considered further in the light of the present report of the Secretary-General and subsequently in the devising of an international régime.

21. The following paragraphs of the Economic and Technical Sub-Committee's interim report, among others, would appear relevant to the present study: 11/

"33. It was stressed that for the development of the resources of the ocean floor new forms of international co-operation should not reflect present inequalities and differences between developed and developing countries. They should provide not only for equality of opportunity, but also for equality in the actual enjoyment and equitable sharing of benefits derived from exploitation of the resources of the ocean floor. A primary goal should be to ensure maximum benefits for mankind as a whole compatible with minimum impairment of marine flora and fauna.

10/ See report of the Economic and Technical Sub-Committee, part three of the present report, in which this paragraph of the interim report appears unchanged.

11/ See paragraph 31 below in this connexion. See also report of the Economic and Technical Sub-Committee, part three of the present report, in which, with the exception of paragraph 38 above, these paragraphs were incorporated with few changes (paras. 33, 34, 38-43, 46, 58, 68-72, 77-85).

"34. It was noted that benefits derived from any such co-operation should, furthermore, contribute to closing the existing gap between developing and developed countries. In this regard it was pointed out that many ways were possible to realize the common endeavour of exploitation for the benefit of all mankind and that all avenues which might lead to that end should be carefully explored.

"38. It was noted that the Secretary-General would, pursuant to resolution 2467 C (XXIII), submit a study on the question of establishing in due time, appropriate international machinery for the promotion of the exploration and exploitation of the resources of the sea-bed and ocean floor beyond national jurisdiction. Pending the opportunity to study this paper, the Sub-Committee reserved its position on the nature and form of any arrangements for a régime which might eventually be agreed upon.

"39. It was pointed out that agreement on arrangements which meet the criteria of effectiveness, credibility and impartiality is one of the first vital steps in creating an economic environment that will encourage and promote the use of the sea-bed resources; they must instil confidence in the minds of potential operators that rights granted will be, and can be, upheld. They must command the support and respect of all the nations of the world - developing and developed, socialist and capitalist, large and small, coastal and land-locked.

"The arrangements should also be effective. For example, the economics of an operation can be drastically changed, or even destroyed, if there are delays in taking decisions which result in excessive dead time for an operating rig. On the other hand, risks of blow-outs, pollution and waste or destruction of resources exist if the wrong decisions are taken.

"Thus the skills of many experts (geologists, geophysicists, geochemists, petroleum engineers, mining engineers, safety experts, marine biologists, lawyers, administrators, etc.) will be needed if exploration and exploitation of ocean floor resources are to be both encouraged and effectively controlled. Any international arrangements must therefore provide for a high degree of technical and professional expertise. Such arrangements must provide the necessary competence to cope with new and complex situations, and the sensitivity to react quickly and decisively.

"40. It was pointed out that adequate and reasonable economic incentives must be provided by such arrangements if sea-bed resources are to be exploited. At the same time the interests of the world community must be safeguarded.

"41. Stability of the basic rules is also important. To assess the economics of a project the potential operator has to be assured that the conditions under which he will work are clearly set out, and that they will not be subject to arbitrary changes during the life of his title.

"42. It was suggested that it would be advisable to keep fees and other payments required from operators at a modest, or low level at the

exploration stage, and then, looking to mankind as a whole, to provide for a sharing in the benefits through appropriate provisions at the time of production. In any event, due allowance should be made in devising any scheme to take into account the difficulties and therefore the high costs and risks inherent in the marine environment.

"43. The view was expressed that from the point of view of operators, the size of the areas should allow for efficient and economic exploration. Equally, it is important that areas be effectively and energetically worked and not allowed to lie fallow. In this connexion, it was also noted that this objective might be achieved in various ways; for example, by a sliding scale of fees and/or work requirements which increase over time, by requiring the surrender of portions of the area after stipulated periods, or by stipulating that a concession will lapse if the mineral is not exploited within a defined period, or by a combination of all three.

"44. Drilling and mining activities carried out on land present hazards requiring strict and adequate safety measures. This is all the more true for all phases of marine mineral resources development, due to the hostile environment in which it takes place....

"47. The opinion was expressed that in the foreseeable future only a limited number of countries will be in a position to actively participate on the basis of their own technological capability in the exploitation of the sea-bed and ocean floor beyond the limits of national jurisdiction. This should, however, not preclude the others from benefiting from this development. In view of this consideration and pending the establishment of appropriate international arrangements it was suggested that it would be timely and appropriate to focus on interim steps to facilitate development of sea-bed resources: these should be simple and pragmatic in nature and not prejudice the eventual régime which may be established. They might include the registry of activities carried out beyond the limits of national jurisdiction, as well as scientific technical co-operation, training of personnel, safety measures, etc. The opinion was also expressed, on the other hand, that such interim steps are unnecessary, since no activities should be permitted prior to the establishment of an international régime and that efforts should be concentrated on the establishment of such a régime.

"59. ... It was also pointed out that if a system of concessions is adopted, it appears feasible to reconcile this principle with the proposition that prospectors be given exclusive rights to explore an area for a specified period. In return for the grant of exclusive exploration rights, operators might be required to make the basic data obtained in the course of the operation freely accessible after the lapse of a suitable period of time. This could be considered in the framework of the arrangement to be agreed upon for granting of exploration rights.

"69. It was suggested that experience gained in various countries in relation to the development of mineral resources under national jurisdiction should be taken into account when considering the measures which might be conducive to promoting the development of the resources of the ocean floor beyond the limits of national jurisdiction. An appropriate adaptation of the existing practices might be envisaged with

a view to ensuring the optimum efficiency. The identification of common denominators amongst these practices might facilitate the acceptance by the international community of an agreed procedure. But it should also be recognized that the terms appropriate for mineral resource allocation and development vary from place to place and time to time. Various views were expressed with regard to promoting the development of marine mineral resources beyond the limits of national jurisdiction.

"(a) According to one, the operator would be called upon to make a declaration of intent to undertake exploration in a certain area. The registration of such a declaration would be made subject to certain conditions such as respect of international law, reasonable regard for the marine environment, etc. No exclusive exploratory rights would, however, be granted.

"(b) A more formal system would entail the issuance of an exploration permit. Such a permit would be granted for a given area and for a relatively short period of time. It would give no exclusivity to the operator nor rights to exploitation. The operator might, however, enjoy preferential treatment when applying for an ensuing exploitation permit and would receive some compensation if his application were rejected.

"(c) Under a third system, an exclusive exploration licence would be granted for a more limited area and a longer period of time. Such a licence would entail exclusivity in the search for specified minerals and would carry the right to future exploitation of the deposits discovered. It might be awarded on one of several alternative bases, including the first to file, a lottery, or a judgement of the operator's financial and technical capabilities and his proposed programme. Competitive bidding is another possible basis for awarding title, although it may be less applicable to the totally unexplored resources of the deep ocean floor than it is in already producing provinces.

"70. It was suggested that individual Governments are in the best position to judge the suitability of their own nationals as potential operators applying for permits and leases, and it is advisable that they be directly involved in such arrangements.

"71. It was further suggested that any such lease-system would also have to contain provisions which would ensure that the interests of all countries were equitably respected.

"72. Reference was made to the importance of preventing oil and gas blow-outs and storm breaks which may endanger human safety and result in pollution and other damage as well....

"73. It was urged that without prejudice to the establishment of an international régime for the exploitation of the sea-bed resources, measures which would further international co-operation in the interests of mankind as a whole might be strengthened. It was suggested that such measures would include technical assistance to developing countries comprising the training of qualified personnel, the establishment of

reference services which could provide easier access to basic data, the provision of capital needed to undertake sea-bed resources development operations, etc.

"78. ... Exploration of concealed deposits and the evaluation of the precise amount and quality of both exposed and unexposed deposits can only be determined by extensive and expensive forms of sampling and may even require some production experience. At the stage when such expensive forms of exploration are reached, the operator needs an exclusive right to explore and to produce if workable deposits are found. Because the value of such deposits cannot be determined in advance, particularly in wholly unexplored areas, the basis for payment for such rights should be one that is related to actual production rather than a predetermined estimate of the value of an unexplored area.

"79. It was mentioned that the high investment risks characteristically associated with mining should be compensated for by the opportunity for higher profits than are acceptable in many other enterprises. The risks stem from uncertainty of discovery, uncertainties concerning the feasibility of mining and recovery systems, possibility of loss from mining accidents, storms, and so on, and from uncertainties concerning future prices, demand, and other external circumstances. Although the high risk in mining cannot be eliminated altogether, it tends to diminish with increasing knowledge about the occurrence of recoverable minerals in a given area and with increasing experience in producing them....

"80. The Economic and Technical Sub-Committee was informed of various methods applied nationally to regulate mineral exploration and exploitation with a view to examining whether common denominators could be arrived at which could serve as examples for similar regulations when such an international régime is envisaged.

"81. The view was expressed that any exclusive rights that might be granted should be over areas large enough and for periods long enough to enable the operator to carry out exploration and exploitation with the benefit of economies deriving from the scale of activities. According to this view, these rights should only be given over such an area and for such a period as will ensure that the area is effectively and energetically worked during the life of the title.

"82. It was also suggested that production titles should specify the minerals which they cover: as a general rule, all-embracing titles should not be contemplated. Subdivision into hydrocarbons and other minerals should be considered at the least. The possibility was mentioned, however, that hydrocarbon titles might be extended to cover other substances which may be recovered by drilling: e.g., sulphur in some forms of its occurrence and helium. Consideration should be given to whether hard minerals might also be grouped in ways corresponding to the mode of occurrence: e.g., it is impossible in the case of typical lead and zinc occurrences to extract the one without the other. Also nickel and copper occur with manganese, as all may be present in the same nodules.

"83. It was pointed out that the need for stability in the basic rules would not imply that conditions should be immutable and that production rights should be granted for an adequate specified period of time, at the end of which the title holder should have the opportunity to renew his title, subject however to review of the conditions for the renewed title. Such a way of proceeding would allow for long-term planning on the part of the operator and induce him to apply sound exploitation methods. Since sea-bed mineral resources were non-renewable, responsible development was imperative. On the other hand it would permit a review of the portion of the benefit from production which should accrue to mankind as a whole - that is to say, the renewed title could carry a higher rate of royalty or tax, or a lower rate could be imposed to ensure more complete mining of the resource.

"84. It was emphasized that promotion and success of international co-operation in the development of marine mineral resources will be dependent on the régime which will be devised.

"85. It was pointed out that operators exploiting ocean floor resources within the framework of an international régime should do so (a) in a way which conforms with good mining practices and makes the best use of these resources, (b) without unjustifiable interference with other activities on the sea-bed or on the superjacent high seas, (c) with constant vigilance to guard against marine pollution and the disturbance of the ecological balance. Ways would have to be devised, therefore, by which the quantities and grade of minerals mined or extracted could be measured and their value assessed in order that mankind, as a whole, may receive its just and equitable due. It was pointed out as well, that the requirements of competence and efficiency should be balanced with the need to keep costs and personnel within manageable proportions so that a bureaucracy not be created which would absorb the financial benefits which might accrue from ocean floor production.

"86. It was pointed out that, under any régime, operators should be required to:

- "(i) submit advance notices of proposed programmes;
- "(ii) provide information and appropriate materials on a current basis as well as furnish comprehensive technical reports;
- "(iii) assist in the carrying out of appropriate inspections by authorized officials."

2. Views expressed in the Legal Sub-Committee

22. Various references were made to the question of possible machinery during the Legal Sub-Committee's discussion of the elaboration of legal principles at the Committee's session in March 1969.

23. The concept of the "common heritage of mankind", it was said, implied formulation of an international régime 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 area.

24. On the other hand, it was considered that the concept of common heritage was neither realistic nor practical and that the activities of States in the area should be in conformity with international law and the Charter.

25. Reference was made by many delegations to criteria which a régime would have to satisfy. Instead of perpetuating present injustices, it was said, the régime should provide equal opportunities for all to exploit the resources of the sea-bed and ocean floor. Provision should be made in the régime not only for legal principles and norms, but also for international machinery which would enable all States to participate on an equal basis in the regulation of activities as well as in actual exploration and exploitation. Another point stressed in this regard was that resources should not be disposed of without adequate compensation to the community of nations and observance of agreed substantive and procedural rules. It was also said that unrestricted exploitation should not be authorized until there existed not only provisions ensuring participation of the world community but also elementary measures for conservation of resources and prevention of damage. The legal régime, it was held, should be enforced by appropriate international machinery. Such machinery, it was also held, 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. Reference was also made to the importance of prevention of pollution, to liability of exploiters for damages to others, to the need not to destroy incentives for developing industries and to the importance of avoiding an excessive proliferation of bureaucracy. Account should be taken, it was said, of practical economic problems of concern not only to Governments but also to private entrepreneurs.

26. There were also, during this debate, suggestions concerning the nature and functions of possible machinery. In particular, it was suggested that the exploitation of resources was only one of the objectives of the body administering the sea-bed under an international régime; another priority objective would be scientific research. The international body should be equipped to prevent activities in the deep seas which might destroy present power relationships. Since the oceans constitute a global biological system, the competence of any international machinery, it was held, should extend to the whole marine environment on a world-wide scale. Its powers might vary from advisory ones in relation to waters within the territorial sovereignty of a State to the ability not only to allocate exclusive rights to the development of mineral resources in regions beyond the limits of national jurisdiction, but in that respect also to act in an administrative capacity.

3. Views expressed in the main Committee

27. Reference was also made to the subject of the present report at the fifth and sixth meetings of the main Committee on the closing day of the second session.

28. The hope was expressed that the study by the Secretary-General would cover all aspects of the problem of establishing a régime for the sea-bed and that the study would be pragmatic in approach so that the Committee could take the necessary decisions in due time. Future activities on the sea-bed should be under the authority of some kind of international machinery, for which it was therefore necessary to establish an appropriate international framework. According to this

view, the machinery was conceived as a technical and administrative body entrusted with the task of organizing, controlling, administering, directing and co-ordinating scientific research, geological and topographic surveys and all other operations relating to the exploration and exploitation of the resources of the area beyond the limits of national jurisdiction in co-operation with competent international organizations and specialized national private and governmental institutions. Only such a body would be able to instil confidence in the minds of potential operators that the rights which they had been granted would be upheld. Such rights would be embodied in service contracts which would be of fixed duration and would apply to particular phases of operations. The operations might, whenever feasible, be carried out in part by the machinery itself but would in general be carried out in association with private enterprise or on the basis of joint ventures with government enterprises or international consortia that would represent either private enterprises or governmental and intergovernmental concerns. The form of association should be adapted to the operation in question.

29. The machinery, it was stated, would have a special legal status as an autonomous body co-operating closely with Governments, international organizations and national institutions. The composition of the executive body and the secretariat of the machinery should be based on the principles of universality and equitable geographical distribution so that all political, economic and social systems might be represented. It was not possible, it was declared, to formulate any general principles for an international régime unless the ultimate objectives and the best means of attaining them were clearly defined. The legal status of the machinery must be closely linked to the operations it would carry out; those operations, in turn, constituted a practical objective which was to be achieved by creating a proper legal order.

30. Another point of view expressed in the main Committee was that the international régime, if it was indeed to promote international co-operation in the exploitation of the resources of the sea-bed for the benefit of mankind, should satisfy certain specific criteria. Such a régime would be ineffective unless it proved acceptable to the membership of the United Nations as a whole. It should therefore be generally equitable, should offer a balance of advantage to all States, including land-locked States, and should take into special consideration the interests and needs of the developing countries. It must provide a firm and continuing basis for the exploration and exploitation of the sea-bed and for scientific research, without imposing excessive restrictions. It should take into account the need for conservation of the resources of the sea-bed and the need to limit pollution arising from their exploitation. In addition, it should contain effective provisions for the settlement of disputes.

31. Various references were made in the main Committee to the discussions which had taken place in the Economic and Technical Sub-Committee. It was stated that it had not been possible for the many important and complex problems before the Economic and Technical Sub-Committee to be fully examined in the time available. The report of the Sub-Committee according to this view was of a preliminary nature and should not be regarded as expressing commonly agreed views of all members. Certain delegations in the Sub-Committee, it was said, had attempted to prejudge the solution of the problem of an international régime governing the exploitation of marine mineral resources; an attempt had been made to impose methods which were not in the interests of mankind as a whole but rather favoured the interests of capitalist monopolies. On the other hand, it was contended that the accounts given of national practices in the work of the Economic and Technical Sub-Committee did not conflict with the preliminary study referred to under item (ii) of its programme of work, a programme which had been debated and adopted by the Sub-Committee.

II. POSSIBLE FUNCTIONS AND POWERS OF INTERNATIONAL MACHINERY

32. This section, after referring to the present arrangements for the collection and dissemination of information and for the provision of technical and financial assistance, examines as possible functions and powers of international machinery:

- (1) Registration;
- (2) Licensing;
- (3) Operations by an international agency;
- (4) Settlement of disputes.

Present arrangements for the collection and dissemination of information and provision of technical and financial assistance

(a) Collection and dissemination of information

33. Exchange of oceanographic information relevant to the study of the sea-bed is at present carried out with respect to scientific data and research by a number of organizations within and outside the United Nations system. 12/

34. It may be recalled that in resolution 2467 D (XXIII) the General Assembly:

"welcomes the concept of an international decade of ocean exploration to be undertaken within the framework of a long-term programme of research and exploration, including scientific research and exploration of the sea-bed and the ocean floor, under the aegis of the United Nations,"

and invited Member States to formulate proposals for national and scientific programmes and to transmit these to the United Nations Educational, Scientific and Cultural Organization for the use of the Inter-governmental Oceanographic Commission.

35. It has been pointed out that "existing international exchange of information and data is limited to scientific data". It has also been suggested that "there is a need for an international exchange of applied technological data". 13/

12/ For a summary of such activities see "Marine science and technology, survey and proposals: report of the Secretary-General (E/4487 and Corr.1 and 2), annexes XI and XII.

13/ Interim report of the Economic and Technical Sub-Committee (A/AC.138/SC.2/6), para. 60. (see para. 59 of the Sub-Committee's report, part three of the present report.

36. If arrangements are made to ensure effective planning and avoid duplication of national efforts, through existing or new machinery, the task might have to cover (a) the collection of data, (b) its interpretation and processing and (c) its publication and retrieval.

37. The question of the collection and dissemination of information would of course arise during actual exploration and exploitation, as well as at earlier stages. The suggestion has been made that States should be responsible for providing information as to the nature, conduct, location and results of their exploration and exploitation activities. If new machinery were to be established in the form of an international registry, the information might consist of an advance notice of intended operations, so as to provide other States with due notice of the proposed activities, and to enable steps to be taken to inform other users of the area in question. If, on the other hand, an international licensing authority were to be created, it might be made a condition of the grant of a licence that the licensee furnish information regarding his activities and the results of his efforts. It would in either case have to be decided to what extent the provision of information would be made a matter of obligation. The question of industrial secrets might also have to be examined.

38. Information concerning relevant national legislation and international agreements has been furnished by Governments to the Secretariat, which has compiled and published it. ^{14/} Such information, however, was provided at the request of the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction for the specific purpose of implementing operative paragraph 2 (b) of General Assembly resolution 2340 (XXII). To keep such information up to date, to analyse it and to store it in full for ready use would require the setting up of permanent arrangements.

39. It may be recalled that provision is made in the constituent instruments of many international organizations for the provision and dissemination of information of a specialized nature. ^{15/} A number of treaties also provide for exchange of

^{14/} See "Survey of existing international agreements concerning the sea-bed and the ocean floor and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction" (A/AC.135/10) and "Survey of national legislation concerning the sea-bed and the ocean floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction" (A/AC.135/11).

^{15/} E.g. The Constitution of the International Atomic Energy Agency provides, inter alia:

"Article 8. Exchange of information.

"A. Each member should make available such information as would, in the judgement of the member, be helpful to the Agency.

"B. Each member shall make available to the Agency all scientific information developed as a result of assistance extended by the Agency pursuant to article 11.

"C. The Agency shall assemble and make available in an accessible form the information made available to it under paragraphs A and B of this article. It shall take positive steps to encourage the exchange among its members of information relating to the nature and peaceful uses of atomic energy and shall serve as an intermediary among its members for this purpose."

information. Thus the Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, 16/ stipulates in article XI that:

"In order to promote international co-operation in the peaceful exploration and use of outer space, States Parties to the Treaty conducting activities in outer space, including the Moon and other celestial bodies, agree to inform the Secretary-General of the United Nations as well as the public and the international scientific community, to the greatest extent feasible and practicable, of the nature, conduct, locations and results of such activities. On receiving the said information, the Secretary-General of the United Nations should be prepared to disseminate it immediately and effectively."

The Antarctica Treaty^{17/} of 1959 provides:

"Article III

1. In order to promote international co-operation in scientific investigation in Antarctica, as provided for in article II of the present treaty, the contracting parties agree that, to the greatest extent feasible and practicable:

(A) Information regarding plans for scientific programmes in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;

...

(C) Scientific observations and results from Antarctica shall be exchanged and made freely available."

(b) Provision of technical and financial assistance

40. Existing programmes for the promotion of marine activities, including facilities for education and training in marine science, were summarized in a previous report. 18/ On the basis of this report and the proposals it presented, several resolutions were adopted by the Economic and Social Council and the General Assembly which have a direct or indirect bearing on the promotion of the exploration and exploitation of the sea-bed beyond the limits of national jurisdiction. 19/

1. Registration

41. A difficult problem with respect to development of sea-bed resources is what means could be devised to provide protection, security and stability of rights in

16/ General Assembly resolution 2222 (XXI).

17/ United Nations, Treaty Series, vol. 402, p. 71.

18/ "Marine science and technology, survey and proposals: report of the Secretary-General (E/4487 and Corr.1, 2, 4 and 5) pp. 52-76 and annex XI.

19/ See Economic and Social Council resolutions 1381 (XLV) and 1382 (XLV), and General Assembly resolution 2414 (XXIII).

exploration and exploitation activities. One of the functions which international machinery could fulfil is that of providing a system of registration whereby States or other applicants could notify an international body of the activities undertaken or proposed and of the area in which they would be conducted. Users of the marine environment could thus be kept informed of the activities in question and other States would receive notice of the act of registration. The value of registration would lie in its evidentiary force which would form the basis for recognition by the international community of the validity of the recorded activities. As presently envisaged the functions of the registry would be limited in scope and its discretionary authority strictly defined. Additional functions which a registry might conceivably perform (although involving a basic modification of its nature) will be found under the heading "(i) Regulatory functions".

(a) Entities entitled to register their activities

42. The first question which would arise in this connexion would be whether registration might be made solely by States or might also be made by other entities, such as public and private bodies or individuals, or by intergovernmental organizations.

43. As regards the choice between registration by States, or by public and private bodies or individuals, while it would be possible to have a system whereby registration might be made by any of these entities, it has usually been assumed that registration would be an official act performed by States. ^{20/} A question which would arise under this assumption is whether registration might be made not only by individual States but by several States jointly (for example, by those in a particular region). Consideration would also have to be given to the possibility of the transfer of registration from one State to another. Should such transfers be allowed, it would have to be decided whether the transferror would remain liable for acts occurring prior to the transfer, or whether the second State would accept the burden of possible liability.

44. On the assumption of State registration, an individual State would be free to determine the character of the entities whose activities it might be prepared to register. Such entities might be State agencies, or bodies owned and operated by nationals of the State in question or incorporated under its laws, or private individuals, or some combination of the different possibilities. Depending on the decision reached, the individual States would process any request received according to their own procedures, which might or might not be similar to those governing the grant of mineral rights in areas within national jurisdiction.

^{20/} Reference may be made in this connexion to article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, which provides that:

"States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty...."

45. The possibility of registration by an international agency might also be permitted under the system. The countries of a particular region for example, might decide to establish a special international consortium, so as to make it easier to raise the necessary capital and in order to enlarge the "home market" for the minerals produced. Alternatively, the consortium might combine countries from different areas of the world, holding shares in the agency or otherwise helping to provide the financial resources required.

(b) Criteria for registration

46. The task of the international registry would be to record the activities undertaken or proposed in different areas in the applications received. The initial choice would thus rest with individual States. In accordance with this approach, suggestions concerning the registration system have sometimes envisaged that registration would be on a "first come, first registered" basis, although it would theoretically be possible to proceed on other bases also. A consideration which should be borne in mind, and to which a number of commentators have drawn attention, however, is that if activities in particular areas are registered on a "first come" basis there may be a tendency (particularly if the registration may be made before finds have been proved) for States to make a maximum number of registrations as soon as possible. Such problems as might arise from this situation are perhaps inherent in the "first come, first registered" principle of registration, although it would no doubt be possible to institute safeguards designed to forestall these difficulties or to minimize their effects. In the unlikely event that simultaneous applications for registration with respect to the same area and activities were submitted, special arrangements would have to be made, perhaps for a decision by lot or a recommendation that a joint venture be undertaken.

47. It has been suggested that further guidelines be included in the statute establishing the registration authority. These guidelines concern the maximum area a State would be entitled to register, the period during which a registration would be valid, the scale of fees and other charges and the requirement that resources be actually worked. The registration authority would be empowered to apply these standards in the manner and to the extent laid down in the statute.

48. Consideration would also have to be given to the question whether the registration authority should be empowered to require that the registering State produce evidence that the entity which would engage in the development of resources in its behalf had the requisite financial and technical capacity to do so. Another issue which would have to be considered would be that of safeguarding the interests of other users of the sea. As the application of existing principles of law would require entities engaged in exploration and exploitation of sea-bed resources to pay reasonable regard to such interests, the registering State could be expected to make an undertaking in this regard at the time of registration.

(c) Effect of registration

49. A valid registration would determine in principle recognition on the part of others and provide evidence of priority of entitlement as regards rival claimants to the same area. It would be a fundamental obligation that States parties to the arrangement would undertake to register all relevant activities and to respect all acts of registration made with the authority. Failure to register would

accordingly deprive a State of the degree of international recognition which the act of registration would provide and registered activities would prevail against unregistered ones. For the arrangement to be fully effective therefore it would be necessary that as many States as possible should be parties and that they be obliged to enact the necessary national legislation to secure respect for registered exploration and exploitation activities.

50. There would appear to be general agreement that the act of registration should not entitle the State concerned to found a claim of sovereignty, or of sovereign rights over the area in question; the rights evidenced by the act of registration would be limited to the purposes of exploration and exploitation of the mineral resources situated there. In principle, at least in respect of exploitation, registration would provide a means for recognition of an exclusive entitlement since sole exploitation of given areas is regarded as an essential condition for the effective conduct of exploitation operations.

(d) Activities subject to registration

51. It has usually been envisaged that both exploration and exploitation activities would be subject to registration. The main issues for consideration would appear to be the following:

(i) Whether all exploration and exploitation activities should be subject to registration, or only those necessitating the erection of fixed installations or the temporary reservation of certain areas of the sea-bed. As a related issue, it might be considered whether preliminary investigation should be distinguished from exploration and not made subject to registration, in order to encourage potential operators.

(ii) Whether the operator should be called upon merely to make a declaration of intent to undertake exploration in a given area, subject to certain conditions, such as respect for international law and reasonable regard for the marine environment, or whether actual activity would be required.

(iii) Whether the registration of exploration and/or evaluation activities would result in an exclusive or non-exclusive entitlement in a particular area. As previously noted, it has generally been assumed that registration of exploitation activities would result in an exclusive entitlement.

(iv) Whether registration of exploration and/or evaluation activities in a given area would give rise to an automatic entitlement to register exploitation activities if mineral deposits were discovered.

(v) Whether registration (whether in respect of exploration or exploitation activities) should be in respect of particular mineral deposits only (e.g., either petroleum or hard minerals) or of all mineral deposits which might be found or exploited in a given area. If claims might be made in respect of specific minerals only, there would be no reason in principle why a subsequent claim could not be registered concerning other minerals in the same area. If the two claims were incompatible, presumably the first claim would prevail. Some means of deciding such issues would appear necessary if registration of activities in respect of different minerals were to be permitted.

(e) Over-all limitations on registration

52. In addition to the qualifications referred to in the previous paragraph, consideration would have to be given to the question whether a limit should be fixed, directly or indirectly, to the maximum number of registrations which one State might make at a time, or the total area or areas involved. A fixed ceiling, which might be expressed in a number of ways, ranging from geographical or national quotas to calculations based on the extent of the mineral wealth discovered, might be incorporated in the statute of the registry. An indirect method might be to increase fees or charges for additional areas registered. Besides these over-all limitations on general grounds, operational practices and principles of conservation 21/ might require that the registry should be empowered to fix the size and shape of the area and the duration of the activities registered. An issue which presents itself here, however, is how the registry's powers in this respect would be reconciled with the power of the registering State to determine the size of the area and the nature of the activity which it wishes to register, subject to any over-all ceiling. Although no obvious answer suggests itself to these questions, it may be concluded that it should be possible, by careful negotiation, to distinguish between the basic limitations to be laid down, perhaps in the instrument establishing the registry, and which would then be binding on participating States, and the narrower technical limitations within which the registry might be empowered to exercise a measure of control in the general interest.

(f) Cancellation of registration and inspection powers

53. It might be made a condition of registration that the operator should submit comprehensive reports at regular intervals regarding his activities and should actively maintain his operations in the registered area, under penalty, in the latter case, of cancellation or forfeiture if he failed to do so. Although the possibility of cancellation and the existence of financial incentives might result in their being relatively little need for the exercise of police functions, the registration authority might be given some means to enable it to exercise its powers properly and with full knowledge of the facts. Provision might therefore be made for a system of periodic or exceptional inspection, in conjunction with national officials. If any registration was cancelled this would only be after a hearing had been granted to the State concerned.

21/ For a brief summary of the requirements essential to rational exploitation, see "Legal aspects of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind" (A/AC.135/19/Add.2), para. 11. The registration authority might, for example, be called upon to deal with exploitation of a single mineral structure situated within more than one registered area.

(g) Fixing of fees or other charges

54. It has been suggested that, having regard to the special needs of the developing countries and the welfare of mankind as a whole, registering States should be required to pay a fee for registering claims and also, possibly a portion of the financial proceeds of actual production, either to the registry or to another agreed recipient institution, such as the United Nations Development Programme, or to a specially established fund. The registry might be concerned in assessing the scale of fees and other charges. In carrying out this task, allowance would have to be made for economic realities and for providing adequate incentives to attract the necessary investment capital, while protecting at the same time the interests of the international community as a whole. 22/

(h) Settlement of disputes

55. Disputes arising from the registration of claims, or the determination of boundaries between them, might be entrusted to the registry itself, or to a special procedure within the registry, or to a suitable body independent of the registry. 23/

(i) Regulatory functions

56. In principle, advocates of a system of international registration have not envisaged the exercise of extensive regulatory functions by the registry. Each State would apply its domestic laws to the operations registered in its name, to the extent to which they were not inconsistent with the conditions imposed for registration of claims. Each State would to the same extent enforce the obligations arising from the registration vis-à-vis the operations. As has been indicated, however, proponents of the system have suggested that within the framework laid down in the enabling statute, the registry might exercise a limited discretionary authority of a regulatory nature over certain matters: establishment of size and shape of area and duration of registration; cancellation of registration and exercise of inspection and supervisory functions; and the fixing of fees and other charges. In addition to these proposed functions, the registration authority might also be given authority to determine the financial and technical capacity of individual operations and to recommend common standards with respect to operating practices and similar matters. These norms of international conduct (which might be binding on States or submitted to them solely as recommendations) might deal with the following topics: working methods and practices; arrangements with respect to other users of the sea, in particular as regards rules of navigation and the establishment of sea lanes and safety zones, and avoidance of interference with fishing activities and submarine cables; prevention of pollution and disturbance to the marine environment; assistance in the case of disaster; and conditions of international liability in respect of damage. Should these additional functions be given to the registry, its character and operation would resemble very closely those of the licensing authority examined below.

22/ Interim report of the Economic and Technical Sub-Committee, (A/AC.138/SC.2/6), para. 88. (See para. 87 of the Sub-Committee's report, part three of the present report).

23/ For a description of the possible functions of international machinery in relation to the settlement of disputes, see paras. 75-80 below.

(j) Localities

57. In order to reconcile the interests of the coastal State and the interests of the world community, in particular where there are indications that certain mineral deposits, such as hydrocarbons, may be located partly within the zone of national jurisdiction and partly outside this area, it has been suggested that either an intermediate buffer zone should be established, contiguous to the outer limits of national jurisdiction, where the coastal State would enjoy priority or exclusive rights, or joint exploitation should be arranged between the State concerned and an entrepreneur operating within the envisaged international arrangements. ^{24/} It has also been proposed that the coastal State might be given sole authority to determine who would be allowed to explore or exploit the resources of the sea-bed and subsoil in an intermediate zone extending to the 2,500 metre isobath, or 100 nautical miles from the baseline used to measure the territorial sea, whichever provides the greater area; activities carried out in this zone would, however, in all other respects be subject to the same conditions as regards registration and charges as are applicable to activities in areas beyond the zone. ^{25/}

2. Licensing

58. A number of suggestions have been made to the effect that if an international organization is established for the ocean floor beyond the limits of national jurisdiction, it should be given the power to grant licenses to States either individually or collectively, to explore and exploit the natural resources of the sea-bed and subsoil beyond the limits of national jurisdiction. Detailed proposals have been put forward by some Governments with respect to a system of licensing, ^{26/} and also by private organizations and individuals. The main

^{24/} Interim report of the Economic and Technical Sub-Committee (A/AC.138/SC.2/6), para. 92. (See para. 91 of the Sub-Committee's report, part three of the present report.)

^{25/} This proposal has been made by the United States Commission on Marine Science, Engineering and Resources, Our Nation and the Sea, p. 151.

^{26/} See the detailed proposals put forward by the representative of the Netherlands, document A/AC.135/1, pp. 23-24:

'II. A double concession system for exploitation outside the area referred to under I, so that the United Nations would give 'concessions' to States which would act as a sort of 'administering authority' in respect of any exploitation concession they might grant to enterprises; the 'Government take' of the United Nations is intended for aid to developing countries.

....

"6. In principle, the United Nations concession would be granted to a State on condition:

"(a) That exploitation is undertaken within a reasonably short time by the State itself (if a State enterprise is involved) or through a bona fide concessionary (exploitation obligation) and,

(Foot-note continued on following page)

feature of these proposals is that title or control of sea-bed resources would be held by the international community, represented by the international authority, which would issue licences to individual operators. Under the allied concept whereby sea-bed resources are regarded as part of the common heritage of mankind, as proposed by various Governments, the international machinery would act as the administrator of a trust, and might even engage in the exploration and exploitation of resources. For the purposes of this part of the present exposition, however, it is presumed that the international body would not itself conduct such operations.

59. A licensing system would permit the exercise of over-all powers and allow individual exploitation operations to be treated as part of a single programme. In this connexion it has been said that international functions should include organizing, controlling, administering, directing and co-ordinating all operations relating to development of the resources of the sea-bed. It has been further suggested that there might be two main economic benefits from an over-all licensing system. First, it would enable a major deposit to be treated as a single unit and for exploitation arrangements to be made so as to achieve maximum efficiency (including the conservation of resources) and benefits, both for commercial operators and for consumers. Secondly, since there is evidence that certain deposits might need to be exploited on a large scale, so that existing market prices might be affected, an international licensing authority could influence, by the issue of licences and other devices, the over-all volume of production so as to maintain stability of prices and market conditions for land and sea producers alike.

(Foot-note 26 continued from previous page):

"(b) That the State is able and willing to exercise effective jurisdiction and control in administrative, technical and social matters connected with the exploitation.

"7. The United Nations concession could be rescinded (i.e., control could be assumed by the United Nations or transferred by the United Nations to some other State) if the concession conditions were not fulfilled. The United Nations would be authorized to carry out inspections for the purpose. No such rescission could be issued until (if the concessionary State so desired) and advisory opinion had been sought from the International Court of Justice, which would then be binding on both parties under the terms of the concession.

"8. Provision would have to be made in the United Nations concession conditions for a fixed percentage of the 'Government take' (royalties plus taxes) to be paid by the concessionary State (possibly in the form of an annual lump-sum) into a United Nations fund for aid to developing countries."

60. Most of the separate issues considered in relation to international registration would also be raised by a system of international licensing. The principal exception would concern the criteria to be followed, since a system based on licensing would tend to give less weight than a system of registration to the principle of giving priority to the first applicant. In the following discussion, however, each of the issues considered with respect to registration are briefly reviewed from the standpoint of a possible licensing system.

(a) Entities entitled to receive licences

61. The total range of possible licence holders is the same as that of the entities which might be entitled to register their activities, namely States; States engaged in a joint enterprise; international, State or private bodies; and individuals. ^{27/} It has usually been envisaged, however, that, parallel to the position with respect to acts of registration, licences would normally be granted to individual States. The only particular comment which appears to be called for is to draw attention to the proposal of the Netherlands Government, that a "two-tiered" system of licences should be arranged, whereby licences would be granted to States, who in turn would act as "a sort of 'administering authority' in respect of any exploitation concession they might grant to enterprises"; although in terms limited to exploitation concessions, it is presumed that such a system might extend to exploration activities also. Thus, under an arrangement on these lines, the State concerned would determine, according to its own procedures, which individual concerns would be allowed to operate within the limits covered by its licence, and would accept responsibility, vis-à-vis the international community, for observance of the obligations and conditions laid down. ^{28/}

(b) Criteria for the grant of licences

62. It has usually been assumed that licences would be granted in respect of activities in particular areas on a basis of a system such as competitive bidding, or by drawing lots, or by assessment of the operator's financial and technical capabilities and his proposed programme. Consideration would also have to be given to the needs of the developing or land-locked countries; special treatment might be given to regional projects, for example, undertaken by such countries, or to ventures proposed by land-locked States. An equitable distribution of licences in respect of areas covered (which might differ according to whether they were exploration or exploitation licences, or for different minerals (e.g., manganese nodules or petroleum) might in fact be achieved by a number of ways, so as to give due weight to the major factors which would require consideration. The result might in fact involve a "mixed" system, rather than adoption of a single criterion; at the very least it would seem that a basic criterion (assuming one were finally chosen) would need to be balanced by other elements.

^{27/} See paras. 42-45, above.

^{28/} The Netherlands proposal is quoted in foot-note 26, para. 58, above. See also the text of article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space quoted in foot-note 20 to para. 43, above.

63. The other issues dealt with under the heading "Criteria for registration", 29/ would also arise for consideration, mutatis mutandis, with respect to awards by the licensing authority, although on general principles it may be assumed that the latter would be granted greater powers and discretion than a registration body.

(c) Effect of grant of licence

64. In the simplest terms, the effect of the issue of a licence would be to grant the licensee the rights specified in the licence. As a practical matter, the recognition given to those rights would depend on the degree of support given to the system and the number of States accepting the arrangements as being in the common interest. As regards the nature of the rights granted, these would not, ex hypothesi, suffice to allow States to establish a claim of sovereign rights over the particular areas, and would be limited to enabling them to explore and exploit mineral resources and, in the case of the Netherlands "two-tiered" proposal, to arrange for others to do so.

(d) Activities subject to licence

65. As in the case of registration, it has usually been envisaged that a system of licensing would cover both exploration and exploitation activities. The same issues as were listed under the heading "Activities subject to registration" 30/ would arise for consideration.

(e) Over-all limitations on the grant of licences

(f) Cancellation of licences and inspection powers

(g) Fixing of fees or other charges

66. The discussion under the equivalent headings in respect of registration 31/ would also apply in the case of a licensing system. A licensing authority might in principle be expected to have certain responsibilities in relation to market conditions. As regards cancellation, it would have to be decided whether a licence might be withdrawn solely for failure to exploit resources in the area or whether failure to observe other conditions also (for example, those relating to prevention of pollution) might result in cancellation or some other penalty, such as a fine.

29/ See paras. 46-48, above.

30/ See para. 51, above.

31/ See Over-all limitations on registration, para. 52; Cancellation of registration and inspection powers, para. 53; and Fixing of fees or other charges, para. 54, above.

(h) Settlement of disputes

67. The use of a licensing system might more easily prevent disputes from arising concerning boundaries or rival claims to particular areas than a registry which merely recorded the information supplied to it by States. Conversely, the greater degree of authority and discretion given to the licensing body would make the question of judicial or other review of its activities more important, if States wished to dispute its rulings. The potential range of possible means for the settlement of disputes would be the same as in the case of registration, with particular attention being focussed on the establishment of an external review body to deal with disputes over the actions of the licensing authority itself. 32/

(i) Regulatory functions

68. It would be expected that under the enabling instrument a licensing authority would be given extensive regulatory functions. Some of these functions have been mentioned in paragraph 56 above. One of the questions which might have to be examined is whether other users of the sea should be entitled to file objections to licensing of sea-bed resources so as to prevent or curtail licensing. A licensing authority could be given powers to adopt or recommend norms of international conduct. 33/

(j) Modalities

69. It would be possible to combine an international licensing system, operating in the outer area, with intermediate buffer zones. If intermediate buffer zones were to be established, the arrangements in respect of a "two-tiered" approach might be adapted so that, although the coastal State exercised control and operational authority, charges were paid to the international body and the general obligations laid down under the licensing system observed.

3. Operations by an international agency

70. Some delegations have suggested that an international body should be established with powers, inter alia, to conduct operations relating to the exploration and exploitation of the mineral resources of the sea-bed and ocean floor. 34/ It is not intended in the present study to describe in detail the many forms which the corporate structure of such an agency might take, but simply to indicate the main functions which might be performed by such a body and the principal issues which would be raised in connexion with those functions. 35/

32/ On settlement of disputes functions, see, generally, paras. 75-80, below.

33/ Or perhaps, as in the case of regulations adopted under article 21 of the Constitution of the World Health Organization, binding unless States registered their rejection or reservations within a given period.

34/ See, for example, the statement by the representative of Kuwait (A/AC.138/SR.5).

35/ Information about a number of existing international bodies established to conduct operational ventures, and their principal legal features, is to be found in Fligler, Multinational Public Enterprises (1967), published by the International Bank for Reconstruction and Development.

71. The exercise of exclusive rights by an international agency would be in accordance with some versions of the "common heritage" approach to sea-bed resources, whereby these resources are to be regarded as trust property, to be held and developed in the general interest, although it should be noted that that concept is in fact compatible with various forms of machinery and is not necessarily to be identified with the exercise of sole rights by an international body. If exclusive rights were to be awarded, however, there would be a number of ways (or combination of ways) in which they might be exercised: the agency itself might carry out direct exploration and exploitation operations, with its own staff and facilities; it might arrange for others to perform these operations on its behalf by a system of service contracts or possibly by issuing licences; or joint ventures could be undertaken with other bodies (for example, with government enterprises or international consortia).

72. Although it is difficult to separate questions relating to the legal status and structure of a possible operating agency from questions relating to its functions, there are several general issues which would be raised with respect to any operating body. These issues, which concern financial arrangements and functions and operational functions, respectively, are considered briefly below. Although numerous other legal matters would need to be considered in connexion with the establishment of an operating agency, including the question of the grant of juridical personality, these issues relate less to the substantive functions which might be performed than to the structure of the organization, and have not therefore been dealt with.

73. As regards financial arrangements and functions, although an operating agency might become financially self-supporting or profitable, initial capital would be required. This might be supplied directly by participating States, either in equal amounts or according to some agreed criteria, or loans might be raised from international financial institutions or from private sources, or some combination of these means might be used. The question of financial arrangements would be particularly important in respect of the development of mineral resources since it is generally agreed that very large sums, perhaps in the order of \$100 million, ^{36/} might be required, and thus the possibility of raising public or international loans might be an important function of the organization. The distribution of profits would also require careful regulation, either in the constituent instrument or by the controlling body of the institution; the special position of the developing countries would have to be weighed against the need to secure an adequate return for those (whether individual Governments or other entities) supplying the initial capital.

74. As regards operating functions, an agency with direct responsibilities would require the grant to it of a full range of legal capacities, including the power to own and sell property. The sale, especially on a large scale, of minerals would raise the possibility of competition with existing, land-based producers, for which extensive regulation might be required. In the case of hydrocarbons, the question of national fuel policies would be involved. The employment of extraction

^{36/} Burke, "Contemporary Legal Problems in Ocean Development", in Towards a Better Use of the Oceans: A Study and Prognosis, published by the International Institute for Peace and Conflict Research, Stockholm (1968), on p. 45, and works there cited.

and beneficiation processes would also present problems with respect to the use of patents and industrial or trade secrets. Operational functions which involved the award of contracts would raise in addition the question of how such awards were to be made so as to give due weight to economic considerations, on the one hand, and on the other, to the need to ensure that contracts were shared amongst the participating States, or at least not allowed to fall entirely into the hands of very few countries.

4. Settlement of disputes

75. It has been suggested that international machinery could be established to provide a means for the settlement of disputes arising out of the development of sea-bed resources. Such disputes might comprise rival claims between States to particular mineral resources or disputes between different users of the marine environment. If international machinery were in existence, the international body might also be involved; the decision to allow a particular State to register its activities in a certain area or to grant a licence to a particular State, for example, might itself either solve a potential dispute or be itself the source of one. Although more complex situations might well occur, disputes may in general be divided into two categories, namely, those in which the parties are individual States and those in which a State wishes to challenge the use made of its powers by an international body.

76. The range of possible means of settlement which might be used in the case of a dispute between States would include negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of the parties' own choice, to adapt the language of Article 33 of the Charter, to which may be added ancillary tasks such as fact-finding and the provision of expert testimony, in so far as specialized knowledge might be required. There are, however, a number of existing treaty arrangements, in addition to those contained in Chapter VI of the Charter, establishing procedures for the settlement of disputes and which might be relevant in the present context. Reference may be made in this connexion to the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes, concluded in 1958, under which disputes arising out of the interpretation or application of any Convention on the Law of the Sea lie within the compulsory jurisdiction of the International Court of Justice, and may be brought before the Court by any party to the dispute being a party to the Protocol. In so far as disputes arising out of the development of sea-bed resources might involve the application of any of the Law of the Sea Conventions, the Optional Protocol might thus come into operation.

77. Whether or not this should prove to be the case, it may be of interest in the present context to indicate the arrangements made in the Protocol, for the settlement of disputes in respect of the existing law of the Sea Conventions. It may be noted, first, that reference of disputes to the International Court is not the only means of settlement envisaged; the parties may agree instead to resort to an arbitral tribunal, or to adopt a conciliation procedure. ^{37/} Secondly, the

^{37/} Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, articles III and IV.

general obligation to refer disputes to the International Court does not apply in respect of one particular category of disputes, for which a separate procedure is provided. 38/ In the event of a dispute concerning the establishment of conservation measures affecting particular stocks of fish or other living marine resources of the high seas, the dispute may be submitted, at the request of any of the parties, to a special commission of five members, unless the parties agree to settlement by another method, as provided for in Article 33 of the Charter. The members of the commission are to be named by agreement between the States in dispute, and, failing agreement, by the Secretary-General in consultation with the States concerned, the President of the International Court of Justice and the Director General of the Food and Agriculture Organization of the United Nations, "from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions, relating to fisheries, depending upon the nature of the dispute to be settled". 39/ Having regard to the fact that disputes in respect of the development of sea-bed minerals may also involve questions of resource allocation and conservation, this example may be of particular relevance. 40/

33/ Ibid., article II.

39/ Convention on Fishing and Conservation of the Living Resources of the High Seas, article 9, para. 2. The remaining provisions of the article are also of interest:

"3. Any State party to proceedings under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission, but without the right to vote or to take part in the writing of the commission's decision.

"4. The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on this matter.

"5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time-limit for a period not exceeding three months.

"6. The special commission shall, in reaching its decisions, adhere to these articles, and to any special agreements between the disputing parties regarding settlement of the dispute.

"7. Decisions of the commission shall be by majority vote."

40/ The circumstances in which conservation measures in respect of living marine resources may be prescribed are defined in the Convention on Fishing and Conservation of the Living Resources of the High Seas, articles 4-8.

78. Whilst, as previously indicated, there would be a range of possible means which could be used for the settlement of disputes, some of the methods or machinery which might be used may be considered with respect to certain situations. First, where no regulatory machinery, in the form of registration or licensing, existed, it would seem unlikely (though, of course, possible) that a permanent institution would be established specifically to deal with disputes. In a situation where States were free to act with maximum freedom, they would presumably prefer that the same principle should apply with respect to the means of settlement of any disputes which might arise. Accordingly, the settlement of disputes might proceed on an ad hoc basis, as determined by the particular States involved within the general framework of the Charter, in particular of Chapter VI relating to the pacific settlement of disputes. However, it would be possible to provide for some measure of institutionalized disputes settlement procedures if States undertaking sea-bed activities were required to give notice of their intention so that, inter alia, other States which felt their interests might be affected adversely, could hold consultations with the State in question. If the matter developed into a dispute it might be settled by ad hoc means of the parties' choosing or be referred to a special body or panel, composed along the lines of the special commission envisaged in the Convention on Fishing and Conservation of the Living Resources of the High Seas; for example, establishment of such a body could be provided for by a multilateral treaty or protocol.

79. Where, on the other hand, regulatory machinery existed, in the form of registration or licensing arrangements, the procedure for the settlement of disputes might be more institutionalized; indeed, the requirement that activities be registered or licensed may itself be regarded as a means of preventing disputes. If disputes did arise, the existing machinery, depending on its extent, could be used in several ways; on the one hand, its activities would provide evidence of the activities of, or rights allotted to, one or other party, and, on the other, it would enable disputes to be submitted to a suitable body established within the organization or linked to it, as an alternative to ad hoc procedures. The nature of such a body might be similar to the special commission previously referred to, or a particular organ of the over-all machinery could be employed, ^{41/} or an entirely separate body such as a special chamber of the International Court of Justice. ^{42/} Provision could also be made for a series of procedures (consultations and negotiation between the parties, reference to a special body or to the executive organ, with the possibility of subsequent referral to the International Court or other juridical organ).

80. Lastly with regard to disputes concerning the actions of the international machinery itself (which might arise in the case of registration or licensing bodies, or with respect to the activities of an operational agency), what would be involved would be, according to the circumstances, either a dispute about the use

^{41/} Reference of disputes to the executive body is a method used, amongst others, by some of the specialized agencies, for the settlement of disputes.

^{42/} Statute of the International Court of Justice, Article 26, para. 1:

"The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications."

made of the powers allotted to the international organization, or a dispute arising out of the activities of an international body (such as, in the case of an operational agency, a claim of liability for damage done, for example). ^{43/} Only the first case is referred to here. Consideration would have to be given to the question of whether or not States should be allowed to appeal against decisions taken by the international body or to request that those decisions be subject to external or further review. Appropriate arrangements might range from an adaptation of the "notice and complaints" procedure, referred to above, to a system of judicial review, such as that provided by the European Court of Justice with respect to the regulatory functions of the European Community. Without knowing the extent of the powers entrusted to the international body, it is impossible to say what system would be most desirable; however, since disputes are perhaps more likely to occur in the allocation of resources than in their regulation, a flexible procedure might be devised so as to enable a State, if it wishes to do so, to contest the actions of the international authority, with the accent laid on various methods of conciliation and negotiation between any States immediately involved, rather than on judicial settlement.

^{43/} If the dispute concerned the direct activities of an international body (for example, over the performance of a contract, or if international responsibility were alleged for damage done), arrangements would have to be made for an appropriate method of settlement, such as arbitration. In such circumstances, however, the international body would be involved solely as a party to the dispute and would not itself normally be called upon to perform settlement of disputes functions.

III. POSSIBLE FORMS OF INTERNATIONAL MACHINERY AND ORGANIZATIONAL QUESTIONS

A. Possible forms of international machinery

81. The functions considered in section II of the present study might be carried out by various forms of international machinery, which are examined below. While the following survey deals with possible forms of international machinery which might be used to perform functions which are not being carried out at the present time, it may be recalled that several bodies now conduct activities which relate to particular aspects of marine resource development. Account would accordingly have to be taken of this fact in the event that it was decided to establish international machinery to promote the exploration and exploitation of the mineral resources of the sea-bed.

82. In the case of registration, a suitable form of international machinery might consist of a secretariat unit or centre which could record and disseminate the information supplied to it. Such a body might submit an annual report on its activities to an existing body (for example, the General Assembly), but would not in principle require the establishment of any special supervisory organs. If, however, it was decided to invest the registration body with more extensive powers, more elaborate machinery would be required, which could exercise regulatory functions and possibly perform functions in connexion with the settlement of disputes. In this case the machinery might need to include a committee and/or an executive council composed of the representatives of States, as well as a permanent secretariat. In this event consideration would have to be given to the question whether this special machinery should be established on its own or whether it would be possible to make use of existing institutions. A United Nations subsidiary organ might provide a suitable framework for the performance of the tasks in question, and for the functioning of bodies composed of State representatives.

83. If international machinery were to be set up with authority to grant licences in respect of sea-bed activities, it would appear to be necessary to create some form of international bureau, institution or organization. Such a body might consist of an executive council and/or a committee or assembly which met periodically, and a secretariat, for example. While the exact structure of the machinery would vary according to the powers conferred by the constitutive instrument, suitable forms of machinery would range from a body such as a United Nations subsidiary organ to an organization similar to a specialized agency, possessing international legal personality in its own right.

84. If machinery were to be established with exclusive rights to conduct exploration and exploitation of the ocean floor, it would be most likely to take the form of a separate international organization. Such an organization, in order to carry out effectively its functions of direct exploitation, would have to be endowed with extensive powers and possess international legal personality. For example, it would have to be given the power and facilities

to exploit sea-bed resources and to hold property and the locus standi to enable it to make claims with respect to damage or loss. The organization would need an appropriate structure, consisting of several organs, composed of government representatives, and its own secretariat.

85. As noted in paragraphs 75 to 80 of the previous part of the study, machinery for the settlement of disputes might take a variety of forms. Use might be made of existing machinery, for example, or special procedures or organs might be created to deal specifically with disputes arising out of sea-bed activities. Such procedures or organs might or might not form part of other machinery, such as a registration or licensing body. It is suggested that, in view of the special features involved, the question of the form of possible machinery for the settlement of disputes should be distinguished from that of the forms of machinery which might be suitable to perform more general functions relating to sea-bed activities.

86. Summarizing the preceding discussion, it might be said that, subject to the qualification just mentioned with respect to possible machinery for the settlement of disputes, the main possibilities with respect to the various forms of international machinery would appear to be the following: (i) a secretariat centre or unit, which might be established within an existing organization; (ii) a United Nations subsidiary organ; and (iii) an intergovernmental body having an independent legal status. The choice between these forms would of course depend on the functions to be performed and the extent of the powers vested in the machinery.

87. A distinction which may be noted with respect to these various forms of machinery is that whereas a secretariat unit or subsidiary organ could be set up under existing United Nations procedures, the establishment of an intergovernmental body with international legal personality would require the adoption of a treaty between States. The legal status and powers of machinery forming part of the United Nations would accordingly be derived from the Charter, unless possibly a treaty were to be adopted establishing additional rights and obligations, as between the States parties, with regard to that machinery. Under the Charter the co-operation of States in the activities concerned - for example, the registration of information about sea-bed activities with a subsidiary organ set up by the General Assembly - would depend on the response of individual States to the resolution of the General Assembly requesting them to provide such co-operation. If, on the other hand, a treaty were concluded, the co-operation of the States parties in the performance by international machinery of particular functions might be made a matter of specific legal rights and obligations. This would apply most obviously in the case of an autonomous intergovernmental body set up to perform functions relating to sea-bed activities, where the conclusion of a treaty would be required both to establish the organization and to create the obligations of States with respect to it. The distinction between new, independent, machinery established by treaty and machinery established by means of existing United Nations procedures, while it exists, is not, however, an absolute or overriding one. As is shown in the following part of this section, the subsidiary organs set up by the General Assembly vary considerably in structure and, in some instances at least, enjoy a considerable measure of autonomy from the parent organ under a constituent resolution which may be regarded more or less as a comprehensive statute. Furthermore, in at least one instance, a United Nations subsidiary

organ has been given functions under a treaty imposing obligations on the States parties to it, though not on United Nations Member States as a whole. In the case of sea-bed exploration and exploitation, it would thus be possible to provide, by means of a specially concluded agreement under United Nations auspices, for the acceptance by the States parties of various related obligations and rights, and for the performance by United Nations machinery of the functions envisaged in that agreement. Such an arrangement would, of course, require the acceptance, according to United Nations procedures, of the request made by the States parties to the agreement.

B. Organizational questions

88. If it was decided to establish new machinery in the form of an organization, such as a United Nations subsidiary organ or a separate international agency, various problems would need to be considered in relation to the structure and internal functioning of the new body. Some of the issues which would be raised are examined below, under the following headings: (1) Procedures for the establishment of new machinery; (2) Membership; (3) Voting arrangements, (4) Financial arrangements; and (5) Secretariat. Under the first heading, relating to procedures for the establishment of new machinery, reference is made, inter alia, to the possible establishment of a centre or unit within the United Nations Secretariat in connexion with performance of the functions listed in section II of the study. Selected examples are given below of the practice followed by the United Nations with respect to the issues concerned in the case of bodies previously established, and of the relevant practice of the specialized agencies.

1. Procedures for the establishment of new machinery

89. In the event that it was decided to entrust additional functions relating to the exploration and exploitation of sea-bed resources to the United Nations Secretariat, the necessary action to establish a special centre or unit could be taken by the Secretary-General, in his capacity as chief administrative officer of the Organization, such action might be taken following the adoption of a resolution by the General Assembly, for example, or in response to a request made by some other body.

90. A United Nations subsidiary organ to perform functions relating to the development of sea-bed resources, on the other hand, could be established by a resolution of the General Assembly under Article 22 of the Charter. A large number of subsidiary organs, varying greatly as to their structure, composition and duration, have been established on previous occasions by the General Assembly to perform a variety of tasks. ^{44/} An element common to these bodies is the fact that the parent organ, to which they normally report, may change their structure and the conditions under which they operate. Despite the

^{44/} A comprehensive survey of the practice followed is to be found in the section dealing with Article 22 contained in Repertory of Practice of United Nations Organs, vol. V, Supplement No. 1, vol. I, and Supplement No. 2, vol. II.

existence of this power, a number of General Assembly subsidiary organs, such as the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Industrial Development Organization (UNIDO), have been granted a considerable measure of operational independence and have been established under detailed resolutions resembling the statutes of autonomous organizations. It has been the practice when creating United Nations subsidiary organs to include in the constitutive resolution provisions relating to the functions, structure, membership, voting and financial arrangements with respect of the new body. The structure of many of these subsidiary organs includes the existence of (i) an executive head, (ii) an intergovernmental body which provides over-all guidance, and (iii) a secretariat whose officials work solely for the relevant subsidiary organ. In the event that it was decided to set up a separate intergovernmental organization it would be necessary to conclude a treaty, binding on the States parties thereto. As previously indicated, a treaty could also be used to define the functions of a United Nations subsidiary organ.

91. Information about the method under which various forms of existing (or previously existing) bodies were established is given below, under the following headings: (a) machinery established within the Secretariat; (b) United Nations subsidiary organs established by General Assembly resolution; (c) United Nations subsidiary organs performing functions under treaties; and (d) international organizations established by treaty.

(a) Machinery established within the Secretariat

92. The form of Secretariat arrangements which might be made would vary according to the extent of the functions to be performed; it would be possible, for example, to establish a division or centre for the purpose, or to make use of or to enlarge the existing Secretariat units dealing with sea-bed affairs. As regards previous practice, it may be noted that the receipt and dissemination of information by the Secretary-General about outer space activities, under article XI of the Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, ^{45/} is performed by the Outer Space Affairs Division established within the Department of Political and Security Council Affairs. A brief description of several centres which have been established within the Secretariat for various purposes is given below.

93. The Centre for Development Planning, Projections and Policies, which was established by the Secretary-General in October 1965, incorporates the former Economic Projections and Programming Centre which had been set up in response to General Assembly resolution 1708 (XVI). The Centre prepares economic surveys and studies relating to economic planning and projections, and provides development planning advisory services. The Centre for Housing, Building and Planning was established by the Secretary-General in June 1965 within the Department of Economic and Social Affairs, following the endorsement by the Economic and Social Council (resolution 1024 (XXXVII), part C) of recommendations made in 1964 by the Committee on Housing, Building and Planning.

^{45/} General Assembly resolution 2222 (XXI), annex.

In addition to providing the secretariat for this Committee, the Centre prepares studies and reports and provides advice to Governments on questions within the area of its responsibility. It also organizes pilot projects in the field of housing, building and planning, including bilateral assistance, under General Assembly resolution 1508 (XV).

94. The Centre for Industrial Development, which has been superseded by the establishment of UNIDO, was created within the Department of Economic and Social Affairs in July 1961, upon the recommendation of the Committee for Industrial Development, a standing committee of the Economic and Social Council. (The Committee, pursuant to General Assembly resolution 2152 (XXI) has now been abolished, following the establishment of UNIDO and of its principal organ, the Industrial Development Board.) The Centre was headed by the Commissioner for Industrial Development, following his appointment in June 1962 by the Secretary-General. The Centre served as the secretariat for the Committee for Industrial Development. In addition, the Centre's activities included the making available to Governments, on request, of information on technical aspects of industrialization programmes, on the mobilization of national resources for industrialization and on the furtherance of arrangements, bilateral and multilateral, for the development of industry. Those functions and others are now being carried out by UNIDO.

(b) United Nations subsidiary organs established
by General Assembly resolution

95. UNCTAD. By resolution 1995 (XIX) of 30 December 1964, the General Assembly created the United Nations Conference on Trade and Development (UNCTAD). In this instance, the initiative for the establishment came from the General Assembly itself, without reference to a subsidiary body. The resolution provided that the members of UNCTAD would be those States which are Members of the United Nations or members of the specialized agencies or of IAEA. It also established as the principal organ of the Conference the Trade and Development Board, which carries out the function of the Conference when the latter is not in session. 46/

96. UNICEF. Upon the recommendation of the Economic and Social Council, adopted at its third session (resolution 10 (III) of 30 September 1946), the General Assembly established UNICEF by resolution 57 (I) of 11 December 1946, subject to subsequent review as to its future continuation. Upon review during its eighth session the Assembly reaffirmed the provisions of the establishment of UNICEF, with the exception of any reference to time-limits (resolution 802 (VIII)). In accordance with paragraph 3 (b) of resolution 57 (I), the Executive Director is appointed by the Secretary-General after consultation with the Executive Board.

97. UNRWA. The General Assembly established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) under resolution 302 (IV) of 8 December 1949, as a temporary agency. The mandate of the Agency has been renewed for varying periods by the General Assembly, most recently, in accordance with resolution 2452 B (XXIII) of 19 December 1968, until 30 June 1972. It should be noted that, in this instance, the decision to establish the organ was based on a report of the Secretary-General (A/1060 and Add.1)

46/ The membership of the Board is discussed in paragraph 106 below.

and on a report of a body (the United Nations Economic Survey Mission for the Middle East), the latter being itself a creation of a subsidiary organ of the General Assembly (the United Nations Conciliation Commission for Palestine). The executive head of UNRWA (since 1962, the Commissioner-General), in accordance with the establishing resolution, is appointed by the Secretary-General, in consultation with the Advisory Commission of UNRWA.

(c) United Nations subsidiary organs performing functions under treaties

98. A number of United Nations subsidiary organs perform functions which are defined in international agreements, particular examples being the bodies concerned with narcotic drugs and the Office of the United Nations High Commissioner for Refugees (UNHCR). In the case of the Office of UNHCR, the Office was created by the General Assembly and given functions under a separate convention. In the case of the various bodies concerned with narcotic drugs, some of these were established under treaties concluded before the establishment of the United Nations and subsequently brought within the framework of the United Nations. Under the 1961 Single Convention on Narcotic Drugs, however, functions were given to United Nations bodies. Further details of the organs concerned are given below.

99. Narcotic drugs bodies. Prior to the 1961 Single Convention on Narcotic Drugs, the main regulatory machinery consisted of the Permanent Central Opium Board (PCOB) and the Drug Supervisory Body, which had been established by treaties concluded in 1925 and 1931 under the auspices of the League of Nations. Under a Protocol of 1946, approved by General Assembly resolution 54 (I), these bodies were brought within the framework of the United Nations, and were considered as "organs of the United Nations" for the purposes of various General Assembly resolutions. Accordingly, their expenses were included in the budget of the United Nations and their staff appointed by the Secretary-General.

100. Under the 1961 Single Convention on Narcotic Drugs the States Parties agreed to entrust various control functions to the Commission on Narcotic Drugs (a functional commission of the Economic and Social Council, which had been previously established) and to the International Narcotics Control Board. It was stated in Article 6 of the Convention that the expenses of the Commission and Board would be borne by the United Nations, in such manner as the General Assembly might decide. Article 44 of the Convention provided that, upon the entry into force of the Convention, its provisions would, as between the States parties, terminate and replace the provisions of the earlier treaties relating to narcotic drugs. Following the entry into force of the Convention, the International Narcotics Control Board took over the functions of the PCOB and Drug Supervisory Body.

101. UNHCR. The Office of the United Nations High Commissioner for Refugees was established by General Assembly resolution 319 (IV) of 3 December 1949. That resolution, inter alia, requested the Economic and Social Council to prepare a draft resolution, which would include provisions for the functions of the Office of UNHCR, for submission to the fifth session of the Assembly. The draft resolution prepared by the Council was subsequently adopted by the Assembly as an annex to resolution 425 (V) of 14 December 1950 (referred to as

the Statute of the Office of the United Nations High Commissioner for Refugees), and the Office came into being on 1 January 1951. At the same session the General Assembly took action to elaborate a draft Convention relating to the Status of Refugees in respect of which UNHCR would have certain responsibilities and functions. The Assembly, in an annex to resolution 429 (V) of 14 December 1950, set out a draft definition of the term "refugee" which was similar to that contained in the Statute of the Office of UNHCR and which, with certain revisions, was incorporated into the Convention relating to the Status of Refugees. The operative paragraphs of resolution 429 (V) read as follows:

"The General Assembly,

...

"1. Decides to convene in Geneva a conference of plenipotentiaries to complete the drafting of and to sign both the Convention relating to the Status of Refugees and the Protocol relating to the Status of Stateless Persons;

"2. Recommends to Governments participating in the conference to take into consideration the draft Conventions submitted by the Economic and Social Council and, in particular, the text of the definition of the term 'refugees' as set forth in the annex hereto;

"3. Requests the Secretary-General to take the steps necessary for the convening of such a conference at the earliest possible opportunity.

"4. Instructs the Secretary-General to invite the Governments of all States, both Members and non-members of the United Nations, to attend the said conference of plenipotentiaries;

"5. Calls upon the United Nations High Commissioner for Refugees, in accordance with the provisions of the Statute of his Office to participate in the work of the Conference."

The Convention, which was adopted at the Conference of Plenipotentiaries and came into force on 21 April 1954, establishes in effect a legal régime for refugees within the territories of the States parties to the instrument. The Office of UNHCR is responsible for supervising the application of the provisions of the Convention, in accordance with Article 35 thereof.

(d) International organizations established by treaty

102. There are many examples of the establishment by multilateral treaty of international organizations enjoying independent legal personality: the United Nations itself, the specialized agencies and IAEA. Were this procedure to be adopted, the constitutive instrument, i.e., the treaty defining the powers and structure of the organization, would be binding on the States parties. If the Committee decided that an international organization to perform functions relating to sea-bed activities should be established by treaty, it might submit

various recommendations to that effect to the General Assembly. The recommendation might take the form of requesting the General Assembly to authorize the Committee (or a sub-committee of the present Committee), or a specially constituted preparatory committee, to elaborate a draft instrument (convention, statute, constitution, etc.) for submission to a subsequent session of the General Assembly, with a view to transmitting the draft instrument to a diplomatic conference of plenipotentiaries, to be convened under the auspices of the United Nations. The General Assembly itself could decide by resolution to convene such a conference, which would be requested to consider the adoption of a suitable instrument, and to open it for signature.

103. The question of the relationship between the organization and the United Nations would also need to be considered. The organization might be established by treaty as a specialized agency, within the meaning of Articles 57 and 63 of the Charter, or as an organization enjoying a different type of relationship with the United Nations, such as that between the United Nations and IAEA. A reference to the nature of the relationship between the new organization and the United Nations might therefore be included in the draft treaty (and possibly in the Committee's recommendation also).

2. Membership

104. The subject of membership will be examined under two main headings:
(a) membership in the governing bodies of United Nations subsidiary organs, and
(b) certain aspects relating to membership in specialized agencies. 47/

(a) Membership in the governing bodies of United Nations subsidiary organs

105. UNCTAD. General Assembly resolution 1995 (XIX) of 30 December 1964 provides that the members of UNCTAD shall be those States which are Members of the United Nations or members of the specialized agencies or IAEA. The fact that all States members of UNCTAD are convened periodically at the Conference, as well as the establishment of a principal organ of the Conference, the Trade and Development Board, differentiates UNCTAD from certain other subsidiary bodies, where provision is made for the participation by States in one intergovernmental body only, as will be seen below.

106. As regards membership in the Trade and Development Board, the resolution provides as follows:

"4. A permanent organ of the Conference, the Trade and Development Board (hereinafter referred to as the Board), shall be established as part of the United Nations machinery in the economic field.

"5. The Board shall consist of fifty-five members elected by the Conference from among its membership. In electing the members of the Board, the Conference shall have full regard for both equitable

47/ That is, associate membership, status of observers, and membership in governing bodies. It was not considered necessary to examine the membership provisions, as such, of the specialized agencies.

geographical distribution and the desirability of continuing representation for the principal trading States, and shall accordingly observe the following distribution of seats:

"(a) Twenty-two from the States listed in part A of the annex to the present resolution;

"(b) Eighteen from the States listed in part B of the annex,

"(c) Nine from the States listed in part C of the annex;

"(d) Six from the States listed in part D of the annex.

"6. The lists of States contained in the annex shall be reviewed periodically by the Conference in the light of changes in membership of the Conference and other factors.

"7. The members of the Board shall be elected at each regular session of the Conference. They shall hold office until the election of their successors.

"8. Retiring members shall be eligible for re-election.

"9. Each member of the Board shall have one representative with such alternatives and advisers as may be required.

"10. The Board shall invite any member of the Conference to participate, without vote, in its deliberations on any matter of particular concern to that member."

The annex referred to in paragraph 5 consists of a series of groupings of States from which the members of the Board are to be elected. It may be noted that whereas other subsidiary bodies of the United Nations provide for the election by the General Assembly or by the Economic and Social Council to the relevant governing and principal organ, the UNCTAD resolution provides that this should be accomplished by voting within the subsidiary body itself.

107. UNDP. General Assembly resolution 2029 (XX) of 22 November 1965, which by combining the Expanded Programme of Technical Assistance and the Special Fund, established the United Nations Development Programme (UNDP), provides that:

"The General Assembly,

"4. Resolves that a single intergovernmental committee of thirty-seven members, to be known as the Governing Council of the United Nations Development Programme, shall be established to perform the functions previously exercised by the Governing Council of the Special Fund and the Technical Assistance Committee, including the consideration and approval of projects and programmes and the allocation of funds; in addition, it shall provide general policy guidance and direction for the United Nations Development Programme as a whole, as well as for the United Nations regular

programmes of technical assistance, it shall meet twice a year and shall submit reports and recommendations thereon to the Economic and Social Council for consideration by the Council at its summer session. Decisions of the Governing Council shall be made by a majority of the members present and voting,

"5. Requests the Economic and Social Council to elect the members of the Governing Council from among States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency, providing for equitable and balanced representation of the economically more developed countries, on the one hand, having due regard to their contribution to the United Nations Development Programme, and of the developing countries, on the other hand, taking into account the need for suitable regional representation among the latter members and in accordance with the provisions of the annex to the present resolution, the first election to take place at the first meeting of the Economic and Social Council after the adoption of this resolution."

108. The annex referred to in the resolution provides as follows:

"1. Nineteen seats on the Governing Council of the United Nations Development Programme shall be filled by developing countries and seventeen seats by economically more developed countries, subject to the following conditions:

"(a) The nineteen seats allocated to developing countries of Africa, Asia and Latin America and to Yugoslavia shall be filled in the following manner: seven seats for African countries, six seats for Asian countries and six seats for Latin American countries, it being understood that agreement has been reached among the developing countries to accommodate Yugoslavia;

"(b) Of the seventeen seats allocated to the economically more developed countries, fourteen shall be filled by Western European and other countries and three by Eastern European countries,

"(c) Elections to these thirty-six seats shall be for a term of three years provided, however, that of the members elected at the first election the terms of twelve members shall expire at the end of the year and the terms of twelve other members at the end of two years.

"2. The thirty-seventh seat shall rotate among the groups of countries mentioned in paragraph 1 above in accordance with the following nine-year cycle:

First and second years: Western European and other countries;
Third, fourth and fifth years: Eastern European countries;
Sixth year: African countries;
Seventh year: Asian countries;
Eighth year: Latin American countries;
Ninth year: Western European and other countries.

"3. Retiring members shall be eligible for re-election."

109. UNICEF. Membership in the Executive Board, the intergovernmental body of UNICEF, is provided for in the establishing resolution 57 (I), of 11 December 1946; subsequently, on the recommendations of the General Assembly, adjustments and reorganizations were made by Economic and Social Council resolutions, most recently under Council resolution 610 B (XXI). The Executive Board consists of thirty States, Members of the United Nations and members of the specialized agencies, designated by the Economic and Social Council. The Executive Board reports to the Council and carries out its duties "in accordance with such principles as may be laid down by the Economic and Social Council and its Social Commission". It should thus be noted that although UNICEF is a subsidiary organ of the General Assembly, its Executive Board has been constituted by the Economic and Social Council to which it reports, and that programmes are adopted in accordance with the principles established by the Council and its Social Commission. An arrangement which has similar features has been made with respect to UNHCR.

110. UNHCR. As in the case of UNICEF, the office of UNHCR, although an organ of the General Assembly, enjoys a close relationship to the Economic and Social Council: the High Commissioner reports annually to the General Assembly through the Council and the intergovernmental body, the Executive Committee of the High Commissioner's Programme, is elected by the Council. The Executive Committee now consists of thirty members (Economic and Social Council resolution 965 B (XXXVI)). The reports of the Executive Committee are attached to the annual reports of the High Commissioner and submitted through the Council to the Assembly.

111. UNIDO. The provision for membership in UNIDO follows some features of the arrangements made with respect to UNCTAD and its Trade and Development Board, however, whereas membership in the latter is voted by UNCTAD at its periodic sessions, the arrangements for membership in the Industrial Development Board, laid down in General Assembly resolution 2152 (XXI) of 17 November 1966, are as follows:

"3. The Industrial Development Board (hereinafter referred to as the Board), established as the principal organ of the Organization, shall consist of forty-five members, elected by the General Assembly from among States Members of the United Nations and members of the specialized agencies and of the International Atomic Energy Agency for a term of three years, provided, however, that of the members elected at the first election the terms of fifteen members shall expire at the end of one year and the terms of fifteen other members at the end of two years.

"4. In electing the members of the Board, the General Assembly shall have due regard to the principle of equitable geographical representation and shall accordingly observe the following distribution of seats:

"(a) Eighteen from the States listed in part A of the annex to the present resolution; 48/

"(b) Fifteen from the States listed in part B of the annex;

"(c) Seven from the States listed in part C of the annex;

"(d) Five from the States listed in part D of the annex.

"The lists of States contained in the annex shall be reviewed by the Board in the light of changes in the membership of the United Nations or of the specialized agencies or of the International Atomic Energy Agency.

"5. Retiring members shall be eligible for immediate re-election.

"6. Each member of the Board shall have one representative with such alternates and advisers as may be required."

48/ The annex to resolution 2152 (XXI) is as follows:

"A. List of States indicated in section II, paragraph 4 (a): Afghanistan, Algeria, Botswana, Burma, Burundi, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, China, Congo (Brazzaville), Congo (Democratic Republic of), Dahomey, Ethiopia, Gabon, Gambia, Ghana, Guinea, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Jordan, Kenya, Kuwait, Laos, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives Islands, Mali, Mauritania, Mongolia, Morocco, Nepal, Niger, Nigeria, Pakistan, Philippines, Republic of Korea, Republic of Viet-Nam, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Sudan, Syria, Thailand, Togo, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta, Western Samoa, Yemen, Yugoslavia, Zambia.

"B. List of States indicated in section II, paragraph 4 (b): Australia, Austria, Belgium, Canada, Cyprus, Denmark, Federal Republic of Germany, Finland, France, Greece, Holy See, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

"C. List of States indicated in section II, paragraph 4 (c): Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, Venezuela.

"D. List of States indicated in section II, paragraph 4 (d): Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics."

112. The UNIDO precedent may be of interest since it embodies the arrangements for the establishment of the most recent subsidiary organ of the General Assembly. It may be recalled that the arrangements which existed prior to the establishment of UNIDO, in this area of activities, were a department within the Secretariat (the Centre for Industrial Development) and a standing Committee of the Economic and Social Council (the Committee for Industrial Development).

(b) Certain aspects relating to membership in specialized agencies

113. Associate membership. Associate membership is provided for in certain of the constitutive instruments of the specialized agencies: the World Health Organization, the Food and Agriculture Organization of the United Nations, the Inter-Governmental Maritime Consultative Organization and the International Telecommunication Union. 49/ Such membership is generally open to a territory or group of territories which are not responsible for the conduct of their international relations; applications for associate membership are normally made by the member of the organization which is responsible for conduct of the international relations of the territory in question.

114. The arrangements for the participation of associate members in the proceedings of the World Health Organization are rather extensive 50/ and for that reason are given here in detail. In WHO associate members have the following rights and duties:

(a) the right to participate, without vote, in the plenary organ of the Organization and in its main committees;

(b) the right to participate, with vote, and hold office, in certain other committees or sub-committees of the Organization;

(c) the right to submit proposals to the Executive Board of the Organization (however, an associate member is not eligible for membership in the Executive Board);

(d) the right to propose items for inclusion in the provisional agenda of the Assembly;

(e) the right to receive all the relevant documentation;

(f) associate members are obliged to contribute to the budget of the Organization, but on a basis which reflects their special status.

115. Status of observers. It has not been the practice to include in the constitutive instruments of specialized agencies references to the possible status of non-member States as observers. However, provision for observer status has normally been contained in the rules of procedure of the plenary organs of such agencies. It is customary for observers from non-member States to exercise the following rights:

49/ Articles 3, 3, 9 and 3 respectively, of the pertinent constitutive instruments.

50/ Resolution adopted by the World Health Assembly, first session, 21 July 1948.

- (a) the right to attend the general conference;
- (b) the right to attend committees;
- (c) the right to attend regional meetings (e.g., in the case of FAO);

(d) the right to participate in the general conference or committee or regional meeting. This usually involves permission to speak on invitation but it does not include the right to vote;

(e) the right to submit written statements;

(f) the right to be notified in advance of the date of the conferences and to be provided with all the necessary documents.

116. Membership of executive bodies. Each of the specialized agencies has two main deliberative organs, one of which is composed of representatives of all States members and the other having a much more limited composition. With respect to the criteria determining membership of the limited organ, in some cases a proportion of the membership is reserved for certain States specified by name, or for States that have a major interest in the subject-matter with which the organization is concerned. In other cases no criteria are stated, apart from that of equitable geographical jurisdiction, as in article 24 of the WHO Constitution.

117. The Governing Body of the International Labour Organisation (ILO) is an example of an executive body in which several interests are represented and provision is made for the representation of States in a particular category. Article 7 of the ILO Constitution provides:

"1. The Governing Body shall consist of forty persons:
twenty representing Governments;
ten representing the employers; and
ten representing the workers.

"2. Of the persons representing Governments ten are appointed by members of chief industrial importance."

The Governing Body is required to determine which of the members of the Organisation are "Members of chief industrial importance" and must ensure that questions relating to the selection are considered by an impartial committee before being decided by the Governing Body. Appeals against decisions of the Governing Body are receivable by the Conference of the Organisation. 51/

118. Similar provisions are contained in the constitutive instrument of a number of other specialized agencies. One may note the provision in the Convention of the Inter-Governmental Maritime Consultative Organization (IMCO):

Article 17: "The Council shall consist of sixteen members and shall be composed as follows:

"(a) Six shall be Governments of the nations with the largest interest in providing international shipping services;

51/ Article 7 (3), ILO Constitution.

"(b) Six shall be Governments of other nations with the largest interest in international seaborne trade;

"(c) Two shall be elected by the Assembly from among the Governments of nations having a substantial interest in providing international shipping services; and

"(d) Two shall be elected by the Assembly from among the Governments of nations having a substantial interest in international seaborne trade...."

119. Similar language is used to describe the composition of the IMCO Maritime Safety Committee:

Article 28: "The Maritime Safety Committee shall consist of fourteen members elected by the Assembly from the members, Governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of members. Governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas."

120. Other examples may be noted. The Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), section 4 (1) concerning the appointment of Executive Directors, provide that:

"There shall be twelve Executive Directors, who need not be Governors and of whom:

"(i) Five shall be appointed, one by each of the five members having the largest number of shares;

"(ii) Seven shall be elected according to Schedule B by all the Governors other than those appointed by the five members referred to in (i) above."

121. Article 50 (b) of the Convention of the International Civil Aviation Organization (ICAO) stipulates that:

"In electing the members of the Council, the Assembly shall give adequate representation to (1) the States of chief importance in air transport; (2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and (3) the States not otherwise included whose designation will ensure that all the major geographic areas of the world are represented on the Council...."

122. When dealing with the question of the composition of the executive body it is also customary to include a provision to the effect that a member of the Organization which is not represented on a limited organ may nevertheless participate in the activities of that organ if the State's own interest are especially concerned. Article 53 of the ICAO Convention provides, for instance:

"Any contracting State may participate, without a vote, in the consideration by the Council and by its committee and commissions of any question which especially affects its interests. No member of the Council shall vote in the consideration by the Council of a dispute to which it is a party."

123. In conclusion, the relevant provisions of the constituent instruments of the specialized agencies may be summarized as follows: the specialized agencies are composed of two main deliberative organs, one being composed of representatives of all members and the other being more limited in size. With respect to the limited organ various criteria have been adopted for the purpose of determining membership:

- (i) The names of certain States, or merely their number may be specified, with reference being made to the necessity for equitable geographical distribution;
- (ii) States with a major interest in the subject-matter dealt with by the Organization may be specially represented;
- (iii) If part of the limited organ is composed of States with a major interest in the questions dealt with by the Organization, the rest of the limited organ will usually be composed of States chosen to represent the interests of the other States and to ensure as far as possible that the various areas of the world are represented.

124. It is desirable that any criterion (or criteria) for determining membership of a limited organ should be formulated in as clear and precise a manner as possible, and that detailed provision should be made concerning the body to apply the criterion, together with machinery for appeal from a decision of that body. It may be recalled that an Advisory Opinion was requested from the International Court of Justice to determine the meaning of the term "largest ship-owning nations" from amongst whom part of the membership of the Maritime Safety Committee of IMCO is to be selected. 52/

125. It is usual to stipulate, either in the constitutive instrument or in the rules of procedure, that a member not represented on a limited organ may nevertheless participate in its proceedings if the State's own interests are involved.

3. Voting arrangements

(a) Voting in United Nations subsidiary organs

126. In many instances subsidiary organs have simply followed the rules of procedure of the parent body, including those relating to voting. Some of the more important subsidiary organs, such as UNDP, UNCTAD and UNIDO, have, however, adopted their own rules of procedure relating to voting, which are summarized below.

52/ I.C.J. Reports 1960, p. 150.

127. UNDP. The rules of procedure of the UNDP Governing Council specify that each member of the Council shall have one vote; decisions are made by a majority of the members present and voting; abstaining members are not considered as voting. It is further specified that "[A]ny member dissenting from a decision of the Governing Council may require that his views be recorded in the records of the meeting" (rule 25). Because of the fact that the Governing Council is a consolidation or merger of the Technical Assistance Committee (a subsidiary body of the Economic and Social Council) and the Governing Council of the Special Fund (a subsidiary body of the General Assembly), it was anticipated that procedural questions might give rise to difficulties. In an effort to meet any problems which might arise, the following rule was incorporated in the rules of procedure of the Governing Council:

"Rule 29. If, in connexion with the conduct of business of a meeting, any procedural question arises which is not covered in the present rules, it shall be decided by the President, taking into account the corresponding rules of procedure of the Economic and Social Council, if applicable. A member may appeal against such ruling of the President. Such an appeal shall immediately be put to the vote, and the ruling of the President shall stand unless overruled by a majority of the members present and voting."

128. UNCTAD. In the resolution establishing UNCTAD (General Assembly resolution 1995 (XIX) of 30 December 1964), a distinction was made as follows between the voting majority required in meetings of the Conference and that required in meetings of the Trade and Development Board:

"Voting. 24. Each State represented at the Conference shall have one vote. Decisions of the Conference on matters of substance shall be taken by a two thirds majority of the representatives present and voting. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting. Decisions of the Board shall be taken by a simple majority of the representatives present and voting."

129. Pursuant to the foregoing, both the Conference and the Board have included references to voting in their respective rules of procedure. In addition, rule 50 (3) of the rules of procedure of the Conference provides:

"If the question arises whether a matter is one of procedure or substance, the President of the Conference shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand unless the appeal is approved by a majority of the members present and voting."

In other aspects relating to voting, the rules of the Conference as well as of the Board follow the pattern established by the rules of procedure of the General Assembly.

130. Of relevance to the voting arrangements provided for in the establishing resolution of UNCTAD are the procedures set forth in paragraph 25 (a) to (n) which, as stated therein, were designed to provide a process of conciliation prior to voting and

"... to provide an adequate basis for the adoption of recommendations with regard to proposals of a specific nature for action substantially affecting the economic or financial interests of a particular State".

Among the topics dealt with in the respective sub-paragraphs of paragraph 25 are: levels of conciliation; requests for conciliation; initiation of conciliation; subjects regarding which conciliation is appropriate or excluded; nomination procedures and reports of the conciliation committee; and the good offices of the Secretary-General of UNCTAD.

131. UNIDO. Voting in the Industrial Development Board is governed by operative paragraphs 8 and 9 of General Assembly resolution 2152 (XXI) of 17 November 1966, which provide that each member shall have one vote, and that decisions of the Board shall be taken by a simple majority of "the members present and voting". The rules of procedure of the Board provide (rule 43.2) that, as is the case in the rules of procedure of the General Assembly, the above phrase means "members present and casting an affirmative or negative vote". Members abstaining are considered not voting. Other provisions deal with the method of voting, conduct during voting, roll-call voting, and voting on amendments and on proposals.

(b) Voting in specialized agencies and other international organizations

132. Entitlement to vote. The acts of individual representatives participating in meetings of the deliberative organs of specialized agencies and other intergovernmental organizations are generally acts on behalf of their respective Governments. The procedures at Conferences of the ILO differ, however, in that since delegations include representatives of employers and of employees, the novel principle was introduced that: "Every delegate shall be entitled to vote individually on all matters which are taken into consideration by the conference." 53/

133. Unanimity, majority and special majority voting. The requirement of a unanimous vote is exceptional in the specialized agencies and other general international organizations, although such votes may be required with respect to certain decisions of various regional bodies, such as the European Coal and Steel Community (ECSC), the European Economic Community (EEC), EURATOM, the European Free Trade Association (EFTA) and the Organization for Economic Co-operation and Development (OECD).

134. Voting within specialized agencies is normally on the basis of a simple majority, except as otherwise specified, with respect to certain categories of decisions, in the constituent instrument or rules of procedure of the deliberative organs; in the latter case, decisions are normally by two-thirds majority. The following are typical of arrangements within the specialized agencies and IAEA regarding matters subject to simple majority or special majority voting. In the case of the General Conference of UNESCO, for example, the following distinction is drawn: "The General Conference shall, in adopting proposals for submission to the member States, distinguish between recommendations

53/ Article 4 (1), ILO Constitution.

and international conventions submitted for their approval".^{54/} In the first instance a majority vote is sufficient; in the latter, a two-thirds majority is required. The following general provision has been included in article 43 of the IMCO Convention:

"The following provisions shall apply to voting in the Assembly, the Council and the Maritime Safety Committee:

"(a) Each member shall have one vote.

"(b) Except as otherwise provided in the Convention or in any international agreement which confers functions on the Assembly, the Council, or the Maritime Safety Committee, decisions of these organs shall be by a majority vote of the members present and voting and, for decisions where a two-thirds majority vote is required, by a two-thirds majority vote of those present.

"(c) For the purpose of the Convention, the phrase 'members present and voting' means 'members present and casting an affirmative or negative vote'. Members which abstain from voting shall be considered as not voting."

135. In the case of applications for membership, most of the specialized agencies require a two-thirds majority vote in favour; WHO, however, requires only the affirmative vote of a simple majority.

136. IAEA requires a majority vote except in cases of decisions of the General Conference regarding financial questions and those of the Board of Governors regarding the budget, in which instances a two-thirds majority is required. The same is true regarding votes on amendments to the statute and/or suspension of the privileges and rights of membership. ^{55/}

137. Weighted voting. In the financial organizations of the specialized agencies and in the European communities, a system of weighted voting has been adopted. Article 12 (section 5 a) of the Articles of Agreement of the International Monetary Fund (IMF) provides that:

"(a) Each member shall have two hundred and fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand United States dollars.

"(b) Whenever voting is required under article V, section 4 or 5, each member shall have the number of votes to which it is entitled under (a) above, adjusted:

"(i) by the addition of one vote for the equivalent of each four hundred thousand United States dollars of net sales of its currency up to the date when the vote is taken, or

^{54/} Article 4, para. 4, UNESCO Constitution.

^{55/} Article 5 (c), IAEA statute.

"(ii) by the subtraction of one vote for the equivalent of each four hundred thousand United States dollars of its net purchases of the currencies of other members up to the date when the vote is taken; provided, that neither net purchases nor net sales shall be deemed at any time to exceed an amount equal to the quota of the member involved."

The Articles of Agreement of the International Bank for Reconstruction and Development provide in article 5 (section 3 a) that, "Each member shall have two hundred and fifty votes plus one additional vote for each share of stock held".

138. The Treaty establishing the European Economic Community also contains provisions concerning weighted voting.

Article 148

"1. Except where otherwise provided for in this Treaty, the conclusions of the Council shall be reached by a majority vote of its members.

"2. Where conclusions of the Council require a qualified majority, the votes of its members shall be weighted as follows:

Belgium	2
Germany	4
France	4
Italy	4
Luxembourg	1
Netherlands	2

"Majorities shall be required for the adoption of any conclusions as follows: twelve votes in cases where this Treaty requires a previous proposal of the Commission, or twelve votes including a favourable vote by at least four members in all other cases.

"3. Abstentions by members either present or represented shall not prevent the adoption of Council conclusions requiring unanimity."

139. No specialized agency, apart from the financial organizations, has adopted a weighted voting system of the kind illustrated above. One may note that a number of the commodity agreements, such as those concerned with wheat and sugar, have adopted a system of weighted voting, however.

140. The following conclusions with respect to voting arrangements can be advanced on the basis of the foregoing examination:

- (i) The requirement of unanimity for decisions within international organizations has waned and is now the exception rather than the rule.

- (ii) Within the specialized agencies most decisions are taken on a majority vote.
- (iii) However, most organizations require special two-thirds majorities with respect to certain questions. A number of organizations follow in this respect the example of the United Nations Charter, which enumerates in article 18 a number of "important questions" which require a two-thirds majority.
- (iv) Some financial and economic organizations such as IBRD, IMF and the EEC have adopted a system of weighted voting.
- (v) Some organizations, for example the EEC, provide for majority voting, special majority, weighted voting or unanimity, depending on the issue concerning which a vote is being taken.
- (vi) Votes are usually cast on behalf of States members rather than individually. However, the ILO Constitution makes provision for individual votes.

4. Financial arrangements

(a) Practice with respect to United Nations subsidiary organs

141. It is the practice in the establishment of subsidiary organs either to provide:

- (i) that all expenses of the organ are to be borne by the regular budget of the United Nations; or
- (ii) that administrative expenses of the organ are to be borne by the regular budget of the United Nations and that other expenditures are to be financed by voluntary contributions; or
- (iii) that all expenses, both administrative and operational, are to be financed by voluntary contributions.

142. Financing procedures in accordance with (i) were adopted in the case of UNCTAD: in paragraph 29 of General Assembly resolution 1995 (XIX) of 30 December 1964 it is provided that "The expenses of the Conference, its subsidiary bodies and secretariat shall be borne by the regular budget of the United Nations which shall include a special budgetary provision for such expense". In respect of contributions by States not members of the United Nations, which participate in the Conference, separate arrangements for assessments have been made, in accordance with the resolution. There is no specific reference in resolution 1995 (XIX) to the applicability of the United Nations financial rules and regulations.

143. Examples of subsidiary organs which operate according to the format of (ii) above are UNIDO and UNHCR. In the case of UNIDO, General Assembly resolution 2152 (XXI) of 17 November 1966 includes extensive provisions in respect of financial arrangements: it provides that administrative and research activities

are to be borne by the regular budget of the United Nations, which shall include separate budgetary provisions for such expenses (paragraph 21). It further provides that:

"22. Expenses for operational activities shall be met:

"(a) From the voluntary contributions made to the Organization, in cash or in kind, by Governments of the States Members of the United Nations, members of the specialized agencies and of the International Atomic Energy Agency;

"(b) Through participation in the United Nations Development Programme on the same basis as other participating organizations;

"(c) By the utilization of the appropriate resources of the United Nations regular programme of technical assistance.

"23. Voluntary contributions to the Organization for its operational activities under paragraph 22 (a) above may be made, at the option of the Governments, either:

"(a) Through announcement at a pledging conference to be convened by the Secretary-General of the United Nations on the recommendation of the Board, or

"(b) In accordance with regulations 7.2 and 7.3 of the Financial Regulations of the United Nations; or

"(c) By both of these methods.

"24. The voluntary contributions referred to in paragraph 22 (a) above shall be governed by the Financial Regulations of the United Nations, except for such modifications as may be approved by the General Assembly on the recommendation of the Board.

"25. Disbursement of the funds referred to in paragraph 22 (b) above shall be for purposes consistent with the policies, aims and functions of the Organization, including such policies and programmes as may be established by the Board, and shall be made by the Secretary-General of the United Nations in consultation with the Executive Director of the Organization."

144. In the case of UNHCR, expenditures for administrative expenses are borne by the budget of the Organization, and other expenditures are financed by voluntary contributions from governmental as well as other sources. A grant-in-aid is made each year to the United Nations budget by UNHCR (representing the contribution toward administrative expenses relating to the functioning of the Office) from the voluntary funds administered by the High Commissioner.

145. Examples of subsidiary organs which are financed in accordance with (iii) above are the United Nations Institute for Training and Research (UNITAR) and UNICEF. In the former case, all expenses, including expenses for operational services and administrative costs are borne by voluntary contributions from

governmental and other sources. The statute of UNITAR provides that the Executive Director may accept contributions, provided that contributions for a specific purpose may not be accepted if the purpose is inconsistent with the purposes and policies of the Institute. 56/ Article VIII of the statute states further that the Controller of the United Nations shall perform all necessary financial and accounting functions for the Institute; that the funds administered by and for the Institute shall be subject to audit by the United Nations Board of Auditors; and that the general administrative, personnel and financial services of the United Nations shall be utilized by the Institute. 57/

146. In the case of UNICEF, operative paragraph 2 (a) of General Assembly resolution 57 (I) provides in effect that the Fund shall bear those administrative expenses which cannot be provided from the established services of the United Nations budget. As in the case of UNITAR, UNICEF and UNHCR are among the subsidiary organs which submit financial reports and accounts to the annual sessions of the General Assembly

(b) Practice in respect of the specialized agencies

147. Although the concept of a common budget for the United Nations and specialized agencies has not materialized there is a certain amount of budgetary co-operation between them. Apart from the constituent instruments of the IBRD

56/ Article VIII, UNITAR statute.

57/ The relevant provisions of article VIII read as follows:

"(3) The funds of the Institute shall be kept in a special account to be established by the Secretary-General of the United Nations in accordance with the Financial Regulations of the United Nations.

"(4) The funds of the Institute shall be held and administered solely for the purposes of the Institute. The Controller of the United Nations shall perform all necessary financial and accounting functions for the Institute including the custody of its funds and shall prepare and certify the annual accounts showing the status of the Institute's special account.

"(5) The Financial Regulations and the rules and procedures of the United Nations shall apply to the financial operations of the Institute subject to such special rules and procedures as the Executive Director in agreement with the Secretary-General may issue after consultation with the Board of Trustees and the Advisory Committee on Administrative and Budgetary Questions of the United Nations.

"(6) Funds administered by and for the Institute shall, as provided in the United Nations Financial Regulations, be subject to audit by the United Nations Board of Auditors.

"(7) The general administrative, personnel and financial services of the United Nations shall be utilized by the Institute on conditions determined in consultation between the Secretary-General and the Executive Director, it being understood that no extra cost to the regular budget of the United Nations is incurred."

and the IMF which make no reference to budgetary co-operation, the constitutions of certain other agencies do reflect this idea. The ILO Constitution envisages "such financial and budgetary arrangements with the United Nations as may appear appropriate", ^{58/} and UNESCO's Constitution anticipates that any agreement with the United Nations may "provide for the approval and financing of the budget of the Organization by the General Assembly of the United Nations". ^{59/}

148. The relationship Agreements between the United Nations and the specialized agencies and IAEA, in respect of budgetary and financial arrangements, fall into four main groups:

(a) ILO, FAO, UNESCO, ICAO, WHO, IMO and IMCO: The Agreements in question reflect the initial hope that arrangements might be achieved to include the budget of the agency "within a general budget of the United Nations", and provided that consultations would be held with a view to concluding a supplementary agreement to that end. In each Agreement it is specified, inter alia, that prior to the conclusion of such a supplementary agreement (i) consultations on the annual budget of the agency would be held, (ii) the proposed budget of the agency would be transmitted annually to the General Assembly, and the Assembly could make recommendations thereon, (iii) agency officials would participate without vote in the deliberations of the Assembly on this matter, and (iv) the agency agreed to conform as far as practicable with the standard forms and practices recommended by the United Nations. ^{60/}

(b) The United Nations-Universal Postal Union Agreement merely provides in article X that the budget of the Union would be transmitted to the United Nations and that the General Assembly might make recommendations thereon to the UPU Congress. The UN-ITU Agreement contains, in addition to provisions identical to those just described, provisions in article XI for the participation of representatives in the deliberations of the Assembly on the budget of the ITU.

(c) The United Nations-IAEA Agreement, is, in respect of the provision in question, more similar to the Agreements described in (a) above than to any other, except that the Agreement is silent on the possibility of any future arrangement by which IAEA's budget would be included within a general budget of the United Nations. Moreover, IAEA agrees, inter alia, to transmit its annual budget to the United Nations for "such recommendations as the General Assembly may wish to make on the administrative aspects thereof". ^{61/}

(d) Neither the Agreement between the United Nations and the IBRD, nor that between the United Nations and the IMF contains provisions similar to those of the other specialized agencies; the only related provisions being those expressed in article X, paragraph 3, of the respective Agreements, which states that

"... The United Nations agrees that, in the interpretation of paragraph 3 of Article 17 of the United Nations Charter it will take into consideration that the (Agency) does not rely for its annual budget upon

^{58/} Article 13 (i), ILO Constitution.

^{59/} Article 10, UNESCO Constitution.

^{60/} See, for example, article XIV of the United Nations-ILO Agreement.

^{61/} Emphasis added. Article XVI, para. 3.

contributions from its members, and that the appropriate authorities of the (Agency) enjoy full autonomy in deciding the form and content of such budget."

149. The budget of a specialized agency or similar organization will normally include the administrative costs of running the organization (salaries of staff, printing, costs of conference services, etc.) and costs which result from a decision of policy that a particular activity be undertaken. Within the specialized agencies the preparation of the budget estimates is usually entrusted to the administrative head of the organization. This is expressly recognized in the Constitutions of ILO, FAO, WHO and IMCO. The actual approval or acceptance of the budget is a matter for the plenary organ.

150. If the organization is not self-supporting the question of apportionment arises. ITU and UFU follow a system whereby a number of "classes" are established. In the case of UFU, seven classes have been established: each member or associate member is, according to the class in which it finds itself, obliged to pay so many "units" of the total budget. The more usual solution, however, is to fix a percentage quota for each member. This may be done either in the constituent instrument, or by the decision of the plenary organ as in the case of the WHO. 62/

151. Other arrangements exist with regard to the IBRD and the IMF, which are financially self-sufficient. As provided for in the Articles of Agreement of IBRD 63/ each member subscribes a given number of shares of the capital stock of the Bank. Whereas as regards original members, the minimum number of shares to be subscribed are established in Schedule A to the Articles of Agreement, the minimum number of shares to be subscribed by other members is decided by the Bank itself. The Articles of Agreement also contain provisions dealing with method 64/ and time periods 65/ of payment of subscriptions for shares.

152. As regards IMF, the provisions for financing include the following: each of the original members of the Fund are assigned a quota under the Articles of Agreement; other members are assigned quotas by decision of the Fund itself. This quota, which serves as the basis of the subscription of that member in the Fund, is adjustable periodically. Payment of the amount of the subscription by a member, in turn, makes that member eligible to purchase currencies from the Fund. Any proposed increase in the quota of any member must be with the agreement of that member. The same is true with respect to deductions in quotas.

153. The question of the periodicity of submission by the specialized agencies of their budgets for approval by the respective legislative bodies, and of the form and presentation of the budgets, was considered by the Ad Hoc Committee of Experts

62/ Article V (5.1) of the Financial Regulations of WHO.

63/ Article 2, section 3.

64/ Article 2, section 7.

65/ Article 2, section 8.

to Examine the Finances of the United Nations and the Specialized Agencies. In its second report to the General Assembly at the twenty-first session, ^{66/} that Committee recommended, inter alia, that the specialized agencies should adopt biennial budget cycles and should endeavour to arrive at a uniform presentation in respect of their budget submissions to legislative bodies.

154. In conclusion, it may be said that the appropriate method of financing new international machinery will depend upon the nature of that machinery (and in turn upon the functions which that machinery is to perform):

- (i) Were that machinery to be in the form of a subsidiary organ of the United Nations, it would be possible to provide that it be financed wholly or partly out of the budget of the United Nations. Alternatively, it could be financed wholly or partly out of voluntary contributions.
- (ii) Were the machinery to be in the form of a specialized agency or similarly constituted international organization, arrangements for some degree of budgetary co-operation with the United Nations could be envisaged. Alternatively, precedents exist for organizations, such as IBRD and IMF, enjoying a greater degree of financial and budgetary independence from the United Nations. Moreover, various alternatives for financing such machinery would be available. These arrangements could either be provided for wholly or partially on the basis of formulae to be contained in the constitutive instrument, or left to the decision of the plenary body of the organization.

5. Secretariat

155. As has been stated by a number of representatives, it would be desirable that, whatever the type of machinery to be established, the secretariat should be based on the principles of universality and equitable geographical distribution. Having regard to the highly technical subject-matter with which the machinery might be concerned, this principle would need to be complemented by the principle that the individual members of the staff of the new machinery should possess a thorough-going and broad knowledge of their respective fields of competence. Persons of experience and capacity in the topics in question are relatively few in number, however, and their services may be expected to be in acute demand with the increasing development and advancement of technical capability with respect to marine activities.

156. Should it be decided that the new machinery under discussion would most efficaciously be established as a unit or branch within an established secretariat, the appointment of staff would be dealt with according to existing procedures, unless it were to be decided that special arrangements should be made. In the case of a unit within the United Nations Secretariat, the officials appointed would be staff members of the Organization within the meaning of Article 101 of the Charter. It would also be possible to provide for the appointment of an executive head of the unit by the Secretary-General.

^{66/} Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 80, document A/6343.

157. If it were to be considered that the new machinery should be in the form of a United Nations subsidiary organ, it might be of interest to note that, in the past, various practices have been followed with respect to the method of appointment of the staff concerned.

158. UNCTAD. General Assembly resolution 1965 (XIX) of 30 December 1964 provides as follows:

"26. Arrangements shall be made, in accordance with Article 101 of the Charter, for the immediate establishment of an adequate, permanent and full-time secretariat within the United Nations Secretariat for the proper servicing of the Conference, the Board and its subsidiary bodies.

...

"28. Adequate arrangements shall be made by the Secretary-General of the United Nations for close co-operation and co-ordination between the secretariat of the Conference and the Department of Economic and Social Affairs, including the secretariats of the regional economic commissions and other appropriate units of the United Nations Secretariat as well as with the secretariats of the specialized agencies."

159. UNHCR. It is provided in the annex to General Assembly resolution 428 (V) of 14 December 1950 that the staff of the High Commissioner shall be appointed by him and that they "shall be chosen from persons devoted to the purposes of the Office ...". Whereas the Secretary-General of UNCTAD, in accordance with paragraph 27 of the establishing resolution is appointed by the Secretary-General of the United Nations "and confirmed by the General Assembly", the United Nations High Commissioner for Refugees is elected by the General Assembly on the nomination of the Secretary-General.

160. UNIDO. With respect to UNIDO, the provisions for the appointment of the Executive Director and the staff are similar to those adopted in the establishment of UNCTAD. The relevant paragraphs of General Assembly resolution 2152 (XXI) of 17 November 1966 read as follows:

"17. The Organization shall have an adequate permanent and full-time secretariat, which will be appointed in accordance with Article 101 of the Charter of the United Nations, and which will avail itself of the other appropriate facilities of the Secretariat of the United Nations.

"18. The secretariat shall be headed by the Executive Director, who shall be appointed by the Secretary-General of the United Nations and whose appointment shall be confirmed by the General Assembly. He shall be appointed for four years and shall be eligible for reappointment."

161. UNITAR. In accordance with the statute of the Institute, the Executive Director of UNITAR is appointed by the Secretary-General after consultation with the UNITAR Board of Trustees. It is provided in article V, paragraph 1, of the Statute that "the staff of the Institute shall be appointed by the Executive Director and shall be responsible to him in the exercise of its functions".

162. Should it be considered desirable to take steps toward the establishment, by multilateral treaty, of a separate international organization, suitable provisions for a secretariat could be included in the constitutive instrument.

IV. GENERAL LEGAL ISSUES

163. The general legal issues dealt with in the present study are considered in the following chapters:

1. The relation between the existing law of the sea and international machinery;
2. The position of States which do not become parties to an agreement establishing international machinery.

1. The relation between the existing law of the sea and international machinery

164. This chapter seeks to relate the existing law of the sea ^{67/} to the performance by international machinery of the various functions previously considered and to indicate the extent to which that law might need to be adapted if such machinery were to come into operation. In view of the uncertainty which exists under the present law of the sea with respect to some of the most crucial issues and since no decision has yet been taken as to the kind of machinery, if any, to be introduced, the present chapter does not, however, attempt to proceed beyond an initial analysis of the main questions raised. The aim of the account which is given below has accordingly been to isolate the principal legal issues which present themselves in various contexts of the potential development of sea-bed resources, so that Member States may review the situation in the light of the legal considerations involved, but not to attempt to deal exhaustively with these issues at this stage or to give full and detailed answers to the problems posed.

165. Before examining specific aspects of the matter, it may be noted that there is one major issue which would affect any of the functions concerned, namely that of the precise delimitation of the area of the sea-bed and ocean floor beyond the limits of national jurisdiction in which exploration and exploitation activities may take place. This issue would have to be examined in the light of the need for the successful implementation of any of the proposed functions and for the avoidance of disputes. Although attention is therefore called to the importance of this question, the choice of criteria and the factors to be considered in making this delimitation, are not, however, examined in the present study. As stated in paragraph 3 of the study, it has nevertheless been assumed that such an area exists.

^{67/} Information on the content of that law is to be found in "Survey of existing international agreements concerning the sea-bed and the ocean floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction" (A/AC.135/10/Rev.1), and "Legal aspects of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of national jurisdiction, and the use of their resources in the interest of mankind" (A/AC.135/19/Add.1).

166. The issues examined are discussed under the following headings: (a) legal régime relating to the exploration and exploitation of the resources of the sea-bed and ocean floor; (b) jurisdiction and control over ships, installations and other devices used for the exploration and exploitation of sea-bed resources; (c) respect for existing uses of the high seas; and (d) pollution.

(a) Legal régime relating to the exploration and exploitation of the resources of the sea-bed and ocean floor

167. A basic question which arises in the present context is to establish what legal principles and rules are applicable, or should be applicable, to the exploration and exploitation of sea-bed resources situated beyond national jurisdiction. Consideration of this question is required in order to determine whether the arrangements which might be made for the exercise of registration, licensing or operational functions by international machinery would require changes to be made in the existing law of the sea.

168. Different opinions have been expressed as regards the fundamental issue involved. One view is that the governing principle in this sphere is that contained in article 2 of the Convention on the High Seas, which provides, inter alia, that the high seas are open to all nations and which refers to the exercise of the freedoms stated in that article (namely, freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, and freedom to fly over the high seas), and of others which are recognized by the general principles of international law, by all States. It is said that the activities on the sea-bed form part of the freedoms of the sea which are available, under existing international law, to all States. Reference has been made in this context to the legislative history of article 2 of the Convention and other articles of the Geneva Conventions on the Law of the Sea.^{68/} A distinction has been drawn between claims of sovereignty or of exclusive control over particular areas for indefinite periods, and the use which might be made of particular areas by individual States solely for exploration and exploitation purposes. It has been pointed out that although the extent of States' rights and duties in this regard has not been made the subject of special regulation, international law does not prohibit exploration and exploitation activities on the part of States beyond the limits of national jurisdiction.

^{68/} An account of the legislative history is contained in document A/AC.135/19/Add.1. In its commentary on the present article 2 of the Convention on the High Seas the International Law Commission noted that it had only specified four freedoms, but was aware that others existed. After a reference to freedom of scientific research, the commentary continued:

"The Commission has not made specific mention of the freedom to explore or exploit the subsoil of the high seas. It considered that apart from the case of the exploitation or exploration of the soil or subsoil of a continental shelf... such exploitation had not yet assumed sufficient practical importance to justify special regulation."

Yearbook of the International Law Commission, 1956, vol. II, p. 278.

169. Another view is that, since in accordance with the terms of article 2 of the Convention on the High Seas, sea-bed resources are not under the sovereignty of any State, they are a common property or heritage of mankind. Accordingly, those resources may only be exploited under conditions agreed upon by the international community and chosen so as to safeguard the interests of all countries and peoples.

170. This difference in views has a bearing on the question whether the existing law of the sea should be revised or supplemented by the introduction of arrangements for the exercise of registration, licensing or operational functions by international machinery. On the basis of one approach, the existing law would provide a legal framework within which sea-bed activities might be conducted without recourse to the establishment of international machinery, and therefore the question of a change in the law does not arise. Those holding contrary views consider that the present international law is insufficient and should be modified or supplemented so as to permit the operation of an agreed form of international machinery.

(b) Jurisdiction and control over ships, installations
and other devices used for the exploration and
exploitation of sea-bed resources

171. The normal rule is that when ships are on the high seas the State under whose flag the ship sails has sole jurisdiction. ^{69/} So far, the same rule has been applied in the case of vessels, installations and other devices engaged in sea-bed exploration and exploitation. In the case of ships the normal rule has been applied, and in the case of fixed installations jurisdiction has been exercised by the coastal State under whose authority they were installed. Having regard, however, to the possibility of establishing a system of international registration or licensing, or of direct exploitation by an international body, the question of jurisdiction and control requires further examination in order to set out the range of possibilities.

172. If a registration or licensing system were to be adopted whereby activities might be registered by, or licences granted to, States, ships might operate under the flag of the State which registered the activity or received the licence. In this case no change would be required in the standard rule according to which vessels while on the high sea are subject, save in exceptional circumstances, to

^{69/} Article 6 of the Convention on the High Seas, provides:

"1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

"2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality."

the exclusive jurisdiction of the flag State in respect of civil, criminal and administrative matters. The same rule might be applied also to the installations and other devices used for the exploration and exploitation of sea-bed resources in the particular areas concerned. In each instance, however, the content of national jurisdiction might need to reflect the fact that, under the establishing instrument, the registration or licensing authority might possibly be given power to make regulations concerning sea-bed activities (for example, working practices and safety regulations) or that international agreements might be concluded dealing with such matters.

173. In the case where a State permitted activities registered in its name, or a licence granted to it, to be utilized by a non-national enterprise which employed a vessel or installation operating under the flag of another State, difficult questions might arise; in such circumstances either the normal rule, whereby the flag State has sole jurisdiction, might apply, or special provision could be made for a system of concurrent jurisdiction.

174. In the event that activities might be registered by, or licences granted to, entities other than States, it would be necessary to decide whether the normal rule should apply, or some form of "international" jurisdiction should be devised, or whether some other solution should be adopted.

175. The possibility may also need to be considered of the inspection of ships, installations and other devices by an international body, in order to verify fulfilment of the conditions under which a claim was registered or a licence granted. If such power were to be granted to an international body the law of the sea would need to be modified accordingly. So far as the present law of the sea is concerned, reference may be made to article 22 of the Convention on the High Seas, which provides that, except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting that the ship is engaged in piracy or in the slave trade, or, though showing a foreign flag or refusing to show its flag, is, in reality, of the same nationality as the warship. In these exceptional cases the warship may proceed to verify the ship's right to fly its flag. Inspection of ships, installations and other devices by an international body would therefore require the adoption of express treaty provisions to that effect.

176. In the event that direct exploration and exploitation activities were undertaken by an international body, it is possible that ships, installations and other devices might be operated by the international agency concerned. Reference may be made in this connexion to article 7 of the Convention on the High Seas, which refers to the question of ships employed on the official service of an intergovernmental organization flying the flag of that organization. The possibility that ships might be operated by an international organization was referred to during the discussions by the International Law Commission when the Law of the Sea Conventions were being prepared. 70/ The question was raised

70/ References and further information are contained in section 3b (ii) of "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities. Part two: the organizations" (A/CN.4/L.118/Add.1).

whether a maritime code would have to be prepared to cover the situation or whether the international organization would apply the relevant laws of the State where it registered the ship. The same choice would thus present itself in the event that an international body were established to operate ships, installations and other devices as part of the exploration and exploitation of sea-bed resources.

(c) Respect for existing uses of the high seas

177. It would appear to have been generally accepted during discussions in the General Assembly, in the First Committee, and in the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and in the present Committee, that future exploration and exploitation of the resources of the sea-bed should be conducted in such a way as to respect the existing uses made of the sea, including the exploitation of other marine resources. The concept that States must pay reasonable regard to the rights of other States with respect to the use of the high seas (whether for the same or different purposes) was incorporated in article 2 of the Convention on the High Seas. After enumerating four of the freedoms of the high seas - freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines and freedom to fly over the high seas - the article declared that: "These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in the exercise of the freedom of the high seas." ^{71/} Assuming this principle to be applicable to activities undertaken in order to explore or exploit sea-bed resources, the question would arise of determining its implications with respect to particular situations or conflicts of interests. In this connexion, reference may be made to the Convention on the Continental Shelf, which contains various provisions concerning respect for

^{71/} For a summary of consideration of the concept of "reasonable regard" by the International Law Commission and at the 1958 Conference on the Law of the Sea, see A/AC.135/19/Add.1, paras. 42-48.

existing uses of the high seas. 72/ In accordance with the continental shelf doctrine, the coastal State is given authority, within the limits laid down in the

72/ Articles 3, 4 and 5 of the Convention on the Continental Shelf are as follows:

"Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters.

"Article 4

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

"Article 5

"1. 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.

"2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

"3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

"4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

"5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

"6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

(Foot-note 72 continued on following page)

articles concerned, to determine the conditions under which installations and other devices may operate on the continental shelf, their location, and the establishment of safety zones around them. The coastal State's obligations vis-à-vis other users are in respect of the legal status of the superjacent waters and the air space above them, the laying or maintenance of submarine cables or pipelines ^{73/} and the prohibition of "any unjustifiable interference" with navigation (in particular as regards sea lanes), fishing, the conservation of the living resources of the sea, or with fundamental scientific research carried out with the intention of open publication. In its commentary on the future article 5, paragraph 1, of the Convention on the Continental Shelf, the International Law Commission stressed that "what the article prohibits is not any kind of interference, but only unjustifiable interference". ^{74/} The commentary then continued with the following general observations, which may be of interest in the present connexion:

"The manner and the significance of that qualification were the subject of prolonged discussion in the Commission. The progressive development of international law, which takes place against the background of established rules, must often result in the modification of those rules by reference to new interests or needs. The extent of that modification must be determined by the relative importance of the needs and interests involved.... The case is clearly one of assessment of the relative importance of the interests involved."

178. If the exploration and exploitation of sea-bed resources beyond the limits of national jurisdiction are undertaken, it may be assumed that the same issues (and perhaps others) will need to be considered, in order that the various uses of the marine environment may be conducted as harmoniously as possible. If international

^{72/} (continued)

"7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

"8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published."

^{73/} As regards submarine cables and pipelines, see also articles 26-29, Convention on the High Seas.

^{74/} Yearbook of the International Law Commission, 1956, vol. II, Commentary on article 71, para. (1), p. 299.

machinery endowed with registration, licensing or operational functions were to be established, therefore, it would have to be decided whether, and if so to what extent, power to regulate these matters should be given to the international body concerned. The constitutive instrument (or any special treaty concluded or declaration adopted) might lay down the framework within which States are to respect each other's uses of the sea for different purposes, with the possibility that the international authority might be given a discretionary power to apply these provisions when exercising its functions. Such discretionary authority might include power to make appropriate regulations or to recommend various practices to States; the eventual arrangements might in fact consist of a complex division of responsibilities between the international body and individual States (or others) engaged in exploration and exploitation, designed to ensure that reasonable regard was paid to the interests of other States with respect to different uses of the high seas or its sea-bed.

(d) Pollution

179. If international machinery with registration, licensing or operational functions were to be established, such machinery might be required to exercise any powers granted to it (for example, with respect to the establishment of operating conditions or of international norms of conduct) in such a way as to reduce so far as possible the dangers of pollution or other harmful effects caused by the exploration and exploitation of the resources of the sea-bed beyond the limits of national jurisdiction. At the present time no general multilateral instrument contains detailed provisions on this question, although it may be noted that the Convention on the High Seas requires States to draw up regulations to prevent pollution resulting from exploration and exploitation of the sea-bed and its subsoil. 75/ Under the Convention on the Continental Shelf, coastal States are obliged to undertake appropriate measures for the protection of living marine resources from harmful agents. 76/ An International Convention for the Prevention of Pollution of the Sea by Oil was concluded under the auspices of IMCO, which has continued to give attention to the problem. 77/

180. It may be recalled that in resolution 2467 B (XXIII) of 21 December 1968 the General Assembly welcomed the adoption by States of appropriate safeguards against the dangers of pollution and hazardous and harmful effects that might arise from the exploration and exploitation of sea-bed resources, and requested the Secretary-General to submit a study on all aspects of the protection of marine resources to the General Assembly and to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

75/ Article 24. Article 25, paragraph 2, provides:

"2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents."

76/ Article 5, para. 7.

77/ United Nations Treaty Series, vol. 327, p. 4, as amended by the Conference of Contracting Governments, held at London, 4-11 April 1962 (UK, Cmd. 1801).

2. The position of States which do not become parties to an agreement establishing international machinery

181. This chapter deals chiefly with the effect, as regards third States, of the conclusion of a treaty providing for the establishment of international machinery to perform functions relating to the exploration and exploitation of sea-bed resources. However, as noted earlier in the study, ^{78/} international machinery might also be created by means of non-treaty making procedures, in particular through the use of a General Assembly resolution to set up a United Nations subsidiary organ. Before considering the effect of treaties for non-parties it is therefore proposed to examine briefly the question of the effect of resolutions of the General Assembly.

182. It should be noted at the outset, however, that the question of the effect, in legal terms, of a treaty or of a resolution is not identical with that of the conditions which may need to be satisfied in order that the machinery may operate effectively. Thus, as a number of speakers have emphasized, it would be important for the successful performance of the functions of any machinery presently envisaged that the great majority of States, and indeed preferably all States, should participate in its work, although that might not be a legal requirement for the actual establishment of the machinery in question. As a second preliminary comment, it may be pointed out that while this chapter deals with the legal effect of the means used to bring international machinery into operation, the particular means employed might form only part of the over-all arrangements. It might be necessary in practice to look to several instruments, for example, to a series of resolutions, or to a General Assembly declaration of basic principles coupled with a resolution establishing a United Nations subsidiary organ, or to a General Assembly resolution and to a treaty concluded between certain States, or to several treaties dealing with maritime activities, in order to discover the full scope of the legal conditions under which the machinery is intended to operate. The following discussion, therefore, is by way of a preliminary examination in general terms of the issues involved, and does not purport to deal with every possible combination of procedures whereby international machinery might be established and international arrangements made relating to sea-bed activities.

(a) General Assembly resolutions

183. Under the Charter, a General Assembly subsidiary organ might be established if the General Assembly considered this necessary for the performance of its functions ^{79/} and the pertinent resolution was adopted by the requisite majority. In view of the attention which the General Assembly has already given to the subject of the development of sea-bed resources, it may be taken as accepted that the General Assembly has functions and responsibilities relating to the development of the mineral resources of the sea-bed. Provided, therefore, the necessary resolution was adopted, a General Assembly subsidiary organ could be established in order to perform agreed tasks relating to sea-bed resources. The resolution would thus have institutional effects within the Organization which, under the system

^{78/} Section III, B, 1, paras. 89-103, above.

^{79/} Article 22.

established by the Charter, would be binding even on States Members which abstained from, or even voted against, the resolution.

184. As regards the question of the effect of a General Assembly resolution (or parts of a resolution) directed to the activities of States, the General Assembly has power only to adopt recommendations. If the General Assembly therefore purported to do no more than that (e.g., if it were to recommend to States Members that they participate in a registration or licensing system), no problem about the binding force of the resolution would arise; the resolution would not, in its terms, purport to impose any substantive obligation, although States Members would be under an obligation to consider it in good faith.

185. If, however, the resolution were to go beyond making a mere recommendation, what would be its force? This matter is still controversial, but there is support for the view that a resolution may be of legal significance in the following ways, amongst others, some of which might be relevant in the present context.

- (i) A resolution may either be declaratory, or contribute to the growth, of customary international law. This might be the case if, as has been suggested, the General Assembly were to adopt a declaration relating to the legal status of the sea-bed and the development of its resources, and possibly to the operation of international machinery. Relevant factors would be the language of the resolution or declaration, ^{80/} the vote, statements made in the elaboration of the text, and practice before and after the adoption of the instrument; later practice would be relevant where the resolution or declaration contributed to future customary law rather than declaring the existing law.
- (ii) A State, by its unilateral acts, may accept as an obligation rules stated in a resolution.
- (iii) Finally, the resolution may in fact incorporate, or in part execute, an agreement between a group of States. This would be the case if a United Nations subsidiary organ were to be established to perform functions laid down in a treaty.

186. Accordingly, a resolution or a declaration adopted by the General Assembly could, in the circumstances indicated, give rise to, or be evidence of, specific legal rights and obligations possessed by States.

(b) Treaties and third States

187. There appears to be almost universal agreement that, in principle, a treaty creates neither obligations nor rights for a State which is not a party to the instrument, unless that State gives its consent. This rule is derived from the Roman law maxim pacta tertiis nec nocent nec prosunt - agreements neither impose obligations nor confer rights upon third parties. In international law, the application of the rule does not rest simply on this general concept of the law of

^{80/} See generally "Use of the Terms 'Declaration' and 'Recommendation'," memorandum by the Office of Legal Affairs (E/CN.4/L.610).

contract, but on the sovereignty, independence and equality of States. There is abundant evidence of the recognition of the rule in State practice, and in the decisions of international tribunals, as well as in the writings of jurists. 81/

188. The Vienna Convention on the Law of Treaties contains in part II, section 4, entitled "Treaties and third States", the articles reproduced below:

"Article 34

"General rule regarding third States

"A treaty does not create either obligations or rights for a third State without its consent.

"Article 35

"Treaties providing for obligations for third States

"An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provisions to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

"Article 36

"Treaties providing for rights for third States

"1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

"2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

"Article 37

"Revocation or modification of obligations or
rights of third States

"1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

81/ References and appropriate quotations are to be found in the International Law Commission's commentary on its articles 30 to 34 which, without substantial amendment, became articles 34 to 38 of the Vienna Convention on the Law of Treaties. Reports of the International Law Commission on the second part of its Seventeenth Session and on its Eighteenth Session, Official Records of the General Assembly, Twenty-first Session, Supplement No. 9 (A/6309/Rev.1), p. 56. (Hereinafter referred to as "1966 ILC Report".)

"2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

"Article 38

"Rules in a treaty becoming binding on third States
through international custom

"Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such."

189. The Vienna Convention on the Law of Treaties is not yet in force. Having regard, however, to the fact that the articles quoted above were adopted by overwhelming majorities, both in the Committee of the Whole and at plenary meetings of the Conference, and did not involve major departure from the texts prepared by the International Law Commission, which were based on existing law, it is proposed to treat these articles as the most authoritative statement available of the present law on the subject. The position under those articles may be summarized as follows. The general rule is that a treaty does not create obligations or rights for a third State without its consent. In the case of obligations, however, an obligation may arise if parties so intend and the third State accepts in writing, so constituting, in effect, a second or collateral agreement between the parties and the third State. In the case of rights, a third State may assent to acquire a right under a treaty if the parties intend to accord that right to the particular State in question, or to a group of States to which it belongs, or to all States, provided, however, the State concerned accepts the conditions imposed by the treaty. Obligations, once they have arisen, may be revoked or modified if the parties and the third State so consent, unless it had been otherwise agreed; rights may not be revoked or modified by the parties if it is established that the third State's consent is necessary. Finally, a rule contained in a treaty may become binding on a third State as a customary rule of international law. In this case, however, the source of the obligation, for the third State at least, is the customary rule and not the treaty.

190. This last provision might in fact become relevant if a treaty were to be concluded relating to sea-bed activities and the operation of international machinery. As noted in the previous chapter, the representatives of Member States have expressed different views as to the legal principles and rules presently applicable to sea-bed activities. Having regard to this fact and the relatively novel nature of the subject-matter, it would appear difficult to adopt a multilateral treaty which was merely declaratory of existing obligations under customary law; moreover, even if the treaty purported to be in part declaratory of existing law, the degree of specific regulation which the treaty might be expected to introduce would in itself constitute a change in the law. A treaty relating to sea-bed activities and the operation of appropriate machinery might thus be regarded as falling in the category of general law-making treaties,

comparable to treaties dealing with the high seas or with outer space. ^{82/} In the words of the International Law Commission's former Special Rapporteur on the Law of Treaties, the rules contained in such treaties "may come to be regarded as general rules of international law either through the number of accessions ^{83/} or through general acceptance as custom". ^{84/}

191. Apart from the question of the extent to which a treaty relating to sea-bed activities might be declaratory of existing customary law or be of a norm-creating character, the possibility of arguments based on the creation by treaty of a so-called "objective régime", that is, of a set of obligations and rights valid erga omnes, may also be noted. The examples usually given of objective régimes are of treaties providing for the neutralization of certain areas or for freedom of navigation through international rivers or waterways, but reference may also be made to the effect of instruments, such as the United Nations Charter, which may confer rights or impose obligations on third States. ^{85/} In the event that an

^{82/} Sir Humphrey Waldock, the International Law Commission's Special Rapporteur on the law of treaties, referred to the Geneva Conventions on the High Seas and on Fishing and Conservation of the Living Resources of the High Seas, and the Nuclear Test-Ban Treaty, as examples of general law-making treaties. It may be recalled that the preamble to the Convention on the High Seas refers to the desire of the States Parties "to codify the rules of international law relating to the high seas". Yearbook of the International Law Commission, 1964, vol. II, Third report on the Law of Treaties, article 63, commentary, para. (19).

^{83/} As in the case of the Kellogg-Briand Pact and the Nuclear Test-Ban Treaty (foot-note in original).

^{84/} Third report on the Law of Treaties, idem. The circumstances in which a rule contained in a treaty may become binding on non-parties as "a customary rule of international law, recognized as such" in the words of article 38 of the Vienna Convention, are extremely difficult to define. It may be noted that in the North Sea Continental Shelf Cases the International Court of Justice stressed that the formation of a new rule of customary international law, through the passage of a rule from a treaty into the general corpus of international law, so as to become binding on third States, is a result which is "not likely to be regarded as having been attained". I.C.J. Reports 1969, p. 43.

^{85/} For example, under Article 2, para. 6 of the Charter. It may also be noted that, in its opinion in the case of Reparation for Injuries suffered in the Service of the United Nations, the International Court of Justice, having found that the United Nations possesses international personality, expressly held that this personality was of an objective character, not limited to the parties to the Charter. It said:

"Fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality and not merely personality recognized by them alone, together with capacity to bring international claims." I.C.J Reports, 1949, p. 185.

agreement were to be concluded relating to the development of sea-bed resources and the establishment of international machinery, it might conceivably be argued therefore that the treaty had created a régime which was to be observed by all States, whether or not formally parties. The weight which might be attached to such an argument would depend on various considerations; the probability, however, that the treaty would fall within the category of general law-making treaties, and the fact that the area concerned was in any case one not subject to the exclusive jurisdiction of any State,^{86/} would tend to suggest that the argument might be difficult to sustain, even if an international organization was established with functions relating to sea-bed activities and enjoying objective legal personality. Nevertheless, having regard to the possibility that the argument might be raised, the position adopted by the International Law Commission with respect to objective régimes may be noted. Sir Humphrey Waldock, the Commission's Special Rapporteur on the Law of Treaties, originally proposed that an article dealing with the establishment by treaty of objective régimes should be included in the Commission's draft provisions. In his commentary on the proposed article, the Special Rapporteur expressed the view that the question of the possible objective effect of treaties creating international organizations should be omitted from the articles considered by the Commission, and left to be dealt with as part of the law relating to international organizations.^{87/} The Commission eventually decided, however, not to include a provision dealing specifically with objective régimes, but to regulate the matter through the articles which subsequently became articles 34 to 38 of the Vienna Convention. The Commission did not specify whether, in so doing, it was intending to include the possible objective effect of treaties creating international organizations, or whether it was continuing to follow the Special Rapporteur's suggestion that the point be set aside. The Commission did, however, put forward an article which provided that the provisions of the Convention should be applicable to the constituent instrument of international organizations. The article became article 5 of the Vienna Convention, which reads as follows:

"The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization."

Since it is clear that the Commission did intend, in its articles dealing with third States, to provide for the possibility that arguments might be raised as to the creation of objective régimes, it is suggested that, at least ex facie,

^{86/} In his discussion of objective régimes the Special Rapporteur on the Law of Treaties distinguished law-making treaties concerned with general international law or with areas not subject to the exclusive jurisdiction of any State, on the ground that any objective régimes that may result from such treaties may be regarded as deriving their force more from custom than from the treaty; the Special Rapporteur drew a comparison with other cases, for example, treaties relating to particular regions and in which the State or States having territorial competence participate. Third report on the Law of Treaties, ibid., paras. (18)-(19).

^{87/} Third report on the Law of Treaties, ibid., para. (20).

the relevant provisions were intended to cover the possible objective effects of a treaty establishing an international organization also. 88/

192. The discussion by the Commission as to whether treaties creating objective régimes should be dealt with as a special case is summarized in its report as follows:

"Some members of the Commission favoured this course, expressing the view that the concept of treaties creating objective régimes existed in international law and merited special treatment in the draft articles. In their view, treaties which fall within this concept are treaties for the neutralization or demilitarization of particular territories or areas, and treaties providing for freedom of navigation in international rivers or maritime waterways; and they cited the Antarctic Treaty as a recent example of such a treaty. Other members, however, while recognizing that in certain cases treaty rights and obligations may come to be valid erga omnes, did not regard these cases as resulting from any special concept or institution of the law of treaties. They considered that these cases resulted either from the application of the principle in article 32 (the subsequent article 36) or from the grafting of an international custom upon a treaty under the process which is the subject of the reservation in the present article (the subsequent article 38). Since to lay down a rule recognizing the possibility of the creation of objective régimes directly by treaty might be unlikely to meet with general acceptance, the Commission decided to leave this question aside in drafting the present articles on the law of treaties. It considered that the provision in article 32, regarding treaties intended to create rights in favour of States generally, together with the process mentioned in the present article, furnish a legal basis for the establishment of treaty obligations and rights valid erga omnes, which goes as far as is at present possible. Accordingly, it decided not to propose any special provision on treaties creating so-called objective régimes." 89/

193. The Commission's approach was restated at the United Nations Conference on the Law of Treaties by the Special Rapporteur on the Law of Treaties (who participated as an expert consultant), who emphasized the special importance the Commission had attached to the future article 36, paragraph 1, when it had decided not to include a provision dealing with objective régimes. 90/ He also stressed that the future articles 35, 36 and 37 must be read together and that article 36 assumed the simultaneous operation of article 35. The United Nations Conference, by its adoption of the articles quoted, endorsed the position taken

88/ An additional reason for following in the present instance the reasoning and method adopted in the Vienna Convention is that the law-making character of a treaty dealing with sea-bed activities might weaken the force of arguments based on the "objective" nature of any machinery established relating to those activities, so as to make it improbable that the approach followed by the International Court in the Reparation for Injuries Opinion (cited in note 84 above) would be preferred to that contained in the Vienna Convention.

89/ 1966 ILC report, article 34, commentary, para. (4)

90/ Official Records, United Nations Conference on the Law of Treaties, First Session, 35th meeting, Committee of the Whole, para. 55.

by the International Law Commission. The status of a third State vis-à-vis an agreement which, it might be argued, established an objective régime, including the establishment of international machinery, in respect of sea-bed activities, would therefore continue to be determined by the articles of the Vienna Convention previously cited.

194. In conclusion it may be said that, in the event that a State declined to become a party to a treaty establishing international machinery relating to the exploration and exploitation of sea-bed resources, it would not acquire any obligations or rights under the instrument. Thus, if a registration or licensing system were to be instituted, the State in question could not be obliged, nor presumably would it attempt, to register its activities or to apply for a licence in respect of them, nor would those activities receive such international recognition as use of the registration or licensing machinery might afford. Provision could, however, be made to allow States which were not parties to receive rights under the treaty; the actual exercise of rights by a non-party would, under the Vienna Convention, require acceptance of any conditions and obligations laid down in the agreement. Assuming that a particular State did not accept any rights or obligations under the treaty, its activities would be based on existing customary and conventional law (to the extent to which the State might be a party to other agreements), unless and until a customary rule of international law emerged, possibly derived from the treaty, as envisaged in article 38 of the Vienna Convention.

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