SUMMARY RECORD OF THE SIX HUNDRED AND SEVENTH MEETING

Held on Thursday, 26 April 1973, at 3.25 p.m.

Chairman: Mr. CZARKOWSKI Poland

PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES OF DEVELOPING COUNTRIES (E/5170; chapter V of E/5247; E/AC.6/L.483/Rev.1) (continued)

The CHAIRMAN announced that draft resolution E/AC.6/L.483/Rev.1 now had 17 sponsors: Algeria, Brazil, Chile, Colombia, Egypt, Ghana, Guinea, Iceland, Iraq, Kenya, Madagascar, Pakistan, Peru, Romania, Venezuela, Yugoslavia and Zaire.

Mr. OGISO (Japan) said that the item before the Committee was by no means new. Indeed, it had been discussed in the United Nations for over 20 years giving rise to a whole range of resolutions. In his Government's view, the study of the different problems relating to natural resources should be conducted in such a way as to contribute to the harmonization of relations between producer and consumer countries. Such a study would constitute a long-term basis for establishing a rational order for international co-operation concerning the exploitation of natural resources, upon which the future prosperity of the international community would depend.

His delegation admitted in principle that the countries possessing natural resources should exercise sovereignty over them in conformity with established international law. However, sovereignty over natural resources should be exercised in a flexible manner, taking into account the economic situation, so as not to hinder the free international flow of capital. Developing countries with natural resources and developed countries with capital and technology could co-operate and maintain mutually complementary links on the basis of reciprocity. In his delegation's view, the report of the Secretary-General (E/5170) offered a suitable basis for future dialogues between developed and developing countries on the question of permanent sovereignty over natural resources.

As he had stated earlier, his Government supported efforts to establish within the framework of multilateral organizations a rational order for international co-operation on the exploitation of natural resources. However, with respect to the means for achieving that objective, it was questionable whether it was appropriate to deal in a sweeping way with the programmes in developing countries, solely under the concept of sovereignty, as the report appeared to do. In his delegation's opinion, each recommendation should be examined on its own merits and the appropriate international organization should be selected to discuss

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each specific problem. Furthermore, the interrelation between the exploitation of natural resources and economic co-operation should be studied in greater detail.

He went on to comment on the recommendations in chapter VI of document E/5170. With regard to the first sentence of recommendation (a) to Governments of the developed countries, he said that Japan, as one of the major consumer countries of natural resources, felt that the interest of consumer countries should be taken into account sufficiently before the eventual conclusion of the agreement in question. It was important to ensure the widest possible participation in such an agreement by developed and developing countries, irrespective of whether they had natural resources or whether they had multilateral enterprises, if an international order for the exploitation of natural resources was to be established in the best interests of producer and consumer countries. He would like clarification on two points regarding recommendation (a) to the developed countries. Firstly, the concept of multinational enterprises remained undefined, and secondly, it was not clear in the report whether an over-all multilateral agreement covering all natural resources was contemplated or whether separate arrangements by product were envisaged.

His delegation supported recommendations (b), (e) and (f) to the developed countries. With regard to recommendation (g), his delegation believed that it was essentially for each interested developed country to decide on the merits of such special assistance within the framework of its respective policies. However, his Government was aware of the difficulties encountered by developing countries in the early stages of economic development and would take them into account as far as possible.

Regarding the recommendations to Governments of developing countries, his delegation felt that the question raised in recommendation (d) should be examined, taking into account the characteristics of production and consumption of the natural resources concerned. If what was intended was that unilateral measures be taken by producer countries or international arrangements be made exclusively between developing countries or producer countries, his delegation felt that such an approach would not provide an effective solution to the problem. His delegation believed that it was neither appropriate nor necessary to include recommendation (f) among

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those envisaged for developing countries, since there were rules of international law governing expropriation.

Turning to draft resolution E/AC.6/L.483/Rev.1, he recalled that Japan had reserved its position on paragraph 1 of General Assembly resolution 3016 (XXVII), and he wished to repeat the same reservation regarding paragraphs 1 and 6 of the draft resolution under consideration. The proposal in those paragraphs that the jurisdiction of a State should cover natural resources in the superjacent waters, and the confusion between the concept of permanent sovereignty and that of the right of States could only prejudice the debates to be held at the Conference on the Law of the Sea in 1974. Therefore, his delegation objected to the words "and in the superjacent waters" in paragraphs 1 and 6 of the draft resolution, on the grounds that the Council should refrain from taking any position which might prejudice the debates to be held at the Conference on the Law of the Sea. For the same reasons, it objected to the words "coastal waters" in paragraph 3. If paragraph 4 of the draft resolution referred to unilateral machinery for co-operation exclusively among developing countries, he would make the same comment as he had made earlier on recommendation (d) to the developing countries in document E/5170, namely, that such machinery would not be an effective measure for a fundamental solution of the problem.

Mr. MOHAMMED (Trinidad and Tobago) said that, in his delegation's view, document E/5170 constituted a useful starting point for discussion of the question of permanent sovereignty over natural resources. His delegation looked forward to the further detailed study which the Secretariat was preparing in response to Economic and Social Council resolution 1673 D (LII) and hoped that it would be considered at the resumed fifty-fifth session of the Council and subsequently at the twenty-eighth session of the General Assembly.

Although the right of people to self-determination had led to political independence, that independence had remained illusory because it was not accompanied by economic independence. Violations of economic independence were becoming more disguised and sophisticated and the matter must therefore be kept under constant surveillance by the United Nations. The studies and analyses to be provided by the Secretariat must go beyond the stage of data collecting which was the essence of

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document E/5170. It was only through real economic independence that a country could ensure economic growth, additional jobs and an equitable distribution of national income. Permanent sovereignty over natural resources was the raison d'être of economic independence.

In his delegation's view, the natural resources of a country's land surfaces and sea-bed and subsoil thereof within national jurisdiction and in the superjacent waters should be controlled only by the country concerned. There must be no controversies over those areas. Invisibles, in particular, insurance, distribution and shipping constituted a third sector directly related to the exploitation of natural resources. Although his delegation was not suggesting that invisibles should be examined in the present context, it felt that the necessary links should be borne in mind when considering the question of permanent sovereignty over natural resources.

Although there had been some change in the pattern of the exercise of permanent sovereignty over natural resources, the change was minimal; it was largely one of form rather than substance and was frequently minimized by outside influences. His delegation fully accepted the need for foreign investment in the exploitation of resources in developing countries. However, such investments must always be integrated in the country's over-all economic planning and objectives at all levels of the operation and must conform to local laws, social and cultural patterns, and institutions. In particular, the modalities of nationalization must be subject to the host country's laws and principles.

As he had stated earlier, investments benefited the host country more in form than in substance and most of the profits were accrued elsewhere. For example, although a number of developing countries might claim that they had nogotiated a 50-50 investment, in fact the investor might overvalue his expertise in management and technology and the cost of equipment, thereby making the host country contribute more than it should towards the project and reaping larger profits for himself. However, the problem did not end there, since such a grossly overcapitalized project must inevitably fail and, in an effort to save the jobs that it had provided, the Government of the developing country would have to resort to nationalizing the firm and therefore would have to pay compensation. In many cases, the technology brought into a country by foreign investors was not only inappropriate but

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obsolescent. Developing countries were frequently unaware of the fact or helpless to prevent it. Often the only market for the product of such obsolescent plant was the developing country itself and therefore no exports were possible. Normally, it was expected that foreign investments would open up new markets; however, the foreign investor could exercise control over the quantity and quality of output so that the market might be confined to a limited area.

The situation was no better with regard to the process of transforming ownership and control of foreign-owned enterprises into local hands. If the sale of shares did not take place on a systematic basis, foreign control was prolonged. However, a rapid transfer of shares to the local stock market would only result in imbalance. If shares were transferred to institutions such as insurance companies or to small shareholders, who normally took little part in administering a company, the result was that a minority of foreign shareholders could continue to exercise effective control over the company.

The recommendations to the Governments of developing countries in document E/5170 were, by and large, rather trite and served little real purpose. In his delegation's view, the United Nations had a crucial role to play in the question of permanent sovereignty over natural resources of developing countries. In his delegation's view, the work of the Secretariat should go beyond the presentation of data and should include analyses of the successful techniques and practices used by some countries, for example, socialist countries, Peru, Indonesia and Guyana; assistance in drawing up suitable legislation; assistance in preparing proper service contracts involving special arrangements based on real mutual interests and mutual benefits; and methods to ensure worker participation in investments. His delegation looked forward to being in a position to proceed in a more concrete manner on the question under consideration at the twenty-eighth General Assembly.

Mr. FASLA (Algeria) said that Algeria had fought hard to recover control over its natural resources and attached particular importance to the question, since the developing countries must have control over their wealth if they were to develop economically and socially. That principle was being recognized by many international forums and was reaffirmed in General Assembly resolution 3016 (XXVII). Since the principle had been accepted by the large majority of the international community, it was surprising that there were still many obstacles to the exercise

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of permanent sovereignty, such as excessive demands for compensation, suppression of aid, the aggressive attitude of foreign companies, deliberate reduction of prices, encouragement not to invest in countries, etc. Such practices were contrary to the principles of the Charter and the objectives of the International Development Strategy, and had been denounced by the Algerian Minister for Foreign Affairs at the twenty-seventh General Assembly.

His delegation could not accept the last sentence of recommendation (f) to the Governments of developing countries in document E/5170, because it put a sovereign State and a foreign company on an equal footing. Nor could his delegation agree to using an international body to settle disputes over nationalization, since the domestic legislation in each country covered such matters and all problems regarding the exercise of sovereignty. His delegation also rejected the growing tendency to use the problem of compensation as a pretext to challenge the right of countries to recover their natural resources. There was no reason why bilateral agreements could not be changed when the basic circumstances in which they had been concluded had changed. States parties should accept such changes and abide by the legal principle of "rebus sic stantibus". If they did not accept that principle, their attitude would constitute opposition to the sovereignty of the developing countries over their natural resources.

In his delegation's view, document E/5170 was not sufficiently detailed and should be expanded in the light of new developments on the question of permanent sovereignty over natural resources and the criticisms of the recommendations in chapter VI expressed by delegations, notably that of Brazil. Document E/5170 should be considered together with the study requested in Economic and Social Council resolution 1673 D (LII) which, it was to be hoped, would be submitted to the twenty-eighth session of the General Assembly.

At the present stage, he had no criticisms regarding paragraphs 5 to 10 of document E/5170, which described the situation in the oil sector in Algeria. He did not wish to prejudge in any way the statement made by the representative of France to the effect that those paragraphs might be redrafted. The representative of France had spoken about the new spirit of co-operation between France and Algeria concerning oil. Previously relations had been somewhat strained, but they now appeared to be satisfactory, which was to the advantage of both countries.

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The developing countries should ensure that the exploitation of their natural resources met their need for independent economic development and planning. Foreign investment was often needed to develop natural resources, but it should be subject to special agreements based on reciprocal advantages and must be incorporated in the national plans of the host country. The profits resulting from such investments must be reinvested in the host country, and an easy loan policy would help to improve the development of natural resources and would lead to more rapid economic development in the host country.

Special attention should be given to the problem of advanced and intermediate training to ensure continuity in the operation of plant and to prevent a brain-drain. The lack of technology in the developing countries constituted a handicap for optimum exploitation of natural resources. The principle of the transfer of technology should be encouraged, and UNIDO could play an important role in that context and should be given the means to do so.

His delegation had sponsored the recommendations contained in paragraph 88 of the report of the Committee on Natural Resources on its third session (E/5247) and it would support draft resolution E/AC.6/L.483/Rev.1, of which it was a sponsor.

Mr. HASSAN (Sudan) said that his delegation, as a member of the Committee on Natural Resources at its third session, found its views concurrent with most of those reflected in chapter 5 of the Committee's report (E/5247). Many of his delegation's views on the subject had been adequately referred to by other representatives of the developing countries and there was no need to repeat them. However, he wished to express his delegation's disquiet over what appeared to be a deliberate and consistent effort on the part of a group of member States to dissuade United Nations bodies from considering issues that fall within their competence. He referred to paragraph 85 of document E/5247 which reflected the views of those countries on natural resources in the superjacent waters of Member States. The argument that consideration of that aspect of the question of permanent sovereignty in the Council would prejudge the outcome of the discussion in another forum was, in his delegation's view, invalid. Paragraph 1 of General Assembly resolution 3016 (XXVII) reaffirmed the right of States to permanent

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sovereignty over their natural resources, on land, in the sea-bed and the subsoil thereof within their national jurisdiction and in the superjacent waters. His delegation did not believe that such a statement, which reasserted a basic principle of international relations, prejudged the outcome of the Conference on the Law of the Sea.

He was pleased to note that the report of the Secretary-General (E/5170) was generally balanced and that many of the recommendations contained in chapter VI touched on the basic and inherent obstacles facing the developing countries in the exercise of their permanent sovereignty over natural resources. That was particularly true of multinational corporations. Developing countries, while encouraging foreign investments, were increasingly concerned over the power and influence of multinational corporations which could control key sectors of the economies of some developing countries and thereby impinge upon their integrity and sovereignty. The recommendations to international organizations in document E/5170 expressed the kind of positive role that the United Nations was to assume. The adoption of Economic and Social Council resolution 1721 (LIII) on multinational corporations had indeed helped to allay the anxieties of the developing countries and it was to be hoped that the study group of eminent persons, referred to in paragraph 1 of that resolution, would achieve the desired results.

Paragraphs 41 to 49 of document E/5170 explained the various ways in which multinational corporations managed to subject the economies of the developing countries to all kinds of pressures. Countries like the Sudan must be protected by the international community from such pressures. However, United Nations efforts in that regard would, in all probability, be frustrated, unless the attitude of multinational corporations towards the developing countries changed. They must be made aware of the fact that the patronage of the colonial Powers, which they used to enjoy, no longer existed and that a relationship which was not based on mutual benefit would not be in their interests in the long run.

In his delegation's view, the Secretary-General's report did not sufficiently emphasize two aspects of the matter under consideration. Firstly, it did not give a true picutre of the exploitation of natural resources in the developing countries as related to the problem of foreign aid. A cursory glance at the report gave the

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impression that only two forces were involved: multinational corporations versus developing countries. It reduced the problem to one of foreign investments without considering the important part foreign aid should play in helping the developing countries to exploit their natural resources. Secondly, the report lacked information on the progress achieved in the United Nations with regard to the exploitation of, and exercise of permanent sovereignty over, natural resources in the developing countries. The report should have referred in detail to the various United Nations bodies which dealt in one way or another with the issue of natural resources and should have reviewed the over-all situation. He referred to such bodies as the United Nations Conference on the Human Environment, UNDP, UNIDO, activities related to the remote sensing of earth by satellites and the various functional offices of the Organization such as the Office for Technical Co-operation.

His delegation fully supported draft resolution E/AC.6/L.483/Rev.1 and was pleased to note that paragraph 5 called upon the international financial organizations to provide financial and technical assistance for the developing countries.

Mr. GARCIA BELAUNDE (Peru) said that there was little more he could say about the Secretary-General's report (E/5170) after the brilliant statement of the representative of Brazil at the previous meeting, which his delegation fully endorsed. However, although his delegation had been very disappointed by the report and found its recommendations unacceptable, there was one point on which he disagreed with the Brazilian delegation. The representative of Brazil had said that the report lacked a conceptual line. The Peruvian delegation felt that the report did have a conceptual line which was unfortunately far from satisfactory, since it appeared to be that of laying down guidelines for making concessions regarding the permanent sovereignty of the developing countries over their natural resources.

Multinational corporations were not the subjects of international law; the only subjects of international law were sovereign States and international organizations established by sovereign States. The confusion on that point in the report led to another confusion, namely that multinational corporations were considered on an equal footing with certain States, for the purposes of dealing with developing nations. That had been a policy of the United States which had given diplomatic protection to its companies in Latin American countries,

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particularly Peru, and had always consulted the interests of the companies concerned but never the interests of the Governments concerned, sometimes not even those of the United States Government. The report suggested that such a practice should be universally adopted. In fact, a company and a State were two totally separate bodies, and while States were, or should be, equal under the law, in relationships between States and multinational companies, the latter were necessarily subject to the laws and regulations imposed by the former. Finally, the most absurd aspect of the report was the insinuation that the sovereign decisions of a State, for example, in the case of an expropriation, should not fall within its own jurisdiction but should be arbitrated by international bureaucracy. In other words, multinational companies and the developing States were to be considered as equal under the law and their disputes should be settled by an arbitration tribunal which would be established for that purpose. It was for those reasons that he had stated earlier that the conceptual line of the report was to find guidelines for encroaching on certain inalienable rights of States over their natural resources.

The reason why the Economic and Social Council had decided to give priority to the item on permanent sovereignty over natural resources was the importance of the subject for the developing countries, whose wealth was based on the present and potential existence of natural resources. The best way for the developing countries to rise above their present conditions of underdevelopment was by fully utilizing their natural resources. While it was true that the developing countries bore primary responsibility for their own development, it was also true that their development depended on the control they could exercise over their natural resources. In addition, they needed financial assistance in order to exploit their resources to best advantage.

The developing countries were labouring under a number of handicaps. In many cases their sovereignty was circumscribed, they lacked the resources necessary to exploit their natural wealth, or they were subjected to pressure by foreign interests. Besides lacking resources, appropriate technology and accurate, up-to-date information on their resources, the developing countries were also subjected to manoeuvres by neo-colonialist countries designed to impede the free exercise of their sovereignty over natural resources.

Draft resolution F/AC.6/L.483/Rev.1 covered the full range of subjects relating to the question of permanent sovereignty over natural resources. His delegation

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supported the idea that the recognition of the inalienable right of permanent sovereignty must be accompanied by the specification of appropriate measures to help the developing countries improve their social and economic conditions. Only if such measures were adopted could the poor nations of the world rise above their present situation of desperation and misery, which was fraught with implications for international peace and security.

Mr. OLIVERI LOPEZ (Argentina), commenting on the report of the Secretary-General on permanent sovereignty over natural resources (E/5170), said that his delegation was greatly disappointed with the recommendations made in chapter VI. After reading the brief but promising introductory chapter which stressed the seriousness of the problem for the developing countries, his delegation had expected more precise conclusions. However, the recommendations in all three sections of chapter VI were too general, drafted in very imprecise terms and failed to offer practical and convincing solutions for the difficulties of the developing countries. As the delegate of Peru had pointed out, some of the recommendations also implied concepts which were unacceptable to his delegation, in particular the concept which appeared to underlie section A, paragraph (a), namely, that multinational enterprises should be endowed with international legal personality.

Commenting on the recommendations in section B addressed to Governments of developing countries, he noted the vagueness of the language used in paragraphs (a) and (b). The recommendations made in those paragraphs were important but marginal in relation to the subject as a whole.

Recommendation (c) dealt with the important question of distribution of profits but did so very generally and with a somewhat paternalistic approach.

With regard to recommendation (d), he pointed out that the expansion of international markets for the products of the developing countries was of the greatest importance; in particular an effort should be made to improve the developing countries' access to markets and to provide more favourable price structures, which would enable the developing countries to increase their relative share in the total volume of world trade. That would require genuine political will on the part of the developed countries to grant the developing countries the preferential trade treatment they needed to compensate for their special handicaps.

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His delegation found the recommendation in paragraph (e) somewhat confusing and shared the reservations expressed by other delegations, notably the Brazilian delegation, with regard to the first part of the paragrah. The last part of the paragraph also contained some dangerous ideas.

Finally, his delegation was not satisfied with paragraph (f) concerning expropriation. As there were provisions on that subject in Argentine law which applied equally to nationals and aliens, his delegation saw no need to have recourse to the United Nations system for the determination of compensation and other terms of compromise. Disputes arising out of acts of expropriation should be settled under national jurisdiction and in accordance with national laws. Expropriation should not be considered a bad word but rather a logical and proper means for countries to reassume control over their natural resources when they deemed it necessary in accordance with their national interests.

The fundamental problem of the developing countries was to achieve effective control over their natural resources at all stages of the production process, from exploitation to marketing. Argentina had exercised such control for a considerable time; however, it recognized that other countries were facing the problem of consolidating their control and for that purpose needed to develop the necessary institutions. Financial assistance from the international community designed to strengthen such institutions would be particularly welcome. That was a point which his delegation had hoped to see in section C, which contained recommendations to international organizations. That section was particularly weak, containing only one recommendation, and should be further developed.

Everyone agreed that foreign investment was necessary to the developing countries and would become increasingly so as they progressed further. However, not all foreign investment was appropriate or in keeping with the needs of the host country. There was, accordingly, a need for clear regulation of foreign investment and the rights and responsibilities of all parties.

The problem of multinational corporations was a very important one, as they were particularly involved in activities relating to the exploitation of natural resources in the developing countries. His delegation did not share the view that multinational corporations should be indiscriminately and systematically

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condemned. However, it was undeniable that their activities had created and would no doubt continue to create certain anomalous situations.

The daily newspapers had recently brought to light the sordid details of an incident involving a Latin American country, for which Argentina had great sympathy, in which a multinational corporation had acted in a way which constituted flagrant and inadmissible intervention in the internal affairs of that country, thereby violating one of the fundamental principles of international law and of the Charter of the United Nations. That same corporation, jointly with another powerful multinational company, had recently been the subject of a request by the authorities in Argentina for the institution of judicial proceedings in respect of another anomalous situation affecting the national telecommunications company.

His delegation welcomed Economic and Social Council resolution 1721 (LIII), which provided for a comprehensive study of the problem of multinational enterprises. Although it was contended that the major legal issue involved was the protection of the free flow of capital, it was more important to take into account other values which overrode the profit-seeking of foreign enterprises. The greatest of those values was the economic and social interest of the host country, which should be fully supported by the organized international community. The industrialized countries should make common cause with the developing countries to ensure that the activities of multinational corporations did not influence events in a way prejudical to the interests of either.

The foregoing comments should not be taken to mean that his country was against foreign investment. On the contrary, Argentina actively promoted foreign investment and provided the necessary guarantees. Accordingly, his delegation supported the Secretary-General's recommendation in section A, paragraph (g), that the developed countries should adopt special measures of assistance to investment in developing countries. However, his delegation shared the misgivings expressed by others with regard to the last part of that recommendation.

An effort must also be made to reach an equitable agreement with regard to the distribution of profits. It was unacceptable that Argentina in particular and the developing countries in general should be regarded as high-risk areas for investment and that, as a result, there should be a growing trend in favour of the

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repatriation of profits. The balance of payments of the developing countries should not be aggravated by such practices; that was an area that offered great possibilities for action by the international community, a point which might well have been made in section C of the recommendations. In that connexion, UNCTAD's work on the transfer of technology was a step in the right direction.

The question of the balance of payments was closely related to the foreign debt problems of the developing countries. His country's position on that subject had been reflected in principle X of UNCTAD resolution 46 (III). The inalienable right of States to dispose freely of their national resources must not be infringed; that would be a violation of the principles laid down in General Assembly resolutions 2625 (XXV) and 3016 (XXVII), as well as the Charter itself. The right of sovereignty over natural resources was a logical corollary of the principles of international law concerning non-intervention, friendly relations and co-operation among States.

The report of the Secretary-General as a whole suffered from numerous defects and omissions. In particular the recommendations in chapter VI should be completely reformulated, taking into account the observations made in the present debate and elsewhere.

Turning to draft resolution E/AC.6/L.483/Rev.1, he noted with satisfaction that it expressly included in the idea of permanent sovereignty over natural resources in relation to territorial waters, as well as the sea-bed and the subsoil thereof. Although his delegation fully supported the draft resolution, it would have preferred a more comprehensive drafting of paragraphs 1 and 6. In any event, existing international law recognized that the sovereignty of the coastal State extended to its continental shelf; accordingly, his delegation interpreted the references in paragraphs 1 and 6 in the light of that recognized legal principle.

His delegation had also been pleased to note that draft resolution E/AC.6/L.483/Rev.1 provided that the study requested in Economic and Social Council resolution 1673 D (LII) should also deal with the important question of sovereignty over marine resources. It was regrettable, however, that the study had been delayed and it was to be hoped that, without detracting from its quality, no effort would be spared to expedite its preparation and that it would be ready in time for consideration by the General Assembly at its twenty-eighth session.

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Natural resources shared by neighbouring States should be exploited in accordance with the principles of international law so as to ensure optimum utilization of those resources for the benefit of the over-all development of peoples and friendly economic relations between neighbouring States.

In conclusion, his delegation expected to give its full support to the draft resolution under consideration in the knowledge that it reaffirmed established principles and further developed the concept of the right of States, in accordance with principles of international law and the Charter of the United Nations, to permanent sovereignty over their renewable and non-renewable natural resources.

Mr. MOLINA (Venezuela) reaffirmed his delegation's support for the principle of permanent sovereignty over natural resources of the developing countries, which was fully reflected in his country's domestic legislation.

With regard to the report of the Secretary-General on permanent sovereignty over natural resources (E/5170), his delegation had been disappointed that the Secretary-General had confined the study to a mere analysis of the replies of Governments to a questionnaire on the subject circulated by the Secretariat. The practice of resorting to questionnaires on every conceivable subject, was becoming too widespread, to the point where the attention of government officials in the developing countries had to be taken away from dealing with important problems in order to reply to United Nations questionnaires. In that respect, his delegation was dissatisfied with the general method adopted by the Secretariat in the preparation of the study.

The section of the report which dealt with the oil industry was particularly deficient in that it failed to take into account the experience of his country, which had achieved major economic gains by assuming control over the development of its petroleum resources. Another defect of the report was its failure to mention the significant achievements of the Organization of Petroleum Exporting Countries, the establishment of which had marked a major step forward in co-operation between developing countries.

With regard to the recommendations contained in chapter VI of the report, his delegation did not deem it necessary to repeat what had already been said so well by others, inter alia, by the representative of Brazil. The recommendations should

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be reformulated and expanded, taking into account the observations made in the course of the debate.

Among the recommendations to the developed countries, something should be said in the new version about the need to control the restrictive trade practices which certain multinational enterprises of the developed countries presently engaged in. There should also be more emphasis on improvement in the terms of trade on a global scale for all commodities produced by the developing countries. In addition, investment from private sources in the developed countries and the activities of enterprises of the developed countries should be more closely regulated by the national laws of host countries.

Other recommendations in the Secretary-General's report referred to the provision of assistance to the developing countries but did not lay sufficient stress on the terms on which such assistance was provided. There must be substantial improvement in the terms of assistance to the developing countries, and an effort should be made to help them reduce their debt-servicing burden, which was the result of assistance provided on unfavourable terms in the past. Assistance should also be directed towards improving infrastructures in the developing countries so that they could exploit their natural resources fully at all stages of the production process, from exploitation to marketing.

The revised version of the report should also go into further detail on the subject of transfer of technology, which should be made available to the developing countries on more favourable terms.

Multinational enterprises should also be given fuller treatment with emphasis on the disproportionate profits they received from their investments in the developing countries.

More attention should also be paid to the relationship between the concept of permanent sovereignty over natural resources of developing countries and other major principles of international law enshrined in the Charter and other United Nations documents, such as the principle of self-determination and independence of peoples.

Another area which should be more carefully investigated was the question of co-operation among developing countries, especially at the regional level, with

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a view to avoiding competition between them for markets in the developed countries. There was also a particular need for co-operation among the developing countries with regard to the regulation of foreign investment and the stabilization of commodity prices.

The policy-making institutions of developing countries must likewise be strengthened; that was a field to which international co-operation could make a valuable contribution.

Finally, his delegation took strong exception to three points in particular in the report by the Secretary-General: first, the implication that there should be a special legal status under international law for multinational enterprises; secondly, the recommendation that the United Nations should act as an arbiter in determining compensation in cases of nationalization; and thirdly, the recommendation that developing countries should conclude multilateral agreements with multinational enterprises.

Mr. FIGUEROA (Chile) said that successive agreements in the General Assembly, many of them recommended by the Economic and Social Council, had led to the formulation of principles which now constituted one of the Organization's major contributions to international law. The majority of countries had untiringly struggled to secure such recognition by the international community of their sovereignty over their own natural resources - whether land or marine resources. Indeed, the developing countries were fully aware of the need to build their economic development on the basis of their natural resources and realized that, unless they exercised complete control over them, the developmental process would have no firm foundation and economic independence could not be assured.

However, recognition of the principle of sovereignty over natural resources was not enough. As the President of Chile had stated at the third session of UNCTAD, the principle must be converted into economic reality. The history of the past 50 years was full of examples of direct or indirect coercion to prevent under-developed nations from disposing freely of their basic wealth. It was now imperative to incorporate into international law appropriate measures to safeguard full application of the principle of sovereignty over natural resources. In that regard, a source of inspiration for the Council in making its decisions was UNCTAD resolution 46 (III).

(Mr. Figueroa, Chile)

It had been emphasized on many occasions that a prerequisite of development was domestic self-help, an effort directed principally towards exploitation of a country's natural resources. However, sovereignty over resources meant not only exploitation of those resources but also the marketing thereof. Accordingly, domestic self-help should also mean co-operation among developing countries to protect their products. Such co-operation, which was already under way, should be encouraged by the Council as a suitable way for the developing countries to protect their natural resources.

The report of the Secretary-General (E/5170) stated in paragraph 26 that the Chilean Government had decided not to pay compensation after nationalizing foreign copper companies, in view of the excess profits earned. However, it failed to say as it certainly should have said, that the Chilean Government had established a figure of 12 per cent as a reasonable profit for the companies in question, since their profits in other countries varied between 3.6 per cent and 10 per cent per annum. Accordingly, it had felt that any profits over the figure of 12 per cent should be deducted from the compensation for nationalization. The fact that the document referred to excess profits, without specifying what they consisted of, was misleading. Worse still, it did not mention that there had been three large foreign companies mining copper and that they had been nationalized. Two of them had not received compensation simply because, under the computation system he had described earlier, their excess profits had exceeded the amount of the compensation. The third company had subsequently reached a satisfactory agreement with the Chilean Government regarding the amount of compensation. The report now before the Committee should include such supplementary information, which would take up little extra space yet would provide an accurate picture of the situation. It was in fact his hope that the Secretariat had omitted the information simply for reasons of brevity and not because it had an ulterior motive.

Some of the positive aspects of the report were cancelled out by the final chapter containing the recommendations. His delegation could only agree with the recommendation set out in paragraph 155 C and, in respect of the others, wished to enter the same reservations as those expressed by previous speakers. For example, his delegation rejected the recommendation contained in paragraph 155 A (a) because it placed Governments and multinational enterprises on an equal footing.

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(Mr. Figueroa, Chile)

Moreover, there was no recommendation that foreign companies should be subject to the national legislation of the country in which they were operating. Similarly, the recommendations appeared to confuse official aid by developed countries to developing countries with aid to transnational companies. Again, paragraph 155 B (f) referred to takeovers. His delegation was firmly convinced that they should occur solely in accordance with the provisions of General Assembly resolution 1803 (XVII) and not for any other reasons that the Secretariat might advance. The Secretariat had also gone too far in suggesting that the United Nations might arbitrate in disputes arising between developing countries and multinational companies. Indeed, he failed to understand what had prompted the Secretariat to make that suggestion. The recommendations contained in the report should be revised to reflect the views of the broad majority of the Council.

Mr. HEMANS (United Kingdom) said that his delegation welcomed the statement at an earlier meeting by the French representative, who had adopted a non-juridical approach and had taken the theme that natural resources should be exploited in the service of development. It was to be hoped that the report of the Secretary-General, when it was issued, would be of some assistance in that direction.

As to the comments of several speakers regarding marine resources and the provisions of draft resolution E/AC.6/L.483/Rev.1, it was unusual to propose that the Council should reaffirm the action of a superior body, i.e. the General Assembly. Duplication or emulation by subsidiary bodies of the actions of parent bodies added no weight to such action and was particularly incongruous at a time when the Council was making strenuous efforts to rationalize its work. It had also been said that, in resolution 3016 (XXVII), the General Assembly had proclaimed the marine resources in the waters superjacent to the continental shelf to be under the sovereign jurisdiction of the coastal State. It remained a fact, however, that the General Assembly was not a legislative body and no resolution adopted by it with a significant number of abstentions, as had been the case with resolution 3016 (XXVII), could change international law, which did not at present recognize sovereignty of coastal States over marine resources in the waters superjacent to the continental shelf. The observer for Iceland had referred to the depletion by foreign vessels of marine resources over the shelf,

(Mr. Hemans, United Kingdom)

resources that, it was asserted, were under the sovereign jurisdiction of Iceland. International law, he wished to repeat, did not recognize such jurisdiction. The question of the conservation of such resources, something which was entirely different, had been and remained a matter for negotiation among the States concerned. In any such negotiations, his Government was ready to pay full regard to the special interests of coastal States.

Again, it was questionable whether the Council was competent to pronounce itself, in the way that had been suggested, on topics which had properly been assigned to the forthcoming Law of the Sea Conference. If such a pronouncement was made, it could not be regarded as signifying prejudgement of whatever might emerge from future discussions in the appropriate forums nor as adding any weight to the jurisdictional claims some countries had made.

With regard to paragraph 1 of the draft resolution now before the Committee, he had already questioned its procedural appropriateness and his delegation could not endorse a statement which was not consonant with current international law.

Paragraph 2 carried the implication that the application of international law to questions of permanent sovereignty was excluded, something he was sure the co-sponsors had not intended.

As to paragraph 3, the expression "coastal waters" was vague and had no precise meaning in international law. Moreover, in a similar paragraph of General Assembly resolution 3016 (XXVII), the sponsors of the latter, when it had been under discussion in the Second Committee, had rejected an amendment to insert the words "contrary to international law". The object of that amendment had been to state clearly that no State which was acting in full accordance with international law could be held to be in flagrant violation of the Charter of the United Nations, something one would have thought to have been universally acceptable. Paragraph 3 of the present text, however, was somewhat stronger, and addition of the wording "contrary to international law" would appear to be even more necessary. Without it, the expression "advantages of any other kind" seemed to be meaningless. The whole object of dealings between States was to secure advantages and the purpose of regulating such dealings was to ensure balanced and mutual advantages. Nothing in that was contrary to the provisions of the Charter. He also experienced some

(Mr. Hemans, United Kingdom)

difficulty with the last phrase of the paragraph. It was not appropriate for the Council to be dealing in the question of determining what did or did not constitute a threat to international peace and security and it was scarcely possible to determine on a general basis that certain as yet undefined hypothetical situations did constitute such a threat. It was even less appropriate if there was an implication that actions carried out in accordance with international law could in fact constitute a threat of that kind.

Paragraph 4 seemed to refer to groupings of exporters. His Government was greatly in favour of commodity agreements designed to reduce price fluctuations, but measures to increase long-term prices hit consumers very hard, and those consumers included the developing countries. Agreements based on discussions and consultations between producers and consumers were always the most satisfactory.

Lastly, the Secretary-General should not be requested, as he was in paragraph 6 of the draft resolution, to include in his study matters relating to an assertion that was not currently in accordance with international law. He was surprised that the members of the Council, where delegations were often very quick to criticize the Secretary-General for overstepping his authority, should complacently consider a proposal to plunge the Secretary-General into an ill-defined area fraught with political difficulties.

Mr. KUMI (Ghana) said that he shared the views expressed by a number of delegations regarding the nature, scope and exercise of the principle of permanent sovereignty over natural resources. The ancient philosophers had discussed at great length the concept of sovereignty, but had failed to address themselves in detail to the relationship between sovereignty and economic independence. The assertion of permanent sovereignty over natural resources by developing countries was the logical and inevitable consequence of political independence. It was based on the assumption that it was the inherent right of developing countries to proclaim and exercise such sovereignty and that any act to deny or violate that right was illegal and was a breach of the provisions of the Charter and of the principle of self-determination embodied in the Charter.

(Mr. Kumi, Ghana)

The era of fiduciary relationships between the developed and the developing countries was over. The members of the third world had realized that they must be self-reliant. Self-reliance for them was impossible without permanent sovereignty and control over their natural resources. His Government was firmly committed to the policy of self-reliance, which meant the mobilization of all national resources to improve the economic situation and well-being of all its citizens. Pursuit of that policy did not, however, mean that his country did not welcome foreign investors.

His delegation had consistently supported United Nations resolutions on the item under consideration and, for that reason, it was now co-sponsoring draft resolution E/AC.6/L.483/Rev.1, hoping that it would be adopted without any difficulty. In conclusion, he wished to point out that, for the developing countries, permanent sovereignty over natural resources included the living and non-living resources of the sea-bed and the subsoil thereof within the limits of national jurisdiction and in the superjacent waters.

Mr. BRITO (Brazil) observed that the United Kingdom representative's view that permanent sovereignty over the resources in waters superjacent to the continental shelf was not justifiable on the basis of international law was simply the United Kingdom representative's interpretation of current international law. Other delegations held different views.

The amendment referred to by the United Kingdom representative, an amendment submitted in the Second Committee to a paragraph which was similar in wording to paragraph 3 of the draft resolution now under consideration, had, rightly and logically, been rejected. If adopted, it would have implied that there were in fact certain acts of pressure that were condoned in international law. That was clearly not the case. The Charter was quite explicit: any action to bring pressure on another State was unacceptable.

Mr. EKBLOM (Finland) said that his delegation would vote in favour of the draft resolution as a whole, despite its reservations regarding the formulation of some paragraphs. It was adopting such a course primarily to demonstrate its support of the principles involved and it did not wish to let inappropriate wording stand in the way of endorsement of those principles.

(Mr. Ekblom, Finland)

However, he still hoped that consultations would take place with a view to improving some of the paragraphs and that the text would thus be adopted with the widest possible support.

His Government viewed with sympathy the exceptional situation of Iceland, whose national economy was to such a crucial extent dependent on effective exploitation of her marine resources. He was fully aware that nations engaged in fisheries were not all on an equal footing. He wished therefore to reiterate the call his delegation had made on a number of other occasions, when it had advocated special privileges for certain States. In his view, developing coastal States as well as developed countries predominantly dependent on fisheries should be granted specific privileges. There were in fact a few "hard-core fishing nations" with economies that depended primarily on income from their fishing industry. It was in that light that his delegation fully endorsed the principles enunciated in paragraphs 1 and 6 of the text now before the Committee.

Nevertheless, his delegation's readiness to endorse the present draft resolution as a whole should not be construed as prejudicing his Government's position at the forthcoming Law of the Sea Conference, at which the relevant legal provisions would be established.

Mr. SCHRAM (Observer for Iceland) said that he doubted whether the representative of the United Kingdom could point to any source which showed beyond question that, as the United Kingdom representative maintained, international law did not recognize the sovereignty of the coastal States over continental shelf fisheries. In fact, the United Nations had decided to convene a Conference on the Law of the Sea precisely because international law was extremely vague in that regard. The decision to convene the Conference simply reflected the great legal uncertainty on the topic of the jurisdiction of the coastal State.

In addition, he wished to point out that more than 30 States had extended their fishery jurisdiction beyond 12 miles from their shores. Was the Council to believe the United Kingdom representative when he affirmed that those States were contravening international law? His delegation wished to protest at such a highly subjective interpretation.

(Mr. Schram, Observer for Iceland)

On the other hand, it was of course true that neither the General Assembly nor the Council could write new rules of international law. At the same time, both bodies had great political power and the decisions they took were bound to reflect the attitude of States to the problems concerned, whether economic or legal. Moreover, he wished to remind the United Kingdom representative that, at the twenty-seventh session of the General Assembly, more than 100 States had proclaimed the principle enunciated in paragraph 1 of the present draft resolution. In other words, more than 100 States were of the view that the fisheries judisdiction of coastal States should extend to the superjacent waters. He hoped that the Council would reaffirm that principle by adopting the draft resolution. It had been discussing the question of permanent sovereignty over natural resources for more than a decade and was still discussing the topic because it was extremely important to developing and other countries.

The CHAIRMAN suggested that the list of speakers on item 9 should be closed by 1 p.m. on 27 April 1973.

It was so decided.

The meeting rose at 6.05 p.m