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

STUDY ON THE QUESTION OF ESTABLISHING IN DUE TIME APPROPRIATE 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

Report of the Secretary-General

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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, firstly, 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 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.

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, document A/7230, para. 86.

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, document E/4449/Add.1, p. 5.

3/ Ibid., p. 56, foll.

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

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, 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 flood beyond the limits of national jurisdiction, nor has 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

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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.

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

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; 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 Sub-Soil thereof, underlying the High Seas beyond the Limits of Present National Jurisdiction", document A/AC.135/10/Rev.1; "Survey of National Legislation concerning the Sea-Bed and the Ocean Floor, and the Sub-Soil thereof, underlying the High Seas beyond the Limits of Present National Jurisdiction", document 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 Sub-Soil thereof, underlying the High Seas beyond the Limits of Present National Jurisdiction, and the Use of their Resources in the Interests of Mankind", document 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, 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".7/

7/ Interim Report of the Economic and Technical Sub-Committee, document A/AC.138/SC.2/6, para. 101.

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

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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, Maldive 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).

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.

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 /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

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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.

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 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 that

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 coud, 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 encompasss 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 should 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), 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 report, among others, would appear relevant to the present study:[10]

"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 floors and fauna.

"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 instill 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 landlocked.

"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

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10/ See paragraph 31 below in this connexion.

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 technologic 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

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in nature and not prejudge 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 granting 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 resources 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 is 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.

"30. 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.

"31. 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.

"32. 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 hydro-carbons and other minerals should be considered at the least. The possibility was mentioned, however, that hydro-carbon 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.

"33. 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 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.

"34. 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 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 to 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 objective 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:

> "welcomed 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 UNESCO 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 ECOSOC forty-fifth session, Marine Science and Technology Survey and Proposals, report of the Secretary-General document E/4487, Annexes XI and XII.

13/ Interim Report of the Economic and Technical Sub-Committee, document A/AC.138/SC.2/6, para. 60.

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 licencee 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 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

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14/ See Survey of existing international agreements concerning the Sea-Bed and the Ocean Floor and the Sub-Soil thereof underlying the High Seas beyond the Limits of Present National Jurisdiction, document A/AC.135/10 and Survey of National Legislation concerning the Sea-Bed and the Ocean Floor and the Sub-Soil thereof, underlying the High Seas beyond the Limits of Present National Jurisdiction, document A/AC.135/11.

information of a specialized nature.[15] A number of treaties also provide for exchange of 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 to the United Nations should be prepared to disseminate it immediately and effectively."

39. 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;
>
> ..."

15/ E.g. The constitution of IAEA 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."

16/ General Assembly resolution 2222 (XXI).

17/ U.N.T.S., vol. 402, p. 71.

(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 ECOSOC 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 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 discretional 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

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18/ Marine Science and Technology, Survey and Proposals, document E/4487, pp. 52-76 and Annex XI.

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

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 nature 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, 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 State concerned."

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 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 both 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. In order to be fully effective therefore it would be necessary that as many States as possible should be parties to the system and that they be obliged to enact the necessary implementing 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

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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 Sub-Soil thereof underlying the High Seas beyond the Limits of Present National Jurisdiction, and the Uses of their Resources in the Interests of Mankind, document 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.

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.

(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 UNDP, 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

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22/ Interim Report of the Economic and Technical Sub-Committee, document A/AC.138/SC.2/6, para. 88.

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

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 in this same section.

(j) Modalities

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 hydro-carbons, 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

24/ Interim Report of the Economic and Technical Sub-Committee, document A/AC.138/SC.2/6, para. 92.

determine who would be allowed to explore or exploit the resources of the sea-bed and sub-soil 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 sub-soil beyond the limits of national jurisdiction. Detailed proposals have been put forward by some Governments with respect to a system of licensing,[26/]

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. 23-25:

"III. 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,

(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) an 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."

and also by private organizations and individuals. The main 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. Firstly, 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.

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 to the principle of giving priority to the first applicant than a system of registration. 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) Entitles 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

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27/ See paras. 42-45.

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, para. 43, above.

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 a basic criterion (assuming one were finally chosen) would need to be balanced by other elements.

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 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

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29/ 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.

in principle be expected to have certain responsibilities in relation to market conditions. In the case of cancellation, it would have to be decided whether a licence might be withdrawn solely for failure to exploit resources in the area or whether for failure to observe other conditions also (for example, those relating to prevention of pollution) might result in cancellation or some lesser penalty, such as a fine.

(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. 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

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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 WHO Constitution, binding unless States registered their rejection or reservations within a given period.

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/]

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 (of 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

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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 IBRD.

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 praritipating 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 millicn,[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 hydro-carbons, the question of national fuel policies would be involved. The employment of extraction and beneficiation processes would also present problems with respect to the use of patents and industrial or trade secrets. Operational functions which

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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.

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 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 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 FAO, "from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions, relating

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

38/ Ibid., article II.

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]

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

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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.
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> 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.
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> 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.
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> 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.

which might be used may be considered with respect to certain situations. Firstly, 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 intentions so that, inter alia, other States who 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

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.

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. Dealing lastly with 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 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.

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."

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.