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

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ANALYTICAL SUMMARY OF PROPOSALS AND SUGGESTIONS EMBODIED IN THE VIEWS EXPRESSED BY DELEGATIONS IN THE DEBATES IN THE FIRST COMMITTEE OF THE GENERAL ASSEMBLY AT THE TWENTY-FIFTH SESSION AND IN THE SEA-BED COMMITTEE IN MARCH 1971

Working paper prepared by the Secretariat

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INTRODUCTION

1. On 14 May 1971 the Bureaux of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and of Sub-Committees I, II and III, meeting together, requested the Secretariat, in order to assist the Committee in its work at its next session, to prepare an analytical summary of proposals and suggestions embodied in the views expressed by delegations in the debates in the First Committee of the General Assembly at the twenty-fifth session and in the Sea-Bed Committee session in March 1971. The summary should not identify which delegations had made the points in question. It was also emphasized that the study should not cover the proposals and suggestions contained in draft resolutions, amendments or other documents submitted in the Assembly or in the Committee.

2. The present paper has been prepared in accordance with this request.

3. A summary of this nature is necessarily a delicate undertaking, particularly in view of the indivisibility often attributed to the subject as a whole and the direct interconnexion between many points. These introductory remarks therefore provide a rather detailed description of methods used and of the problems of exposition entailed.

4. In order to make the paper as useful as possible to the members of the Committee, the material covered has been set out under general headings and sub-headings corresponding broadly to the elements of the agreement on the organization of the Committee's work contained in the summary record of its forty-fifth meeting. The order in which the headings are placed is also derived from that agreement. To comply with the requirement that the paper be analytical, however, it has been found necessary in Part II to break down the classification of material under sub-headings derived from the material itself; the terms of the agreement do not themselves provide a sufficiently detailed set of subjects to allow the degree of articulation called for. No implication should be read into this in relation to the organization of work of the Committee and its Sub-Committees and it is not in any way intended to suggest that these rather than other possible sub-headings should be vested with any authority as formulations under which topics should be studied.

5. The ways in which representatives have expressed views or put suggestions often do not, of course, fit precisely the kind of breakdown that is employed. In particular, it should be noted that in accordance with the terms of the request for its preparation this paper seeks to present, not a summary of actual views as stated by delegations, but a compendium of general and specific points involved in such views which members

might wish to take into account or keep under review in studying the different aspects of the Committee's mandate. While it has not been found practical to attempt any differentiation between proposals and suggestions, on the one hand, and views, on the other, it is mainly those elements of views which appear to constitute points in this sense that have been incorporated. Moreover, although the arrangement inevitably involves some degree of apposition, no attempt has been made to balance views one against the other. These points represent particular positions - some may have been made by many and others by only one or two delegations. It is not the object of the paper to assess the degree of support they may have received; they are treated alike as elements to be covered. For the same reasons there is no attempt at separation of one position from another; and it should not be assumed that because one point follows another it is advocated by the same delegation or delegations.

6. The material has been placed under the heading which seems most directly relevant. It will be appreciated, however, that in many instances it could have been covered under any one of several headings or sub-headings. For example, this is true particularly of the issue of treatment and allocation of the precise definition of the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction (hereinafter referred to as "the area") taken in relation to the similar matters covered in one way or another under the issue of priority and under the terms of reference of Sub-Committees I and II. In order to keep the length of the paper within reasonable proportions, every effort has been made to avoid undue repetition. It should also be noted that a great deal of material not covered is of direct relevance to the subjects dealt with here. This is true, in particular, of the material contained in past reports of the Committee to the General Assembly.

7. The order in which the points are covered under each heading or sub-heading is, to the extent possible, one due to proceeding from the general to the particular. Where several themes of comparable generality are dealt with the order is usually more or less arbitrary. No differentiation is attempted between points made in the First Committee of the General Assembly and points made in the Sea-Bed Committee. It has been found that material from the First Committee discussion has sometimes been superseded, in one way or another, by the later material in the Sea-Bed Committee. To avoid any confusion, therefore, the material drawn from the First Committee discussion has in the main been limited to more concrete points of obviously lasting interest. Points calling for inclusion in the régime of elements of the Declaration of Principles have not necessarily been noted since it has been assumed that they would be taken into account in any event.

PART I: TREATMENT AND ALLOCATION OF OUTSTANDING SUBJECTS AND THE QUESTION OF PRIORITY OF PARTICULAR SUBJECTS

A. Treatment and allocation of the question of the precise definition of the area of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction.

8. This section deals with the points made in discussions at the March session of the Sea-Bed Committee on the subject of the treatment and allocation of the precise definition of the area of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction. It may be recalled that the agreement on the organization of work read out at the forty-fifth meeting of the Committee contains the following provisions: "It is understood that the Sub-Committees, in connexion with the matters allocated to them, may consider the precise definition of the area of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction. It is clearly understood that the matter of recommendations concerning the precise definition of the area is to be regarded as a controversial issue on which the Committee would pronounce."

9. This agreement was interpreted as meaning that the three Sub-Committees and the Committee itself were free to discuss the question of limits as and when that subject was relevant to their work. The main points in the discussion concerned the question of the body which would be responsible for preparing recommendations.

10. It was considered that the main Committee should reserve for itself the right to take a final decision on the question of the precise definition of the area of the sea-bed beyond national jurisdiction. It was proposed that the problem of the precise definition of the area should be allocated to Sub-Committee I, which was to prepare draft articles on the international régime, including machinery, and should therefore be empowered as well to make recommendations, that is, to prepare draft articles, on the limits of application of the régime. Any Sub-Committee should be allowed to consider the precise definition of the area in relation to the items assigned to it, but only Sub-Committee I should be empowered to make recommendations on the issue. Another view was that the question of precise definition of limits should be dealt with by Sub-Committee I, but without affecting the priority to be given to the régime and machinery. On the other hand, it was contended, Sub-Committee I could not by itself settle the question of limits of the area, given the intimate relation between those limits and the limits of the territorial sea or the continental shelf, and the latter

fell within the competence of Sub-Committee II. The need was to reconcile within Sub-Committee II the conflicting attitudes on the question of the extent of national jurisdiction before the outer limits of the area beyond national jurisdiction could be determined.

11. It was proposed that the drafting of treaty articles and the formulation of recommendations concerning sea-bed limits should be reserved for Sub-Committee II. One suggestion in this connexion was that the sea-bed delimitation principle recommended by Sub-Committee II should be incorporated in the treaty on the international régime to be drafted by Sub-Committee I. Allocation of the function of making recommendations to Sub-Committee II, it was said, should be on the understanding that its consideration should await progress on the essential elements of the sea-bed régime in Sub-Committee I. Since the question of delimitation was crucial to the nature of the proposed international machinery, no hasty decisions should be taken and the final determination of limits could be left to the later stages of the Committee's work. It was also pointed out that if Sub-Committee II reached agreement on the extent of the territorial sea, the nature and extent of the preferential fishing rights of coastal states, the outer limits of the continental shelf and the definition of the resources of the shelf, it would have arrived for all intents and purposes at a precise definition of the area to which the international régime was to apply.

12. It was also considered that since there was a very close relationship between the question of the limits of the area of the sea-bed beyond national jurisdiction and the mandates of both Sub-Committee I and Sub-Committee II, it would be logical either to require Sub-Committees I and II to meet jointly under the chairmanship of the Chairman of the main Committee and to consider and make recommendations on the limits of the continental shelf and of the sea-bed and ocean floor beyond national jurisdiction, or to vest the power of making recommendations on that question in the main Committee itself.

B. Treatment and allocation of the question of peaceful uses of the area.

13. This section covers not only the discussion in the Sea-Bed Committee in connexion with the treatment and allocation of the question of peaceful uses of the area as one of the outstanding subjects under the agreement on organization of work but also points made in the First Committee and in the Sea-Bed Committee on the subject of peaceful uses of the area. It should be noted that the matter has been approached in different ways, and that many comments have been directed to the "reservation of the area exclusively for peaceful purposes", a formulation which may be found in the title of

the agenda item in the General Assembly, while others refer to "peaceful uses", wording which may be found both in the title of the Committee and the agreement on organization of work. For purposes of the present summary, it has not been found practical to attempt any organization of the material based on a distinction between these two formulae, and it has been assumed that points made in connexion with both should be covered.

14. The point was made that the question of peaceful uses should be discussed. It was unlikely, it was said, that the sea-bed would be used only for peaceful purposes unless it were placed under international jurisdiction. International agreements, it was contended, should be concluded as soon as possible to give full effect to the principle that the area should be restricted exclusively to peaceful purposes as a move toward its exclusion from the arms race. Since extension of the arms race to the sea-bed and ocean floor would result in a considerable broadening of the sphere of serious potential conflicts and would make international co-operation in the exploitation of its resources practically impossible, the treaty establishing the future régime must provide for the complete prohibition of use of the area for military purposes. An article might be included stating that the parties to the treaty would conclude as soon as possible one or more international agreements to implement that principle effectively.

15. Another point made regarding the terms of the treaty was that it would have to include a provision permitting the international institutions to undertake such functions as the powers concerned might agree upon.

16. The hope was expressed that the Committee would reach agreement on an over-riding rule that, in the interest of the pursuit of peaceful activities in the area, all unauthorized activities should be excluded, particularly those serving national military purposes. Further elaboration in the Sea-Bed Committee, it was suggested, could perhaps expand provisions of the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and the Subsoil Thereof, to cover the entire marine environment. It would be necessary to reconcile the responsibilities of the international régime with those to be undertaken by States Parties to Article III of the Treaty. It was considered that implementation of the concept of peaceful purposes should include prohibition of the establishment of military bases, installations and fortifications, or the testing of any type of weapon in the area.

17. Other points made included one to the effect that a distinction should be made between peaceful activities in the exploration and exploitation of the sea-bed and the disarmament problem. It was held that specific problems related to prohibition of the use of the sea-bed for military purposes should be dealt with by the Conference of the Committee on Disarmament and were not within the competence of the Sea-Bed Committee. Another view was that the new international system should be applied only to the extent necessary to fulfill its purposes, and that it should not encroach on matters which had found a satisfactory solution under the existing rules of international law. The question of military uses of the seas, and in particular of the sea-bed and ocean floor, should be left to the United Nations agencies concerned with arms control and disarmament.

18. In the discussion in the Sea-Bed Committee regarding the forum to which the question should be allocated, it was noted that the subject had implications for the international régime to be elaborated by Sub-Committee I, but that those implications ranged much farther afield than the régime and could possibly make it a fit subject for discussion in the Committee itself.

19. A number of points were advanced in connexion with the proposition that the subject of peaceful uses should be allocated to Sub-Committee III. In this connexion it was observed that prevention of pollution and scientific research could well come under the heading of the peaceful uses of the sea.

20. One suggestion made was that the working paper prepared by the Secretariat on the military uses of the sea-bed for the Ad Hoc Committee (A/AC.135/28) should be not only brought up to date but also expanded in order to include an analysis of the military uses of the seas, their present state and foreseeable technological advances.

C. Question of priority of particular subjects.

21. The agreement on organization of work states that the Committee "shall . . . decide on the question of priority of particular subjects, including the international régime, the international machinery and the economic implications of exploitation of the resources of the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, proceeding from resolution 2750 (XXV) and the relevant explanations made on behalf of its co-sponsors." This part of the summary covers points made on issues of priority.

22. It may be recalled that this subject was touched upon in statements made in the First Committee[1/] and in the General Assembly by the representative of Canada, speaking on behalf of the original sponsors of the draft resolution which became resolution 2750 C(XXV). At the 1933rd. meeting of the General Assembly on 17 December, he stated[2/] that the seventh preambular paragraph and operative paragraphs 2 and 6, taken together, ". . . imply a certain priority for the régime in the sense in which the term is used by the International Law Commission. I wish to make clear, however, on behalf of the co-sponsors, that the intention behind operative paragraph 6 was not to imply that detailed preparatory work would not commence on other topics, such as the precise delimitation of the sea-bed area or other law-of-the-sea subjects, until work had been completed on the drafting of the sea-bed régime. With respect to other law-of-the-sea subjects, it is the clear intention of the co-sponsors that all urgent questions on the law of the sea should receive attention commensurate with their urgency in the preparatory work undertaken by the Committee, and the votes of the co-sponsors should be understood in this sense."

23. Various references were made to such issues during discussion in the First Committee and in the Sea-Bed Committee. Most of the points advanced on matters of priority referred to the régime or to the régime and the problem of limits. Several views were expressed on the meaning of priority. One view was that it meant that priority must be given in both time and emphasis to drawing up the essential elements of the régime, including the international machinery. Another was that it meant priority in the order of discussion. It did not mean that the articles of the treaty on the régime and allied questions would have to be adopted or given a final form before the question of limits of national jurisdiction could be tackled. Other interpretations of priority referred to the order of submission or adoption of recommendations to the General Assembly.

24. One view expressed regret over the Committee's hesitation to grant priority to the economic implications of the exploitation of the resources of the sea-bed since it was felt that the spirit and letter of resolution 2750, as well as the Principles in resolution 2749, were clear enough to grant such priority in view of the special and

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1/ A/C. 1/PV 1799, p. 92, A/C. 1/PV 1800, pp. 66-67

2/ A/PV 1933, p. 77.

immediate interests of the developing countries. To make the discussion of that vital problem depend on a new decision by the Committee might delay indefinitely the detailed study of a question on which the Committee's work as a whole rested.

25. The view was often expressed that in resolution 2750 C, the General Assembly had established a clear priority for the international régime. It was said that the Committee should lay down the main elements of the régime as a matter of priority, since only thus could agreement be reached on drafting articles on other questions. It was quite unrealistic to expect agreement to be reached on the precise definition of the area until at the least the main elements of the international régime had been worked out.

26. It was said that giving priority to the establishment of an international régime did not mean drafting treaty articles on the régime before discussing the limits of national jurisdiction. The delimitation question could be taken up as soon as a memorandum of understanding was adopted on the essential elements of the régime and references to the question could be made in the Committee and the Sub-Committees even before that stage.

27. Another view was that the precise determination of limits was necessary but was not a prerequisite for the establishment of an international régime. Priority given to the establishment of the international régime, including machinery, should not prevent a thorough discussion of the limits of the sea-bed area, the outer edge of the continental shelf and the territorial sea; establishment of the international régime would itself determine the precise limits of those zones. The question of agreement on limits should not delay progress in the definition of the legal status of the sea-bed beyond national jurisdiction.

28. The point was made that the difference of views had led to a satisfactory compromise that the two questions should be studied in parallel at the 1973 conference but that did not imply that such parallelism must always be henceforth observed. In the early preparatory stages, the Committee would have to devote much more time to the régime than to the law of the sea. Accordingly, at the summer session, more time should be allocated to Sub-Committee I than to Sub-Committee's II and III.

29. On the other hand, the point was made that an international régime was not conceivable unless the area to which it would apply was known. It was neither reasonable nor practicable to establish a hierarchial order between the two proposals. Operative paragraph 6 of resolution 2750 C could not in itself provide any legal basis for establishing a specific priority.

PART II. SUBJECTS AND FUNCTIONS ALLOCATED TO SUB-COMMITTEE I

A. International régime - including an international machinery - for the area and the resources of the sea-bed and the ocean floor, and the sub-soil thereof, beyond the limits of national jurisdiction.

1. Relation of the regime to the Declaration of Principles.

30. The point was repeatedly made that drafting of the international regime, including international machinery, should, in accordance with paragraph 9 thereof, be on the basis of the Declaration of Principles contained in resolution 2749 (XXV). The precise relationship of the terms of the Declaration to the regime to be prepared was formulate in a number of ways. It was, for instance, said that the Declaration constituted the only basis on which a regime could be established; that it should be embodied in the proposed treaty governing the area; that the principles it contained should be defined and elaborated for incorporation in a convention on the regime; and that the regime should put into practice the principles of the Declaration.

31. The principles were regarded, in one view, as general guidelines for the establishment of a regime for the sea-bed and as an earnest of the desire of the great majority of members to have a regime. Another statement stressed that the principles were not, and were not intended to be, a provisional regime governing the exploitation of the sea-bed; the Declaration was a first step toward the regime, but was not yet the regime.

32. It was stated that the Declaration, like any other resolution of the General Assembly, had in itself no binding force. It must be regarded and interpreted as a whole, and had no dispositive effect until there was agreement on an international régime and, as part of that agreement, there was a clear, precise and internationally accepted definition of the area to which the régime was to apply.

33. On the other hand, it was considered that because of the overwhelming support expressed for it the Delcaration could be considered as a sort of informal agreement between the members of the international community. It was regarded as providing a legal basis for considering thenceforth as illegal any unilateral act on the part of a State to appropriate the resources of the area or to claim any form of sovereignty over it. It was also said that the principles were not mere guidelines for drafting a treaty establishing the regime. They constituted basic and fundamental principles from which no departure would be allowed and which should be faithfully reflected in the basic international treaty which would be the constituent instrument of the regime.

34. The Declaration was described as having already affected positive law by the concept of common heritage; its second operative paragraph was said to have destroyed the basis of outmoded customary rules.

35. Present international law was regarded, in one view, as obviously insufficient to govern the sea-bed, but some of its principles were seen as applicable, particularly those that concerned the rights and duties of States. A number of other points were also made in connexion with this subject, but bearing mainly on the issue of the extent of the changes necessary in existing law. These are dealt with under Part III A below.

2. Scope and provisions of the regime.

36. Various references were made to the scope of the international regime to be established and to the specific provisions which it should contain. One point made repeatedly was that the developing countries needed a strong international regime, including international machinery, to insure that the exploration and exploitation of the resources of the sea-bed beyond national jurisdiction benefitted all, and especially the developing States. It should be based on certain fundamental concepts, the most important of which was the principle of common heritage. Deriving from that principle and equally important were the concepts of equitable sharing of benefits from the exploitation of resources and of the necessity for appropriate protective measures against possible adverse effects on the economies of the developing countries. Another way in which this point of view was put was that a strong regime and machinery was of cardinal importance to ensure that the rights and aspirations of developing countries would be respected.

37. It was considered that the scope of the regime should include all uses of the sea-bed beyond national jurisdiction. Although adequate provisions already existed with regard to submarine cable laying, for example, the sea-bed organization should exercise some form of technical control over such activities because of their close relationship with other uses of the area.

38. The regime was to apply to the area, it was noted, and not merely to III of the Secretary-General's study on international machinery (A/8021, Annex III).

39. Reference was also made to the question of powers covering the high seas as well as the sea-bed and in this connexion the interrelationships between the various parts of the marine ecosystem were stressed.

40. The scope of the regime, it was said, should be confined to those functions necessary to ensure an orderly, efficient and equitable system of exploration and exploitation of sea-bed resources. There should be a cautious approach to the

possibilities of a broader regime covering all uses of and activities on the sea-bed; the attempt to regulate all other uses involved complex and far-reaching problems and might delay indefinitely establishment of a regime for resource exploration and exploitation.

41. The future treaty embodying the regime, it was said, should regulate the activities of Governments only in respect of exploration and exploitation of the mineral resources of the sea-bed. It was essential for the agreement to contain provisions permitting any country to exploit the sea-bed within the framework of the regime. It should not effect either the sovereign rights of the coastal State over the continental shelf and the natural resources in the area within the limits of national jurisdiction, or the recognized freedoms of the high seas. The treaty should be based on the principle that the sea-bed beyond national jurisdiction was open to use, exclusively for peaceful purposes, by all States.

42. One general point advanced was that the sea-bed regime must be not merely an expression of the concept of common heritage; it must also provide practical means whereby the potential wealth of the area could be exploited for the benefit of the international community, and particularly the developing countries. It must therefore include operating conditions likely to attract the capital, resources and skills required for the production of hydrocarbons and other minerals at great depth. The regime should inspire confidence and ensure the stability which was essential for longterm planning and investment.

43. Reference was also made to the need to take realistic account of the progress of technology and of the need for further information. Another general point made was that care should be taken to provide all possible incentives for continuation of the technological development which had made possible prospects for development of the sea-bed.

44. A number of references were made to the need for the future treaty to be universal in character. It was said that it should be open to signature by all States, irrespective of whether they were members of the United Nations or the specialized agencies. Another formulation was that as many States as possible should participate in the establishment and operation of the regime.

45. It was said that the regime should be universal and should be established by an international treaty which was as universal as possible, in accordance with article 62 of the Vienna Convention on the Law of Treaties. The treaty should forbid any

reservation conflicting with the objectives laid down under the regime it established. The international instruments setting forth the functions of the international organization should contain provisions guaranteeing their universal character.

46. The regime must be drafted in such a way as to provide that the interests of all countries were effectively ensured. It was said that a State might of course negotiate about what constituted the common heritage of mankind, but it could not be expected to bargain away easily a drop of water or a particle of soil that it regarded as its sole heritage.

47. It was contended that a single regime should be established, with general and universally applicable rules, although that did not mean that the Committee should refuse to take special situations into consideration. However, it was considered reasonable, within the framework of a general regime, to consider special provisions for the more special cases such as internal or marginal seas, exposed to pollution hazards; the Polar regions; archaeological sites; and finally the developing countries. A recognition that there were countries, and isolated areas of countries, which were heavily dependent on resources of the sea might lead to adoption of differentiated solutions, with due regard to interests and rights of others in the use of the sea.

48. Another view was that the regime should be uniform for all areas of the sea-bed beyond national jurisdiction. The principle of having a single regime, it was also said, must be accepted if anything functional was to result; a plurality of regimes would conflict with the principle that the resources of the sea-bed and the ocean floor were the common heritage of mankind.

49. The basic issue, it was said, was the requirement to develop a regime which would prove equitable to both developing and developed States. A priority task for the Committee was the detailed elaboration of operating regulations which were essential to any effective resource management system. There would be no benefits for many years to come unless the Committee faced squarely the difficult and highly technical issues raised by the need to develop an offshore resource management system which achieved the right balance between the need to control every operation and the sometimes competing need to encourage development and exploitation.

50. The granting of licences, it was said, should be subject to a new set of rules embodied in the basic international treaty establishing the regime.

51. It was envisaged that the treaty to be drawn up should lay down what royalties were to be paid to the operator, and should not leave that task to the international agency,

since otherwise it would be impossible for the international community to make even a rough estimate of the benefits likely to accrue to it. At the same time, it would be useful to have a study prepared by the Secretariat of the criteria used in municipal law for the calculation of royalities on minerals extracted from the continental shelf or from the land.

52. The treaty should also include a system of allocation of benefits, the contents of which would be discussed and negotiated, under which the international agency would distribute direct to States members the benefits accruing to them. The treaty should regulate the exercise of freedom of scientific research in the area. The treaty should also define the rights of coastal States concerning measures to prevent, mitigate or eliminate grave or imminent danger to the area under their jurisdiction. The responsibility of States and international organizations in that respect should be strictly regulated. The treaty should define precisely what was understood by the living resources of the sea-bed and ocean floor beyond national jurisdiction.

53. It was considered that the treaty might include a flexible system of arbitration on the basis of ad hoc groups.

54. It would be indispensable, it was also said, for the régime to set forth more precise and binding procedures than were contained in Article 33 of the Charter for the solution of controversies that might arise.

55. Reference was also made to the question of delimitation in relation to provisions of a treaty to establish the regime. One point of view was that it would be necessary to specify the limits clearly in the treaty so that they would be part of the regime. Another was that the area would not necessarily have to be delimited in this treaty, but that that might be done in other instruments.

56. If the treaty provided for the establishment of an international machinery, it was said, it would be essential for it to include provisions based on operative paragraph 3 of the Declaration of Principles in order to prevent the international machinery from engaging in exploration and exploitation of mineral resources on its own account or from trying to assume jurisdiction over the area and its subsoil and mineral resources.

57. It was proposed that the rights of individual States should be functionally limited and controlled under the regime. They would not acquire sovereign rights over a given part of the sea-bed and the subsoil but would rather be entrusted with the administration of the exploitation activities in that area, within the framework of the international rules and procedures of supervision.

58. The following also were proposed or suggested as specific provisions of the treaty establishing the regime: an article stating specifically that the provisions of the treaty did not affect the legal status of the superjacent waters or airspace of the sea-bed beyond national jurisdiction; provisions under which all States should act in the area in the interests of maintaining international peace and security, of contributing to international co-operation and of the strict observance of the international law of the sea and the Charter of the United Nations; provisions to deal adequately with the subject of international responsibility, including liability; liability should be strict or even absolute, without reference to fault or negligence; some system of full insurance should be built into the regime to cover all cases of civil liability as well as effective sanctions to deal with acts of malfeasance or non-feasance; and an article to the effect that any claim to jurisdiction over ocean space founded on islands should be given priority consideration in the context of international institutions.

59. One view which may be mentioned in this section was that there should be a single basic treaty which should consist of several parts: general norms governing activities in ocean space as a whole; a clear and precise definition of the outer limits of coastal state jurisdiction, without the present distinctions between the territorial sea, and the continental shelf and other areas; general norms governing the activities of States in the area beyond the limits of national jurisdiction; specific norms governing conservation and exploitation of resources beyond national jurisdiction; norms for the equitable distribution of benefits and provisions concerning scientific research and the preservation of the marine environment. In addition, the treaty should set up appropriate institutions not merely for the sea-bed but for ocean space beyond national jurisdiction; it should define their powers and establish an impartial mechanism for the interpretation of the treaty. It should include general and specific provisions on the subject of legal limitations to be set to the virtually total freedom that States at present enjoyed within the area subject to their control, though there was no question of abolishing the sovereignty of States. It should provide for consultation between neighbouring States and for notification to the international institution in the event of a coastal State proposing to make use of its technological capability in a manner likely to change the climate or the natural state of the marine environment outside the area subject to its jurisdiction.

60. Points which were suggested for discussion by Sub-Committee I included: the concept of regional management in the administration of the international regime, the applicability of the archipelago principle in semi-enclosed areas and the relationship between the international regime and regional maritime arrangements already agreed to within the framework of so-called closed areas.

3. The regime and the question of limits of the Area

61. Various references were made to the question of the relationship between an international régime for the sea-bed beyond national jurisdiction and the problem of limits of the area. One position was that as large an area as possible should be set aside for the international community. Points in support of this proposition included the arguments that this would ensure that the developing countries would benefit from the profits of the exploitation of sea-bed resources, and that this was also in the interests of the land-locked and shelf-locked countries. On the other hand, it was said that the developing countries would never agree to the concept of common heritage being used to restrict national jurisdiction over the territorial sea and the continental shelf of developing countries.

62. The need for a strong regime and machinery did not necessarily imply narrow limits of national jurisdiction; a strong organization could not impair the right of a coastal State to exercise its natural vocation to exploit the resources of the sea-bed and superjacent waters off its shores within a reasonable distance.

63. Another view in this regard was that with instant internationalization the super-Powers would have free access to all the sea-bed beyond national jurisdiction. They were the only ones which at that stage disposal of sufficient capital and technology to present valid and accurate applications to the agency to be created, and it was evident that such an international body would be much more docile in its dealings than individual governments.

64. It was held that the nature of the regime and the limits of the area to which it applied must be negotiated and resolved together. It was held that an international regime was not conceivable unless the area to which it would apply was known. This view was disputed, although it was recognized that the question of the regime could not be separated from the problem of limits. It was thus maintained that in order to find a satisfactory solution it would first be necessary to work out a just formula for the establishment of an equitable regime with full comprehensive powers. The question of limits could easily be settled if the régime assured the developing countries that they

would receive a substantial share of the benefits to be derived from exploitation of sea-bed resources. It was observed that the need was to ensure a harmonious balance between the protection of the economic interests and security of the coastal States and of the international community. Precise determination of limits was necessary but was not a prerequisite for the establishment of an international regime. Prior agreement on the regime would facilitate the task of determining the limits of the area, and the establishment of a regime would itself determine precise limits.

65. It was said that the international area began where national jurisdiction ended and it was a mistake to suggest that there was no rule in international law regarding the outer limit of the continental shelf in view of article 1 of the 1958 Convention. It was noted that among the suggestions on limits were the idea of establishing them at a fixed distance from the baseline for the territorial sea of the coastal State, or if a rule on the breadth of the territorial sea were adopted, at a fixed distance from the outer limit of that sea. Other criteria suggested included a fixed depth seawards from the coastal State, a combination of distance and depth criteria at the choice of the coastal State, a criterion based on geological, geographic and economic factors, a criterion based on regional considerations or an arbitrarily determined point on the continental margin. The limits might also be fixed by determining first the limits of the international area universally admitted to be outside the jurisdiction of the coastal States. A limit based on depth alone, it was considered, would be unfair and a reasonable criterion of distance should also be adopted. On the other hand, the only practical consideration was held to be distance from the coast; a system based on depth would be difficult to implement in practice but the situation of certain countries endowed with broad continental shelves and shallow waters around their coasts should be taken into account. It was contended that special rules should apply to small or marginal seas. Efforts should be directed, it was said, towards establishing a clear and precise criterion which would be easy to apply in practice.

66. Another approach to the problem proceeded from the concept of a basic international treaty to replace existing conventions. Under this approach, a limit of 200 miles was envisaged. In another line of reasoning, it was held that until new international law was developed to replace it, the 1958 Convention could not be read selectively with the 200 metre isobath being accepted to the exclusion of the exploitability concept. It was

accordingly suggested that every ocean basin and every sea-bed of the world should have similar percentages of its underwater acreage reserved for the benefit of mankind. There had been no satisfactory answers, it was said, to the questions of why, in principle, it should make any difference whether a shelf was shallow or deep or why they should be concerned with distance from shore. It was held that there was no reason why shallow basins would be exempted from such an approach whether or not riparian States had divided up such areas, albeit in good faith, by a process of unilateralism, bilateralism or as parties to the Convention. That approach, it was said, would be infinitely more effective than any other being considered in terms of providing immediate and substantial benefits for the developing and land-locked nations.

67. It was noted that the limits of the area had implications for the viability of the new international machinery to be established.

68. In one view the problem was how to reconcile the benefits which many nations might derive from the international regime with those which coastal States felt they would gain from exclusive jurisdiction. The former would like the regime to apply to the broadest practicable area; the latter would prefer it to be applicable to a smaller area of the sea-bed.

69. Petroleum and natural gas deposits, usually situated in the continental margins, it was considered, would probably be exploited first in the shallower parts of those margins. If national jurisdiction should have wide limits, most oil and gas deposits would be excluded from the international regime in the years to come. If the 200 mile limit was adopted, most of the continental margins would be excluded from the régime.

70. It would be a mistake to believe that resources of interest beyond 200 metres lay only off the coast of developing countries. It would also be a mistake to believe that the resources beyond 200 metres were incapable of being exploited. The question was whether the benefits from such exploitation should be enjoyed exclusively by the coastal State and by States whose nationals were capable of exploiting such resources under concessions granted by the coastal State, or by the international community as a whole.

71. Reference was made to a number of specific proposals or suggestions in connexion with the issue of limits. One was the United States working paper which, it was said, would have a new international regime for the sea-bed apply to the broadest practicable area, namely that outside a territorial sea of twelve miles, seaward of the point where

the high seas reached a depth of 200 metres. The regime should provide for accomodating the interests of the coastal State beyond such a limit by giving it carefully defined but substantial rights and functions under the international regime in an "international trusteeship area", seaward of the sea-bed over which the coastal State enjoyed sovereign rights. The essential point was that the international, coastal or maritime interests involved could and should be accomodated. The precise mixture of those respective rights in the area should be equitable.

72. This working paper was recognized as having useful features but was criticized on the ground that it had the defects of adopting the 200 metre isobath as the limit of national jurisdiction and of involving establishment of an intermediate zone with a hybrid status which could easily become a source of friction.

73. The idea of an intermediate zone in which the coastal State would receive preferential treatment was held to go beyond the terms of article 1 of the 1958 Convention on the Continental Shelf; it appeared to assume that the entire continental margin, whether exploitable by the coastal State or not, was somehow the preserve of that State, whose special position must be recognized by the international community. If this approach proved to be the only practical one, the international community should perhaps seek acceptance of the idea that the sea-bed authority rather than the coastal State should administer the intermediate zone.

74. The idea of trusteeship was said to be unacceptable because it was not consistent with the notion of the common heritage of mankind and the trustee would benefit more than the beneficiary. It would add to the inequalities caused by the irregularity of the continental shelf. It was a discriminatory concept which would favour only large corporations from developed countries. All the area beyond the agreed limits of the continental shelf was the common heritage of mankind, to be exploited for the benefit of the community.

75. Another criticism of the concept of an international trusteeship area was that its scope was so wide that for many years to come explcitation would be almost confined to it, and operations beyond non-existent. The less the breadth of the trusteeship area, it was held, the more it seemed acceptable.

76. It was also said that what was envisaged was really a juxtaposition of national jurisdictions. The international trusteeship area would cover the most accessible part of the sea-bed, the exploitation of which would be the least costly. In that way, the international area would be reduced to the lowest terms. That system would amount to

giving the rich countries, which possessed the necessary technical resources, the chance of becoming partners - theoretically on an equal footing, but in fact to an extent which would amount to two thirds or more - of any coastal country which wished to exploit it mineral resources but was not in a position to do so. The most accessible resources would be exploited not for the benefit of all mankind but for the benefit of the coastal States.

77. It was suggested that the Committee should consider ways of imposing an effective moratorium under which States and persons, physical or juridical, would be bound to abstain from all activities of exploitation beyond the 200 metre isobath or a 12 miles breadth, whichever was more distant. During the moratorium, no claim should be recogniz to any part of the area under consideration or its resources, in accordance with General Assembly resolution 2574 D (XXIV).

78. It was suggested that it would be desirable to have the geographical location of the possible zones of application of the international regime shown clearly on hydrographic charts and to obtain some idea of the quantity and importance of the actual resources to be found there.

4. Relation of international machinery to the regime

79. It was considered that the provisions relating to the international machinery for the area should form an integral part of the international treaty embodying the international regime, and that this was a corollary of the Declaration of Principles.

80. The question was raised as to the degree to which issues would be decided in the treaty or left for later decision by the authority, since there was clearly some need for flexibility. All delegations, it was said, would prefer to simplify the drafting of the treaty as much as possible, but the Committee's mandate was to prepare a régime as well as machinery. Even if that were not the case, States might feel understandably hesitant about entering into a treaty without some fairly detailed idea of how it would operate. Detailed provisions might facilitate rather than delay agreement on the treaty.

81. It was said that there was an intimate connexion and interpenetration between the principles applicable to the sea-bed beyond national jurisdiction and the kinds of international institutions or machinery required to ensure the effective implementation of the regime to be based on those principles.

82. Another point made was that agreement on the regime was in fact the prerequisite for a solution of the problem of machinery.

83. Attempts to establish the machinery separately from the provisions of the treaty determining the regime of the sea-bed and to authorize the machinery to formulate and to establish the regime for the exploitation of the sea-bed, it was said, were unjustifiable and unrealistic.

5. Scope and functions of international machinery

84. It was considered that the régime to be established should put into practice the principles set forth in General Assembly resolution 2749 and that it should be associated with machinery capable of ensuring, both in exploitation of the resources of the area and in the distribution of the benefits to be derived therefrom, an equitable balance between the interests of the parties concerned: any exploiting enterprises, the international community, developed or developing countries or coastal or land-locked countries.

85. The institutions responsible for administering the régime, it was noted, would have to exercise powers of administration, management and regulation not previously granted to any international organization.

86. It was said that many delegations thought the machinery should take the form of an autonomous universal organization possessing full legal personality and having jurisdiction, in the full sense of that word, over the sea-bed and the ocean floor beyond the limits of national jurisdiction, to ensure the exploration, exploitation and use of the resources, as well as the supervision and control of operations, prevention of pollution, the safety of life and property and the conservation of the living resources of the sea. In fact, the machinery should be so organized as to enable it to undertake wide functions and assume comprehensive powers.

87. The following were among the powers suggested: the power to authorize exploration and exploitation activities in the international area, and to perform such related functions as the registration and inspection of activities; the power to carry out exploration and exploitation activities through its own resources or through contractors; to act as a clearing-house for the collection and dissemination of information relating to sea-bed activities; to promote an organized training programme for scientists from developing countries; to collect and share all monetary and other benefits accruing to participating States; to take measures, either on its own or in co-operation with such institutions as UNCTAD, to redress any adverse economic effects caused by exploitation activities such as fluctuations in the prices of raw materials mined on land; to take

measures for the preservation of the marine environment, including pollution control; to promote new uses of the sea-bed, such as communications, transportation, buildings; and to settle disputes and impose sanctions in the event of non-compliance with obligations.

88. Another formulation specified that an international agency should be established for granting licences for exploration and exploitation of resources to States or intergovernmental organizations of a universal or regional character and to enforce compliance with the conditions prescribed in those licences; the agency should represent the international community as a whole, and should be capable of undertaking direct exploitation; States or intergovernmental organizations should be able to grant licences to private operators, provided that the latter would not have international personality and the former would be internationally responsible; procedures for allocation of areas to States or intergovernmental organizations by the international agency should be based on the need to ensure access for all countries, including developing countries, to exploration and exploitation of sea-bed resources; allocations should be so controlled as to ensure they had no adverse effects on prices of commodities obtained from land. Also some safeguard should be devised to ensure that developed countries did not discriminate in their domestic legislation in favour of the products of their national companies operating in the international area of the sea-bed.

89. Another point was that the new institutions would have to exercise jurisdiction, not sovereignty, in the name of the international community.

90. It was noted that in the initial stages direct exploitation activities would not be possible but the possibility of direct activities should be left open.

91. Decisions by the international machinery should be taken in close co-operation with the regional and subregional organizations which already existed or which might be established for that purpose. Preferential rights of coastal States, particularly the developing countries, should also be taken into account. Those preferential rights related not only to technical assistance but also included effective participation in scientific research, and in the exploration and exploitation of the sea-bed and ocean floor adjacent to their coasts.

92. The international machinery should plan the exploitation of the resources of the area in order to avoid harmful repercussions on the selling price of the mineral resources of the developing countries, particularly oil, natural gas, manganese and copper.

93. The international machinery should have built into it adequate means for providing compensation for damage caused within areas of national jurisdiction as a consequence of activities carried out beyond the limits of that area. It should also embody specific arrangements, perhaps in conjunction with other international institutions, for providing necessary technical and financial assistance to developing countries for their own scientific research on the sea-bed.

94. It was urgently necessary for nationals of developing countries to acquire skills in the field of marine science and technology.

95. One thing to be avoided was making the machinery cumbersome to the point of reducing its effectiveness and thus unnecessarily increasing its operating costs. It would also be necessary to avoid unwarranted limitation of the base for taxation of the exploiting enterprises, for example by excluding profits or by diversion of the machinery's resources from their main purpose, - namely, aid for the development of the poorer countries, - to such purposes as payment of compensation to States which suffered from pollution caused by the exploiting enterprises.

96. Proposals had been made concerning the machinery's financial resources and their use. Those resources would have to be obtained by means of a system of taxation and assessment which was sufficiently productive, but would not jeopardize the legitimate interests of the exploiting enterprises.

97. In another view support was expressed in principle for international machinery with fairly comprehensive powers to regulate, co-ordinate, supervise and control activities in the international area, while leaving an important role to the States. It was possible to imagine acceptance of the exclusive competence of an international body in areas of the deep ocean, but it would be natural to confer certain prerogatives on coastal States in areas adjacent to their coasts and their present national jurisdiction.

98. On the other hand, it was observed that there did not yet appear to be general agreement on whether the machinery should consist merely of a resource authority or an authority of broader scope including within its mandate all sea-bed activities.

99. The single most important factor in promoting resource exploitation, it was said, would be the adoption of a resource management system designed to encourage and maintain investment on a continuing and orderly basis. Only in that way, it was considered, would it be possible to ensure fulfillment of the basic purpose of benefiting mankind in general and the developing countries in particular.

100. It was suggested that there might be some advantage in practical terms in attempting to devise a system of machinery which would have all the essential elements provided for from the outset but which would begin with a skeletal structure, to be fleshed out as progress permitted.

101. A two-phase development of international machinery could be envisaged which would be intended to provide for a system of registration, notification and, if possible, control of exploration, and which would be effective immediately, while providing also for the gradual assumption of further, more specific functions and powers as the need arose during a second phase of actual exploration and development. That would be a comprehensive regime with interim machinery.

102. A third step would be to appeal to all coastal States to start paying to the interim international machinery a fixed percentage of all their revenues from the sea-bed areas they claimed beyond the outer limits of their territorial waters. One per cent of such revenues, for example, could produce millions of dollars a month for the the benefit of the international community and of the developing countries in particular. Such a contribution would be a kind of voluntary international development tax to be paid pending the adoption of a multilateral treaty on the limits of national jurisdiction and the creation of an international regime for the sea-bed beyond national jurisdiction.

103. The third step would not prejudge the development of international law but would go a long way towards meeting the essential requirement which should provide the basis for any sea-bed regime, namely, the principle of equity. That principle should apply not only to the sharing of benefits from the sea-bed beyond national jurisdiction, but also to the contributions to be made towards building up those benefits.

104. A direct relationship was seen between the powers and the structure of international machinery. If the powers were to be extensive and were to apply to areas of vital interest to States, then it was necessary to have a structure which would inspire confidence in States and would ensure responsibility, efficiency and expertise. If that was achieved, the desire of many countries for machinery with extensive powers could be accommodated with their understandable concern about the possible harmful effects of such machinery on their interests.

105. It was considered important that the international machinery should have well defined functions if all States were to surrender a reasonable number of their prerogatives. It should not serve as a disguise for perpetuating the existing state of affairs.

106. Criticism was expressed with regard to the attempt to give the machinery excessive powers and to transform it into a supra-national organ which would direct the activities of States on the sea-bed. In present day conditions, when States insisted on their sovereign rights, the international community could create organizations only to co-ordinate the activities of States and not to direct them.

107. Reservations were expressed about the proposal that the machinery itself should be allowed to engage in the exploitation of the area. The purpose was, it was said, to establish some kind of international consortium which would act as a separate entity in international relations, on the same level as States. But in spite of the good intentions of the sponsors of the proposal, the real power would be exercised by those against whom they hoped the machinery would protect them, namely, the major imperialist monopolies which provided the technical and financial resources for sea-bed activities.

108. In this view, the functions of the international machinery should be to verify compliance by all States with the undertakings assumed under the treaty on the sea-bed regime, to promote the rational exploitation of the mineral resources of the sea-bed, and to take measures to prevent pollution. In the structure and actual operation of the international machinery, due consideration should be given to the interests of all States, and any possibility of undertaking activities in the interests of some States or groups of States, to the detriment of the interests of other States or groups of States, should be entirely excluded.

109. A number of references were made to the question of State responsibility for licenses. It was noted that there were differences of view whether or not licenses should be confined to States only. Thus it was considered that the organization should deal directly with member States, which would be vested with total responsibility for their companies vis-a-vis the international community.

110. Another view was that the licensing system to be applied by the authority should be such as to engage directly or indirectly the responsibility of the State of the

operator. That might be accomplished by issuing a license for exploration or exploitation only to States or groups of States, or to natural or juridical persons, under conditions whereby the person's State should stand behind him, guarantee compliance with the terms of the license, and accept ultimate responsibility for any damage caused as a result of such activities. Detailed rules for determining nationality and fixing liability would have to be worked out.

6. Organs of international machinery

111. The point was repeatedly made that the machinery should have an assembly or plenary organ consisting of the entire membership or of all the countries of the world, meeting annually or at some other prescribed interval. This body would be responsible for general policy and guidelines. It would be the political organ responsible for controlling and supervising exploitation of the sea-bed. Other organs frequently suggested were a council or executive organ, a tribunal or body for the settlement of disputes, and a secretariat. In one view, a plenary body would be too large to deal with the current business of the organization and its decisions, made by a simple or two-thirds majority, might not necessarily reflect the broad spectrum of opinion in terms of total population or other relevant criteria. While meeting the needs of some, it might not meet the needs of others - indeed, of those whose interests might be most directly affected by many of the decisions taken. In this connexion it was noted that the United States draft convention provided for a council of twenty-four States to meet as often as necessary. Eighteen of those States, at least twelve of which would be developing countries, would be elected by the assembly every three years. The remaining six seats would be assigned to countries regarded as the most industrially advanced, in accordance with specific criteria. Decisions by the council would require a majority of each group, thus ensuring the necessary balance. At least two members must be shelf-locked or land-locked.

112. In another view, it was considered that the international institutions would only be able to act with the acquiescence of the preponderance of world opinion, measured in terms of properly represented population and power; the principle of one nation one vote would have to be replaced by a system that would ensure an equitable balance between the interests of the different countries.

113. According to another approach, representation on the executive organ would be broadly on a geographical basis but it might also be necessary to provide for the representation of certain groups of special interests, such as those of land-locked or shelf-locked countries, countries with extensive continental shelves, and the like.

114. The composition of the executive council, it was said, should be based on the equal representation of all participating States.

115. Strong opposition was expressed to the idea of preferential voting rights.

116. It was neither desirable nor practicable to leave decision-making to the most developed or industrially advanced countries, while a system of weighted voting would violate the principle of the sovereign equality of nations. The principle of democratization of international relations contained in the Lusaka Declaration should be embodied in any future provision concerning the regime and the machinery.

117. Decisions of the plenary or executive organ should not be made subject to any system of preferential voting rights and there should be no veto system, either open or disguised.

118. It was suggested that the president of the executive organ might at the same time be the chief executive and legal representative of the organization and the head of the secretariat. As the head of an essentially operational organization, he should be recruited from the outside on the basis of outstanding technical competence and administrative ability.

119. Subsidiary bodies, it was considered, might be charged with such functions as the establishment of sound operational rules and practices, the inspection of operations to ensure compliance with such rules, the administration of a system of benefit-sharing approved by the plenary organ, and measures to deal with price fluctuations.

120. The necessary expertise could be achieved by establishing small functional commissions, composed of persons with the necessary skills to carry out certain important functions. Those persons need not be full-time employees of the authority and their number should be proportioned to the work to be performed.

121. Since political organs were not equipped to provide the necessary check on the detailed exercise of administrative or regulatory power, a system for review of administrative and regulatory actions would be needed. There should be an independent tribunal for the settlement not only of disputes between States but also of disputes between the authority and an interested State or individual. A State which felt that its rights were being infringed by the authority could bring the matter before the tribunal.

122. The question was raised as to whether jurisdiction of the tribunal should be consensual or compulsory.

123. Another approach to machinery involved division of the structure of the machinery into an economic, technical and commercial wing concerned with exploration and exploitation of resources and a general or political wing concerned with other functions concerning the international area. The former would deal with regulation and co-ordination of all activities relating to exploration and exploitation including sharing of benefits while the latter would deal with such other aspects as co-ordination with other international organizations concerned with the marine environment and questions relating to the use of the area exclusively for peaceful purposes. It could also take action, in co-operation with other agencies, to minimize the adverse consequences of exploitation as well as to meet the particular requirements of land-locked countries.

124. The organs supervising, controlling or regulating the activities of the regime, it was said, should not be too numerous or the early returns of the regime would be consumed by the international machinery.

7. Relation of international machinery to the United Nations system

125. It was considered that the proposed machinery, by virtue of the very nature of the task to be performed, should be a wholly new institution rather than one developed out of existing organs and agencies within the United Nations family. Since the new institutions would have to enjoy powers greater than those of the United Nations General Assembly, it would be necessary to avoid subjecting them to General Assembly control in the same way as most of the specialized agencies.

126. In another view it was emphasized that any international regime should be set up within the framework of the United Nations. The point was made that existing organizations should be used as much as possible.

127. Reference was also made in this connexion to the desirability of having the authority itself - perhaps through a subsidiary organ established for the purpose - undertake the sharing or distribution of benefits to participating States rather than that the funds should be transferred through one or more of the existing international or regional institutions. Since each of those institutions would be bound to apply its own regulations and operational policies, that would inevitably result in the subjection of the transfer of those funds to conditions which might be inappropriate. In order to avoid that situation, it might be necessary to amend the charters of those organizations, and that would hardly seem worth while.

128. The idea of turning over benefits to an existing international organization to finance programme for developing countries was regarded as in flat contradiction with the principle of the common heritage of mankind.

129. On the other hand, it was urged that some of the resources derived from exploitation of the sea-bed should be allocated to the United Nations, a portion being devoted to strengthening the Organization itself and the remainder to development programmes implemented either directly by UNDP or by UNDP acting in co-operation with the specialized agencies.

8. Regional organization

130. Various references were made to the use of regional organizations for the purposes of the regime, either in conjunction with or as part of an international machinery.

131. It was urged that in the preparation of the regime there should be recognition of regional differences and particularities of a geographical, social and economic nature. Reference was made to the Latin American declarations of Santiago, in 1952, and Montevideo and Lima, in 1970; to that of the Baltic States, in 1967; and to the agreements relating to the North Sea and the Adriatic, concluded by countries of those areas. It would clearly be unrealistic, it was said, not to recognize that existing trend which permeated the whole field of the law of the sea.

132. Preference was expressed for an international regime comprising regional or subregional systems co-ordinated on a world scale, in accordance with principles of common interest. Such systems would help ensure that the exploration and exploitation of the area were undertaken for the benefit of mankind. Moreover, regionalization would make it easier to produce the most satisfactory solutions to problems affecting the interests of each individual region. If regionalized, the system would be more flexible and would provide a better guarantee of effective international co-operation at the regional and interregional levels. The system could be given the necessary unity and efficiency by establishing institutional links to co-ordinate the activities of the proposed regional organ and those of a central organ.

133. Another view was that customary regional arrangements could provide for certain variations which, however, should not infringe on the principles already agreed upon by the world community.

134. Still another view of the regional aspect was reflected in the statement that exploitation of the sea-bed and the ocean floor on a regional basis, which could place countries in different parts of the world on a different footing, was not likely to ensure equitable sharing by all States in the benefits to be derived.

135. It was also contended that if the Committee drew up a series of special regimes adapted to different regions, instead of general and universally applicable rules, it would not be doing its job properly. It should try to agree on a single regime for all countries.

B. Equitable sharing by all States in the benefits to be derived from the area and the resources of the sea-bed beyond national jurisdiction, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked.

136. In keeping with the common heritage principle, it was said, each State was entitled to its share of benefits. That share was not aid and could not be treated as such, and would in no way relieve contributors to United Nations agencies of their existing obligations.

137. In the short run, it was said, benefits for the developing countries might well be minimal.

138. Benefits derived from sea-bed activities might include: funds received as revenue or from the sale of raw materials by the authority, or from other sources; the raw materials themselves, and information that might become available to the authority through scientific research programmes or other means.

139. Other benefits mentioned included employment and the purchasing power derived therefrom, and State revenue from taxation.

140. It was suggested that the spirit of the Declaration could best be implemented if the sharing of benefits were related to the needs of the countries concerned and based on an agreed scale whereby the least developed would receive the most and the most developed would receive the least. The question of the degree of need had been the subject of considerable study by UNCTAD. The needs of countries might be agreed upon on the basis of a scale reflecting standards of development.

141. The sharing of raw materials would present special problems that would need the most careful investigation. The raw materials might be obtained by the authority through its own operations or it might establish stock piles of raw materials obtained elsewhere. Raw materials coming under the control of the authority should be subject to special conditions to ensure that they were used exclusively for peaceful purposes. The question of how such raw materials might be made available to participating States was one with which the Sub-Committee would have to come to grips very soon.

142. The sharing of information derived from sea-bed activities could proceed on the basis of paragraph 10 of the Declaration of Principles. Such sharing was of the first importance for developing countries, since it was only through the accumulation of expertise and the development of their own technology that they could eventually equip themselves to take full advantage of the benefits accruing to them.

143. It was also considered that if the advantages derived from the exploration and exploitation of the sea-bed and the ocean floor were to be shared equitably between the

members of the international community, the developing countries would have to participate actively and effectively in the operations concerned. Since those countries possessed neither the necessary technical know-how nor the requisite financial resources, they should be provided with research and training institutions; in addition, there was so little capital that developing countries were unable to invest the necessary sums in the exploration of the sea-bed.

144. The attention of international financial institutions must therefore be drawn to the need for granting loans and credits to multi-national undertakings on favourable terms.

145. In another view, the benefits would in the first stages consist of fees charged for licenses and royalties on production. A tax on profits of operating companies was unacceptable because profits were difficult to assess and control. Any system based on that idea would lead to the bulk of the profits being chanelled to the companies and thus to the industrially developed countries.

146. Benefits, it was said, should be distributed direct to member States, with special priority for developing countries, both land-locked and coastal, after making provision for the expenses of the international organization and for technical assistance programmes.

147. Criticism of the United States draft convention, in respect of sharing of benefits and the special needs of developing countries, included the view that the net profits of the international authority would be reduced to the amounts given in the form of licenses, taxes and other charges; that a part of that revenue would be allocated for the administrative expenses of the Organization; that another part would be used to promote the efficient exploitation, investigation and protection of the marine environment. Only when all that had been deducted would the balance be used to encourage the economic progress of the developing countries. Since it would first be divided among the international and regional organizations working in that field and would finally be distributed among such a large number of countries that the amount received by each would be actually insignificant.

148. It was also said that the sharing of benefits between States should be subject t clearly specified rules and should not be dependent on the will of the exploiting State.

149. Provision should be made that an agreed portion of the yield from the resources of the sea-bed should go to strengthen the United Nations financially.

150. The equitable sharing by States in the benefits derived from exploitation of the resources of the area was interpreted as meaning that all States without distinction

should obtain certain benefits from the exploitation of the sea-bed and the ocean floor without taking into account the social and economic situation in the world. That must be considered separate from the responsibility that fell upon the former colonial Powers and the capitalist monopolies.

151. Another approach to the matter was that the international machinery to be set up, whose principal function would be to issue licences for the exploration and exploitation of the area, should issue those licences in such a way that all the States parties to the régime could participate directly and as principals in the benefits of the exploitation of the area, as well as indirectly through the distribution of royalties for international community purposes. Each State party should have allocated to it, upon criteria to be agreed, a fixed quota of the blocks into which the sea-bed beyond the limits of national jurisdiction would be divided for the purpose of the issue of licences. That would be a guarantee against the possibility of a few States, for example those which happened at present to be the most technologically advanced, obtaining an unfair share of such blocks. A further guarantee would be provided by having the machinery hold a substantial proportion of blocks in reserve for allocation in later years. States could defer taking up their quotas without forfeiting any rights. Some developing countries might, for example, wish to create their own indigenous technological capacity before applying for licences. They could equally apply for licences from the beginning and sub-licence foreign operators to exploit their blocks on their behalf under their own national administration and regulations, though subject, of course, as in the case of all sub-licensing, to the internationally agreed rules. The allocation of licences to States and not directly to operators, who, in the initial years at least, would necessarily be from a few advanced countries, was an important way of preventing an undue share of the benefits from going to a few countries only.

152. In yet another approach, based on the concept of a single over-all régime for ocean space, it was said, as regards use of the benefits to be derived, that a simple cash distribution to States would in all likelihood be used to cover their immediate financial needs instead of to secure lasting benefits. The net income should be used to provide services in the marine environment - of which the immediate main beneficiaries

would be the developed maritime countries - such as publishing scientific studies and maps, marking ocean shallows, monitoring the marine environment, maintaining a network of international scientific stations and marine parks (20 to 30 per cent). In land-locked countries it should be used for studying the efficient use and improvement of the human environment, preferably, but not necessarily, in matters relating to lakes and rivers (about 20 per cent); in developing coastal countries, it should be used to provide the means for the efficient and productive use of the ocean space under their jurisdiction by more intensified training, purchase of expensive equipment and building a scientific and technical infrastructure (50 per cent).

C. Economic implications resulting from the exploitation of the area

153. The point was made that the economic implications of exploiting the resources of the area constituted a vital question for many developing countries, at a time when technological progress in marine exploration and exploitation could seriously affect the economic well-being of those developing countries whose economies depended on their exports of certain commodities. Further studies on the possibilities of technology in the field of the exploration and development of marine resources were needed as well as studies on the profitability of investments. Special stress should be placed on the possible economic implications for world market prices of exploiting marine resources.

154. The Committee, it was said, should formulate specific recommendations on problems arising from production of certain minerals from the area beyond the limits of national jurisdiction and their impact on the economic wellbeing of developing countries, to minimize any adverse economic effects caused by fluctuations in commodity prices resulting from exploitation of the resources of the area. Those recommendations should be a vital part of the régime.

155. The machinery, it was considered, should enforce a ceiling for the production of minerals of which a surplus already existed in world markets. That would be more appropriate than entering into compensatory agreements with affected States, which would entail the expenditure of funds that could be better utilized in accelerating economic and social progress in the developing countries.

156. The view that subjecting sea-bed production to special limitations would constitute a major deterrent to sea-bed exploration was not accepted. It was held that international commodity agreements had already proved an effective method of avoiding fluctuation of

prices. The matter was of vital concern, especially to developing countries which had not yet succeeded in diversifying their economies and were still dependent on a limited number of agricultural and mineral commodities. The mineral commodities were a source of greater anxiety because they were inherently not renewable.

157. One of the main tasks of the machinery, it was said, would be to implement such measures as the regulation and control of production in order to minimize the effects of fluctuations of raw material prices which might adversely affect developing countries. The system of providing compensation for loss of revenue was unjust; it would mean diverting funds which belonged to the developing countries to the sole benefit of the operators engaged in exploitation and of the developed nations to which they belonged.

158. The régime, it was considered, should contain a provision to ensure that countries did not discriminate in their domestic legislation in favour of the products of their own operators in the international sea-bed area. Developing countries would thus be guaranteed the possibility of exporting their products to the world's largest consumer markets. An adequate escape clause would of course be necessary to safeguard the economies of the developing nations.

159. On the other hand, it was said that the issue of economic implications of exploitation of resources of the area could not be assessed and examined to a satisfactory degree until it was known what minerals and what resources would be exploited under an international régime - or, in other words, until the international area had been delimited - since marine mineral resources were not evenly distributed over the ocean floor.

160. Concern was expressed that due regard had not been given to the position of States which were not rich in their natural resources and were therefore importers of mineral resources.

161. The only effective kind of arrangement for minimizing the adverse economic consequences of fluctuations in prices of raw materials, it was said, was through world-wide commodity agreements on the lines that had already been established.

162. While it was desirable to guard against the disruption of world markets, that objective should not be permitted, it was said, to override the paramount need to develop resources for the benefit of mankind and the developing countries in particular.

163. Resources must be used so as to promote the healthy development of the world economy and the balanced expansion of international trade, while keeping to the minimum the adverse economic effects of the fluctuation of prices of the commodities involved.

D. Particular needs and problems of land-locked countries

164. In the discussion on the problems and needs of land-locked countries in the First Committee and the Sea-bed Committee, the point was made that those countries had a genuine interest in matters of sea-bed development, especially in the light of the principle of the common heritage of mankind, and that they stood to benefit from the development of marine resources only if the sea-bed and ocean floor were explored and exploited in an orderly manner, in the framework of an international régime including appropriately strong international machinery.

165. The right of inheritance to what had been internationally recognized as the common heritage of mankind could not be exercised unless there was a precise and generally agreed concept of the limits of national jurisdiction.

166. The land-locked States, it was declared, must be represented in all decisions regarding the development of rules and institutions for the oceans. Any theory which purported to justify unilateral changes in the oceanic balance of rights and interests - particularly unilateral claims - inherently and necessarily violated the right of participation of land-locked States.

167. The land-locked countries could not extend their national jurisdiction by unilateral action, nor could they try to improve their economic conditions through unilateral administrative measures. Their geographic situation hampered their development, for they not only had no share in the treasures of the coastal seas, but they suffered the disadvantage of having to pay higher transport costs than other countries.

168. It was noted that the right of access to the sea for land-locked countries derived from the fundamental principle of the freedom of the high seas. If there was no free access to the sea, the principle of the freedom of the high seas could have no universal application. Likewise, the right of free transit to the sea derived from the right of free access to the sea.

169. For the land-locked countries, it was said, it was important to ensure freedom of navigation through the straits used for international navigation where such straits became part of territorial waters established by coastal States within the agreed limits.

170. In the discussion prior to adoption of resolution 2750 B (XXV), the singling out of the so-called special problems of land-locked countries was criticized as liable to give the impression that the coastal States had in fact fewer problems. It constituted another attempt to break down the class of developing nations. It was said that when it came to the question of the sea-bed and the ocean floor beyond the limits of national jurisdiction, land-locked countries did not have any special interests or problems which were not common to all developing countries. It was also contended that some of the disabilities cited could not physically be solved; a continental shelf could not be attached to a land-locked country.

171. Another point made was that the problems of land-locked countries were not the same as those of shelf-locked countries, and the policies and views of a land-locked country might in many respects be closer to those of a land-locked developed country than to those of a developing country with direct access to the sea.

172. The hope was also expressed that the Committee when it considered the special problems of the land-locked countries, and the Secretary-General when he prepared his report on those problems, as requested in resolution 2750 B (XXV), would treat the land-locked developing countries as the least developed, in keeping with the spirit of the International Strategy of the Second UN Development Decade. The Secretary-General it was hoped, would give special thought to the need for the land-locked countries to be given facilities for coastal installations in order that they might participate more directly in the exploration and exploitation of the resources of the sea-bed as an application of their general right of free access to the area.

173. The view was expressed that although the question of the land-locked countries had been allocated to Sub-Committee I, since the Secretary-General's study would consider the law of the sea as it applied to the land-locked countries and since the Committee was to draw up appropriate measures within the framework of the law of the sea in order to resolve the problems of the land-locked countries, those problems should be studied by both Sub-Committees I and II.

PART III: SUBJECTS AND FUNCTIONS ALLOCATED TO SUB-COMMITTEE II

A. General

174. It was noted that under the agreement on organization of work, Sub-Committee II would have the power to prepare draft articles before the list was completed. The list was to be comprehensive but not necessarily complete. The Sub-Committee should reach a conclusion at a given point as to whether the list was sufficiently comprehensive to warrant suspension of work on it and to commence drafting articles, on the understanding that it could return to the list as and when new items were proposed. The list should not be closed until the conference itself decided that it would be impracticable to deal with any more subjects or issues.

175. Sub-Committee II, it was considered, should start with an initial list and then proceed to formulate draft articles on matters on which there was agreement.

176. The list of subjects should be discussed on the basis of paragraph 2 of resolution 2750 C(XXV) and, since it would provide the basis for the conference agenda, it should be prepared before the drafting of the articles and the establishment of working groups, at least in Sub-Committee II.

177. The Sub-Committee should not embark on the drafting of articles when it had only one or two subjects or issues on its list. On the other hand, it would be unreasonable to delay the drafting of articles until the list had been completed. It should be possible to settle for some such elastic criterion as a "substantial list".

178. Sub-Committee II could decide to draft articles on any issue before it had completed the comprehensive list of subjects. If any State or group of States insisted that a subject be included, then that subject should be included.

179. Preparation of draft treaty articles could start when a reasonable number of subjects had been placed on the list. On the other hand, every delegation had the right to propose the addition of new items, whether or not they had already been dealt with in international instruments relating to international law.

180. The Committee should not wait, it was said until the list of issues was complete before it embarked on the preparation of draft articles, starting with subjects on which there was no ground for controversy.

181. One view, however, was that preparation of draft articles by Sub-Committee II should not begin until the list of subjects and issues was completed.

182. Another view was that it was for the Sub-Committee to decide whether, before it began drafting articles, it should have before it a comprehensive list of subjects which might of course not be complete.

183. "It was suggested that the list of questions to be dealt with by the Conference on the Law of the Sea should consist of the following questions: The question of the breadth of the territorial sea and related matters i.e. the limit of the territorial sea, freedom of navigation through, and flight over, straits used for international navigation where such straits became territorial waters established by the coastal States within the limit referred to above, and the right of a State to establish a fisheries zone contiguous to its territorial sea if the latter's breadth was less than the said limit-; and arrangements to ensure that any State, irrespective of membership of the United Nations or its specialized agencies could become a part to the Conventions on the Law of the Sea adopted at Geneva in 1958.

184. Comments made on this suggestion included remarks to the effect that it was not considered a comprehensive list and that certain points should be reformulated in order not to prejudge matters."

185. The list of subjects, it was held, should include the questions left unsolved at the 1958 and 1960 conferences, in particular the breadth of the territorial sea and the issue of the preferential rights to be accorded to coastal States in waters adjacent to their territorial sea.

186. It was also held that the list should include the question of access to the sea by land-locked countries.

187. It would be useful, it was considered, to ask the Secretariat to request States by means of a questionnaire to provide a list of specific issues relating to the law of the sea on which international legal provisions were lacking or were controversial. It would also be useful if the lists submitted were accompanied by an explanatory memorandum. When it had received the replies, the Sub-Committee should group and classify the issues and discuss them under the rules of procedure which it could determine. In that phase of its work, it could be guided by the indicative list contained in General Assembly resolution 2750 C (XXV).

188. At the 60th meeting, on 26 March 1971, the Committee agreed that all members were free to send any ideas to the Secretariat for general circulation.

189. Various statements were made in connexion with the question of the relationship between the preparatory work to be undertaken for the new Conference on the Law of the Sea and existing law.

190. The elaboration of an international régime and the preparation of the future Conference on the Law of the Sea, in one view, constituted in reality a single task in accordance with the statement in Resolution 2750 C (XXV) that the problems of ocean space were closely interrelated and needed to be considered as a whole. It was held

that the future Conference should therefore be broad in scope, but that did not mean that an attempt should be made to rewrite the whole of the law of the sea or that the importance of international and regional custom should be ignored. The new realities resulting from scientific development and rapid technological advances and the emergence of new countries rendered progressive development essential. The world had changed and could no longer be satisfied with rules of law which had emerged from the practice of a few European countries in the nineteenth century.

191. The mandate of the Committee and of the future conference, it was also said, should not be interpreted as authorizing the total revision of the law of the sea; but rather as calling for the filling of gaps and the re-examination of specific issues in the light of present day needs. In speaking of the law of the sea, care should be taken not to equate it entirely with the 1958 Geneva Conventions since the latter included provisions which might be regarded not as international rules of a general character but only as ius inter partes.

192. Another view was that the 1958 Geneva Conventions had only been ratified and accepted by a minority of the membership of the United Nations, and there was a visible and very explicit trend for the convening of a conference to reconsider all matters bearing on the law of the sea and on the sea-bed.

193. The traditional rules of the law of the sea, it was said, no longer afforded protection against threats to living resources, growing deterioration of the environment and security risks. Certain States, which thought themselves more threatened than others, had felt obliged to take unilateral measures of protection against the abuses of modern technology. Such unilateral measures were not arbitrary but were justified, since without them, the vital economic and political interests of the countries concerned would be in jeopardy. The fact that such measures were the only remedy at present available was an international reality which should be taken into account. Reference was made in this connexion to the right of every nation to live and develop.

194. Another view was that the only sea areas around which the present discussion centred were those of the Mediterranean and of the oceans bordering countries belonging almost exclusively to the Third World; under a number of international agreements, the seas north of the 40th parallel had become the exclusive property of the coastal States as regards both fishing rights and the exploration and exploitation of the resources of the sea-bed and its subsoil. That division, it was said, had been carried out on the basis of legal rules and economic considerations which were now not accepted where the developing countries were concerned.

195. The point was made that the decision to hold a general conference on the law of the sea in 1973 offered a unique opportunity to replace by one comprehensive régime the present multiple international legal régimes governing the various activities of States in the seas. The lack of agreed internationally recognized institutions with power to administer ocean space constituted a serious gap in the present law of the sea. It was unrealistic to expect any wide international agreement on a clear definition of the various limits concerned merely by means of slight amendments to existing conventions, and present trends, if unchecked, could only lead to the gradual disappearance of the high seas and the ultimate partition of ocean space. The Committee's task, it was said, was not merely to review provisions of existing law of the sea but to create a new international order of an institutional character for ocean space beyond national jurisdiction based on the concept of common heritage and incorporating such provisions of existing régimes as might still appear to be visible.

196. On the other hand, various points were made with regard to the need to avoid unnecessary change or to the desirability of maintaining as much as possible existing law. The principles which formed the basis of the 1958 Conventions should in no way be affected, it was considered, and changes in the texts of those Conventions should be made only in so far as they were a consequence of both the establishment of an international régime for the sea-bed and the definition of the area.

197. It was observed that the existing rules of the law of the sea had not come into being overnight, but had been shaped over centuries of co-operation between States. The Geneva Conventions of 1958 merely contained, in treaty form, a number of generally recognized principles of the law of the sea which had proved their value in practice. A general extension of territorial waters to the 200-mile limit would place international navigation under the control of coastal States, and would interfere with international communications and trade. As far as the sea-bed was concerned, the area covered by the international régime would be considerably reduced; indeed, it might even become pointless to establish a régime at all, since it would in practice apply only to the ocean depths and other areas of the sea-bed which were virtually inaccessible for exploitation.

198. There was no need, it was said, for a general revision of the Geneva Conventions of 1958, which codified essential rules of international law relating to the sea. There was no justification for treating them as obsolete, for they represented the greatest success so far achieved by the international community in the codification of international

law. Reference was also made to the conventions drawn up at the IMCO Conferences and it was observed that it was not necessary to reopen all the matters at present regulated by rules of customary law. However, new agreed international rules relating to the legal régime to govern exploration and exploitation of sea-bed resources beyond national jurisdiction, and other matters needed to be formulated. It was also considered that only questions not solved at previous law of the sea conferences should be dealt with. Various statements were made referring to the interest of all concerned in maintenance of the freedom of navigation.

199. It was said that the new law of the sea would be essentially economic in character. It would have to take into account responsibility for natural balances, i.e. protection of the environment; and responsibility for economic balances, i.e. maintenance of satisfactory world market prices for commodities.

200. Another view was that the matters which were the subject of agreement in the Geneva Conventions of 1958 could not be excluded from the third conference on the law of the sea. A review might be carried out in accordance with the procedures they specified, but some of the subjects which appeared in the Conventions might be covered by new agreements among the international community.

201. It was held that in the absence of a rule of international law, it was the sovereign prerogative of every State to determine the outer limits of its jurisdiction as indicated by the requirements of national security and economic survival. That practice, it was said, would continue to be lawful and justifiable until the international community had adopted a new rule rendering it illegal.

202. The coastal State, it was maintained, should determine the limits of its protected zone on the basis of a realistic appraisal of local conditions. It had sometimes been said that the general maximum should be set at 12 miles and more extensive claims should be dealt with on a regional basis through agreements between the countries concerned. That was held not to be a realistic approach, however, and the general rule must include the solution of special cases.

203. The law of the sea was considered to have not responded as fully and promptly as necessary to the pace of technological change. No uniform rule would be established regarding the question of the limits of maritime areas. None was established by international-law and only by stretching the facts could it be claimed that the 3 or the 6 or the 12 mile limit represented international law. Since there was no rule

defining the limits of national jurisdiction, the coastal State was free to define such limits within reasonable boundaries, and with regard to geographical, geological and biological considerations. For many years past one group of States had claimed a national jurisdiction extending to 200 miles and their claim had met with only a few scattered protests which were not representative of the international community as a whole.

204. The extension of national jurisdiction to 200 miles, it was noted, should not be interpreted as a threat to the freedom of the seas, in particular to the freedom of navigation since the latter was safeguarded by the same national legislation that had adopted the 200-mile limit. The countries which had claimed the 200 miles as the limits of their jurisdiction were the same ones which in UNCTAD had been in the vanguard of the fight for liberalization of international trade and the establishment of equitable rules to govern trade relations between the developed and developing countries.

205. It was felt that favourable consideration should be given to the idea that coastal States should have exclusive jurisdiction, for economic purposes, over an area of the sea adjacent to their territorial sea, although that must not result in the under-utilization of marine resources. If the idea was accepted, careful consideration would have to be given to the breadth of the area envisaged and the nature of the rights which applied to it. Its breadth would have to be determined on an equitable basis, taking into account the interests of both coastal States and the international community. The distances so far adopted to satisfy the aims of particular countries no longer reflected the technological and economic realities of the time. It was unlikely that different limits could be established in respect of different zones, for in that case the limit would become stabilized at the maximum; different limits could be adopted for different purposes however.

206. On the other hand, concern was expressed regarding a tendency to extend national jurisdiction over increasingly large areas.

207. If the tendency to extend the territorial sea was generally adopted, the principle of the common heritage of mankind would become a dead letter and there would be nothing left to exploit but a small remnant of the sea-bed and the ocean floor.

208. Any such unilateral action by coastal countries was regarded as incompatible with the common heritage concept. As long as the area beyond national jurisdiction was not clearly defined and delimited, any exploration or exploitation of the area and its resources, as well as any co-operation or collaboration between States on granting concessions or licenses, would be regarded as a violation of that common heritage.

209. Extension of the coastal sea and national jurisdiction of certain States by such unilateral measures, it was said, could not be harmonized with the interests of even the majority of States, whereas it was the interests of all States that the Committee had to weigh and carefully consider. There had been little mention so far of the rights and interests of those States which might find themselves at a disadvantage as a result of unilateral actions.

210. Various references were made to a need to find a solution which struck a balance between the interests of coastal States and those of the other members of the international community.

211. In one view the most difficult problem was that of determining the exact distribution of tasks and profits among States, on the one hand, and the international community on the other. It was stated that the area to be left to States should not necessarily be reduced to a minimum. First, coastal States had a natural right to explore and exploit an area of reasonable extent off their coasts. There were also reasons connected with protection of the environment and considerations of national defense. Secondly, the area under national control could hardly be reduced to a minimum when neither the advantages nor disadvantages of international control were fully known. Thorough study of the proposed régime would be needed before any estimate could be made of the real advantages which the international community might derive from it. A comparison of various types of exploitation would lead to a sounder view concerning the extent of the area to be placed under an international régime.

212. Reference was made to the possibility of a new form of moratorium resolution calling on all States to define their continental shelf claims within a specified time-limit, on the clear understanding that those claims would not prejudge the future development of the law on the precise definition of the area of the sea-bed beyond national jurisdiction. Alternatively, the resolution might specify that as from a specified date already past, national claims would be deemed to have been fixed. Either way, the effect would be to define the non-contentious area of the sea-bed beyond national jurisdiction, leaving the precise limits to be negotiated later. States unwilling to advance clear national claims might instead specify the outside limits beyond which they would make no claims. Thus, while the limits of the area beyond national jurisdiction might be expanded in the later negotiations, they could not be narrowed since States would be stopped, in practice if not in law, from claiming a greater area than that included in the claims they had advanced as from the specified date.

213. Imposition of such a true moratorium, it was considered, would have a beneficial rather than a harmful effect. No State had yet claimed sea-bed limits greater than 200 miles or the outer edge of the continental margin, and it was unlikely that any State would attempt to go further than either of those limits, even for the provisional purposes of a moratorium.

214. On the other hand, it was contended that the present trend towards the unilateral extension of exclusive sovereign rights of individual States over larger and larger sea areas and resources must be reversed and replaced by an international system of collective management, adjustment and allocation, designed to alleviate at least some of the inequalities which history and geography had created among States.

215. The time had come, it was said, to consolidate the multiplicity of limits of coastal State jurisdiction in ocean space into a clearly defined outer limit of national jurisdiction that recognized and satisfied the totality of the interests of the coastal State in the marine environment.

216. A number of points were made in connexion with the question of the criterion or criteria to be used to establish limits in ocean space. Although in many instances they are of relevance to the whole range of questions involving limits, they were for the most part advanced in connexion with the continental shelf, the territorial sea and fisheries, and have been covered below under the relevant section. A few points that were made, however, raised issues of a general nature in respect of criteria for limits. Some of these are touched on here.

217. For a variety of reasons, it was held, the concepts of "natural" boundary and "adjacent" zone could not be adopted as criteria to define the limits of the area beyond national jurisdiction. The only applicable criterion was distance from the coast, and that would have to be fixed in the light of existing international law - whether customary or conventional - agreements between States, national law and the practice of coastal States. In view of the need to protect the interests of the international

community over the widest possible area of ocean space, and in view of the fact that certain coastal States had already extended their jurisdiction to 200 nautical miles from their coasts, it was reluctantly concluded that, to avoid prolonged haggling, it was necessary to fix a distance of 200 miles from the nearest coast as the outer limit of coastal State jurisdiction in ocean space.

218. Three or four States might have legitimate claims beyond that limit, based on the depth criterion of the 1958 Geneva Convention on the Continental Shelf.

219. Recognition by an international treaty of the universal character of the 200 miles limit would enable international institutions to start working usefully, but there would remain the question of baselines and of the extent of jurisdiction that could legitimately be founded on the possession of islands.

220. It was imperative now to distinguish between archipelagos and islands that were independent States or could become independent States, and those that could never become independent States.

221. Another matter that may be referred to at this stage is the point that was made to the effect that the legal gap between the régime applicable to the ocean space and that applicable to marginal or limited seas was widening, with the result that the former régime could not be automatically applied instead of the latter without disadvantage to the coastal States. It was hoped that the conference to be held in 1973 would examine the shortcomings of existing international law in that respect.

B. Régime of the high seas

222. Apart from general comments referring to the number of Member States who took part in the framing of the 1958 Conventions and to the need for review of all aspects of the law of the sea, very few points were made in connexion with the question of the régime of the high seas. Those that were made usually involved either expressions in support of maintaining the provisions of the 1958 Convention unchanged or acknowledgement that there seemed to be no particular wish to alter its dispositions. There were, however, several references to the likelihood that changes made in other areas would have to be taken into account, as well as contentions that the whole of the law of the sea should be reviewed at the 1973 Conference.

223. Points which have been covered under other sections, notably those concerning the régime of the territorial sea and preservation of the marine environment, might also be regarded as of some relevance here.

224. The point was often made that nothing should be done to impede freedom of navigation. That freedom, it was noted, was of great importance for international economic relations, for industrial growth and international solidarity. On the other hand, it was also contended that it should not be abused as a concept.

C. Régime of the continental shelf

225. Many of the points made with reference to the régime of the continental shelf dealt with the problem of limits and with its significance for the definition of any régime for the area beyond national jurisdiction.

226. One position proceeded from the terms of the 1958 Convention on the Continental Shelf. That Convention, it was said, provided the elements for the determination of the outer limits of the shelf. For example, if an undersea oilwell could be drilled at a depth of 500 metres, the outer limit of the shelf would then be the 500-metre isobath.

227. The exploitability criterion clearly referred to objective exploitability, to the depth which permitted exploitation by the most advanced technological methods employed at the time. Such an objective criterion would apply equally to all States and would alone be consistent with the preparatory work of the 1958 Conventions and with the principle of sovereign equality proclaimed by the Charter.

228. Various references were made to the existing rights of States under the 1958 Geneva Convention on the Continental Shelf, and it was noted that the consent of those States would be necessary to alter those rights. The representative of one Member

State, for example, pointed out that rights under the Geneva Convention and the present standards of international law could not be changed or undermined without the express and formal consent of their title-holders. The absence of a definition could not serve as a pretext to start exploration and exploitation of resources in areas that were allegedly free.

229. On the other hand, it was considered that the limits determined under that Convention lacked precision or were otherwise unsatisfactory. It was held that it would be impossible to apply the provisions of the treaty on the régime effectively unless the area of the sea-bed and ocean floor beyond national jurisdiction were clearly defined.

230. The bulk of the mineral wealth extracted from the sea would come largely from the sea-bed near the coast. The international machinery, it was held, should have jurisdiction over an area, the depth and resources of which would permit profitable exploitation. The tendency of coastal States to make unilateral claims to large areas of the sea-bed and ocean floor, while not taking account of the legitimate rights of other countries, was regrettable.

231. Other points also concerned the problems of limits. For example, it was observed that the continental shelf did not extend for the same distance beyond the coasts of all coastal States and was not everywhere of uniform structure. For that reason, it might be replaced by a more abstract but juridically more satisfactory concept, i.e. that of an area defined by the criterion of distance from the coast.

232. Similarly, it was noted that the depth criterion was too complex for the daily requirements of operators who needed an easily ascertainable limit. With such a criterion, the majority of countries, whose marine technology was still in an early stage, would be in a difficult position to ascertain and prove violations of their national limits. Only in exceptional cases, when the continental shelf clearly extended beyond the distance accepted for the region, should a depth criterion be envisaged.

233. On the other hand, the variability of the continental shelf was also invoked as suggesting that it would be wrong to establish a universally valid limit, based on a single criterion. The depth criterion should be combined with the distance criterion.

234. Another approach was that the criterion to be established ought to ensure to all States, and especially the developing countries, an equitable share in the whole extension of existing continental shelves.

235. Reference was also made to the proposal to establish an intermediate area between the continental shelf and the ocean depths. That constructive proposal might reconcile the interests if the coastal States - which would inevitably stand to lose by the establishment of a definite limit for the continental shelf - and the interests of other States which were bound to gain thereby. It was held that it deserved careful study and should serve as a basis for the Committee's work.

D. Régime of the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone

236. It was proposed that the limit of the territorial sea should be set at 12 miles. Twentieth century experience had shown that the 12-mile limit was in keeping with modern requirements and was quite sufficient for maintaining the security and protecting the customs, health and other interests of the coastal States. The vast majority of States seemed to accept that figure. The establishment of the 12-mile limit as a principle of international law was therefore completely justified from every point of view. Coastal States which had set the limit of their territorial waters at less than 12 miles should be entitled to establish a fishing zone, of a breadth such that the total breadth of their territorial waters plus fishing zone did not exceed 12 miles.

237. A point made by the advocates of this proposal was that claims in excess of this figure were unilateral and unwarranted. A unilateral approach would lead to disputes The solution should be based on international co-operation and agreement and respect for the interests of all States, in the interests of international peace and security.

238. On the other hand, it was said that the 12-mile limit for the territorial sea did not take into account the fundamental economic interests of the developing countries. That limit was being advocated on the grounds that uniformity was necessary in the law of the sea in order to prevent "anarchy". In fact, such anarchy as there was was simply due to failure to observe the rules of law - national, regional and internationa Those rules were being violated by certain Powers which were at present engaged in what amounted to looting of the living resources of the sea off the shores of the developing countries. Similarly, in defiance of resolution 2574D, some States had not hesitated to grant licences to certain companies for the exploration and exploitation of that area. The delimitation of the territorial sea was held to be a matter which fell exclusively within the jurisdiction of the coastal State. The present trend to broaden the limits of the territorial sea was inspired by a desire to meet the growing economic needs of the peoples of the third world.

239. It was also held that there was no juridical rule in general international law delimiting the breadth of the territorial sea. There did not exist any "international custom, as evidence of a general practice accepted as law", to use the words of Article 58 of the Statute of the International Court of Justice. That fact destroyed the arguments of those who claimed that the breadth of 200 miles was arbitary since any breadth set by a State would then be equally arbitrary.

240. In another approach, it was stated that the question of the breadth of the territorial sea and exclusive fishing zone had never been a matter solely within the domestic jurisdiction of the coastal State. Reference was made to the position of the International Court of Justice in its judgement in the fisheries case between the United Kingdom and Norway. In the opinion of the Court the validity of the delimitation of the sea areas with regard to other States depended upon international law; in other words the limits fixed by the municipal law of the coastal State must be in accord with the maximum limit permitted under international law.

241. It was said that there appeared to be agreement on the need to establish a new limit for the territorial sea. There also appeared to be an understanding that jurisdiction over coastal fisheries need not necessarily be tied to the coastal State's sovereignty over its territorial waters. It was noted that views differed on the question, however; some considered that the area of national jurisdiction should be delimited on a regional basis or proposed that each State should be free to establish the limit of its sovereignty on the basis of reasonable criteria; others wished to impose a single limit for both maritime sovereignty and all forms of maritime jurisdiction.

242. Reference was also made to what was described as the special situation of the archipelagic countries. The islands and the intervening waters formed a single unit. That was an axiomatic fact of life as well as an economic and political necessity. That position had never been meant to interfere with freedom of navigation, which was essential for international trade. But such passage must be innocent.

243. It was said that examination of claims in excess of 12 miles revealed that in the majority of cases they did not amount to an extension of the territorial sea itself but to special jurisdiction in certain specific matters.

244. It was also held that the crux of the question of the extent of the territorial sea was fishery limits. A relatively narrow territorial sea was acceptable provided that the question of fishery limits was adequately dealt with.

245. It was said that the problem of the breadth of the territorial sea and the related question of international straits did not appear equally compelling to all the members of the Committee. But merely to state the issue - the need to strike a balance between the legitimate necessity for coastal States to exercise sovereignty over a belt of waters adjacent to their coastlines and the competing needs of all States for passage - was sufficient to make clear its close relationship with the problems of fisheries jurisdiction, pollution control and preservation of the marine environment. Even scientific research could be affected by the approach taken to that problem. There was need to ensure that the rights of shipping States were not asserted to the disadvantage of the coastal States whose shores they passed and that the rights of coastal States were not over-protected to the point of interfering with free trade.

246. Reference has been made above to a proposal for a general limit of 200 miles on national jurisdiction in ocean space. It was noted that such a limit would place international navigation under the control of coastal States and would interfere with international communications and trade. As far as the sea-bed was concerned, the area covered by the international régime would be considerably reduced; indeed it might even become pointless to establish a régime at all since it would in practice apply only to the ocean depths and other areas of the sea-bed which were virtually inaccessible for exploitation.

247. Even under the 12-mile concept, it was observed, there would be problems. More than 100 straits would be transformed into territorial waters of coastal States; and it would therefore be necessary to make arrangements for free passage and overflight.

248. Extension of the limit to 12 miles, it was said, could mean that, on the one hand, the coastal State was absolutely sovereign over the 12 miles and that, on the other hand, it had no special rights in the area beyond. Such a result would not be satisfactory as an accommodation of interests unless special provision were made for free transit through and over international straits and unless there was provision for the interests of coastal States in fisheries and sea-bed resources beyond a 12 mile territorial sea.

249. Support was expressed for the idea of an international treaty to guarantee freedom of navigation through straits. That formula could be acceptable, provided the special régime of the corridor in question applied only to navigation and overflight and not to fisheries.

250. On the other hand. no justification whatsoever was seen for changing the traditional régime of the territorial sea with regard to innocent passage through territorial waters. That traditional safeguard (as set forth in the 1958 Convention) had become more urgently necessary with growing demonstrations of naval power in certain waters and with technological development. It was necessary to amplify rather than reduce the security measures recognized by international law.

251. The great importance that appeared to be attached to question of freedom of passage through and flight over straits did not seem justified since merchant ships already enjoyed the right of innocent passage; the question would therefore seem to refer to warships and submarines, and it was doubtful whether any real justification could be adduced in that respect. There were of course certain straits which formed the only link between two expanses of high sea. Only in those cases, would it be possible to speak not of the freedom of navigation and overflight but of a special régime that would permit passage while at the same time safeguarding the security of coastal States.

252. Freedom of navigation should be respected, it was said. It should apply to straits situated on main communication routes even when forming part of a State's territorial sea, but not to other straits.

253 As far as navigational use of the seas as a highway of international commerce was concerned, the existing rules of international law seemed adequate. To be meaningful, however, the right to navigational use of the seas should obviously include the right to use the channels of navigation customarily employed by ships in transit. In some parts of the world the exercize of the right to navigational use might conflict with the non-navigational uses of the coastal State. Some of the resulting problems were regulated by the existing rules of international law, as for example in the 1958 Convention, but there still remained the problem of the territorial sea established by the coastal State as a protective belt for purposes of its own security. It would now seem necessary to explore the possibilities of a more adequately formulated group of rules accommodating the interests of navigation and security.

254. The conditions governing freedom of navigation should in some respects be clearly defined, it was said, if only to take into account the size, contents or mode of propulsion of modern vessels which might be a danger to the marine environment. It was necessary, however, that any restrictions of a technical nature which might be imposed on the freedom of navigation should not be used to interrupt or interfere with maritime

or air communications. Complete national sovereignty over the sea should not extend beyond a reasonable limit consistent with freedom of navigation. Similarly, freedom of passage through straits should be guaranteed for the ships of all States in accordance with strictly defined and enforcible international rules.

255. It was also noted that the traditional concept of "innocent passage" needed clarifying and perhaps redefining. The notion of "innocence" should be modernized.

E. Fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States)

256. Points made on the subject of fishing and conservation of living resources, including the question of the preferential rights of coastal States, frequently proceeded from the premise that this question was a significant one in the context of a new conference on the law of the sea. It was maintained that failure to settle the question might jeopardize the settlement of other related issues.

257. It was held that the most frequent reason why many coastal States were not unilaterally extending their national jurisdiction was to protect themselves from the competition of other States in the exploitation of fish stocks.

258 The effective management of fisheries, it was said, could only be undertaken through institutions that had the power to allocate the right commercially to exploit fisheries beyond the limits of national jurisdiction, to set the conditions under which exploitation could take place and to levy a tax or licence fee on commercial fisheries in international waters.

259 A vital issue which the conference would have to tackle, in another view, was the question of protection of living resources of the sea against the effects of intensive scientific fishing and the consequences of marine pollution. Science and technology should be used directly for conservation and developing of living resources of the sea and for their protection from depletion as a result of unrestricted exploitation.

260. A rational system of fisheries conservation and management and exploitation was required in the common interests of all concerned. Without effective multilateral action States would be forced to meet international inaction by national action, for even in developed countries there were fishing communities which depended for their livelihood on the living resources of the sea adjacent to their coasts. Restraint must be exercized by the major distant-water fishing nations in devising a solution to the problem, while coastal States must accept the fact that there was a limit to the distance to which they could extend exclusive fisheries jurisdiction; but groups must begin to work out together a system of high seas living resources and management

and exploitation. Any proposal for the solution of the fisheries problem must be realistic in according the coastal State some degree of control in the conservation of the living resources of the sea lying off its coasts.

261. Many new States, it was said, rightly considered that the coastal fishing resources were part of the natural resources of the coastal nation; and that was indeed the predominant view of the international community at the present time.

262. Another position was that the concept of the coastal States "special interest" in the conservation of living resources of the sea implied some right of the coastal State to take action against over-fishing off its coasts. But when the time came to translate that specific interest into a right of unilateral action in the high seas for that specific purpose, the right had been subjected to such limitations and safeguards as to render it practically nugatory. The rights conferred upon coastal States by the Geneva Convention on Fishing and Conservation of Living Resources were thus quite illusory and no coastal State had invoked the provisions authorizing unilateral action. What had happened instead was that claims to exclusive fishing areas extending to huge distances from the coast had mushroomed.

263 On the other hand, it was noted, unlike mineral resources, marine living resources were being constantly reproduced. Exploitation under appropriate conservation measures did not result in a reduction in the size of stocks of fish, whereas omission to harvest part of those living resources would simply result in their waste. Moreover, marine living resources and the productive capacity of oceans were not equally distributed around the world, due to various natural conditions such as currents and geographical features of the sea bottom. In fact, the large and lucrative fishing grounds of the world were to be found only in the vicinity of a very limited number of coastal States.

264. In recent years, many developing countries had therefore been striving to promote their distant-water fishing, not only as a contribution to the development of their economy, but also in order to solve in part the problem of nutrition; for many of those countries fish was the most accessible source of supply of animal protein. But the extension of fisheries jurisdiction over the vast areas off the coast would not serve the interests of the international community as a whole. If all the rich fishing grounds of the world came to be placed under the exclusive jurisdiction of a limited number of coastal States adjacent to those grounds, the results would be detrimental not only to those nations at present engaged in distant-water fishing but to the developing nations which were trying to promote their own distant-water fishing, taking advantage of their comparatively low labour costs.

265. A similar position was that by extending the territorial sea and the exclusive fishing zone, not all and not only the developing countries would be favoured but only countries with rich offshore fishing grounds, whether developing or developed. The extension of the exclusive fishing zone did not necessarily imply either the conservation of the biological resources of the sea or their rational exploitation. It might even result in smaller catches on important fishing grounds if foreign vessels were prohibited from fishing where the fishing industries of coastal States were not developed enough to make the optimum catch. Moreover, the excessive unilateral schemes made by certain States might provoke international friction and give rise to disputes. It was necessary to secure a balance between the interests of countries interested mainly in coastal fisheries and those which had no rich offshore fishing grounds and consequently had to exploit high seas fisheries.

266. Reference was also made to the idea of establishment of an area adjacent to the high seas, in view of the particular interest to the coastal State of maintaining the productivity of the living resources of the sea, the aim being to guarantee it preferential rights to the exploitation of these resources while empowering it to take the necessary measures to ensure their conservation.

267. It was noted that once the idea of a preferential position, in case of need to limit the allowable catch, was accepted, several distinctions acquired significance: there was the distinction between traditional fishing activities in respect of a particular fishing ground and stock of fish, and the fishing activities of "newcomers"; the distinction between fishing activities near the shore and distant fisheries; the distinction between the application of old techniques and new techniques; and the distinction between new States at an earlier stage of development and those having a fuller developed and diversified economy. The equitable allocation of living resources clearly required an effective international machinery. The possibilities should be explored of supplementing the present substantive rules and of strengthening the existing machinery in order to arrive at international measures of conservation which duly recognized the preferential requirements both of States dependent upon fisheries and of those which, owing to their social and economic structure and the stage of their development, were in need of protective measures for their fishing activities.

268. Another view was that a simple proposition would be to give the coastal State exclusive fisheries jurisdiction in a zone of fixed breadth, or to give it specific preferential rights in such a zone. A more complex solution would be to recognize that neither fish nor fishermen could be separated by artificial lines, and that coastal State rights beyond the limit of the territorial sea should be based on the

economic interests of coastal State fishermen in a stock of fish associated with adjacent coastal waters, rather than on the distance of the stock from shore. The latter approach was regarded as more closely reflecting the biological and economic realities on which any sound accommodation of interests should be based. While a basic rule of law would be established, the effect of its application would vary with different economic conditions in different parts of the world. The fact that different coastal States had different interests in fisheries in itself commended a certain flexibility but did not mean that there could be no universal rules. It merely meant that the rules should require a balancing of interests and not prejudge what the particular results should be with respect to every stock of fish in every part of the world. Such rules could be formulated to make the maximum use of international or regional fisheries organizations.

269. It was also suggested that fishery questions might best be resolved on a regional basis; for example, the coastal States of a particular ocean might have preferential fishing rights and the right to take fishery conservation measures in that ocean, and be encouraged to enter into arrangements among themselves on such matters.

PART IV: SUBJECTS AND FUNCTIONS ALLOCATED TO SUB-COMMITTEE III

A. Preservation of the marine environment (including the prevention of pollution)

270. During the discussions in the First Committee and in the Sea-Bed Committee in March 1971, a number of points were made in connexion with the subject of the preservation of the marine environment. Three main aspects may be distinguished in this regard: problems of marine pollution in general, including pollution from the exploration and exploitation of the resources of the sea-bed beyong national jurisdiction; points made in connexion with problems of co-ordination between the Sea-Bed Committee and other United Nations and specialized agency bodies; and points bearing upon the question of rights of coastal States in relation to pollution in the vicinity of their shores.

271. It was noted that an examination of the subject of sea-bed pollution was necessarily closely related to the work of Sub-Committee I on the international régime and machinery, as well as to the work of Sub-Committee III. The régime should provide that all activities in the international sea-bed area must be conducted with strict and adequate safeguards for the protection of human life and the marine environment. The international machinery would also play an important part in the protection of the environment.

272. It had been proposed, it was recalled, that the international community should take the following steps in the near future: identification of pollutants and other ecological hazards; establishment of an effective world monitoring network to keep track of those dangers; initiation of a global information system to facilitate exchange of experience and knowledge about environment problems; establishment of internationally accepted air and water quality criteria and standards; development of international guidelines for the protection of the environment; implementation of comprehensive international action programmes to prevent further environmental deterioration and to repair the damage already done; development and improvement of training and education programmes to provide the skilled capabilities necessary to protect the environment.

273. The traditional law of the sea, it was said, had proved wholly inadequate in its provisions for the rights and duties of States with regard to the preservation of the marine environment and the prevention of its pollution and degradation. The sea was being dangerously abused, both accidentally and deliberately, in ways which might threaten its capacity to regenerate itself and could even effectively destroy its living resources. It was also noted that small enclosed seas were even more vulnerable to the effects of pollution than were the oceans.

274. It was considered essential that the problem of pollution and its harmful effects on marine ecology be studied as a whole.

275. Present conventions on pollution were ineffective, it was said, because they did not impose sufficient constraint. An international control system - to be completed if necessary by regional surveillance centres, would be the primary condition for a new treaty to be valid in practice.

276. An effective régime for the prevention and control of marine pollution would have to be devised which would lay down internationally agreed restrictions on the maritime transport of pollutants and provide preventative protection for the interests of the international community as a whole and the coastal States in particular. A suggestion was made that the régime, which would have to be endorsed by the forthcoming conference on the law of the sea, should include three basic rules: the first would state the essential duty of States to refrain from polluting the marine environment to the detriment of other States and of the international community, the second would provide for the international responsibility of a State for damage caused to other States or to the international community by pollution of the sea, and the third would be that the international community represented either by the organization to be created for the sea-bed or by the United Nations itself, would be legally entitled to hold responsible a State which caused damage to the property of the international community. Another view was that enforcement of a system of internationally agreed pollution prevention regulations should be largely in the hands of the coastal State, but with the least possible interference to passage. The regulations might, for example, require ships to carry international pollution prevention certificates in order to qualify for innocent passage.

277. Another question raised was that of the uncertainty of the question of liability for damage caused by pollution. Should the offender's State be held directly responsible for damage caused by pollution and should such responsibility be "absolute" or "strict"? The view was expressed that the functional approach, according to which, within the framework of an international set of rules and procedures, the States most concerned in the different uses of any sea area would be empowered to take the necessary measures, might provide more satisfactory results than the system of extending the sovereign rights of the individual State over a sea area adjacent to its coast up to a specific distance.

278. The point was made that questions regarding pollution control and liability for pollution damage were particularly urgent matters for the industrialized countries. The emergent industries of developing countries might be hindered by excessively strict control, whereas developed countries should take more vigorous action.

279. It was said that Sub-Committee III could study in depth the adverse effects of maritime pollution on the economies of countries which to a large extent depended on tourism. A new conference on the law of the sea should review the entire question in depth, with particular reference to flags of convenience.

280. In one view, the principle of security also determined the attitude to the problem of preserving the marine environment and especially that of preventing pollution.

281. Regarding problems of co-ordination between the Sea-Bed Committee and other United Nations and specialized agency bodies, the view was often expressed that the Committee should take into account other current activities, such as the 1972 United Nations Conference on the Human Environment and the IMCO conference planned for 1973, and that steps should be taken to co-ordinate the various international activities on the subject with the work of the Committee. The point was made that the results of the Conference on the Human Environment might include specific recommendations to the law of the sea conference and the IMCO conference. Sub-Committee III might co-ordinate its work on the subject of pollution with the activities of the Intergovernmental Group set up by the Preparatory Committee for the United Nations Conference on the Human Environment. It was also said that the Committee should avoid duplicating the work being undertaken by other United Nations bodies and should concern itself solely with the pollution that might arise from the exploitation of the sea-bed. The Committee should request the continuing help of the specialized agencies to enable it to reach decisions on the questions that came before it. On the other hand, the problem of marine pollution was regarded as a problem of the law of the sea and it was said that a comprehensive approach would have to be adopted to it at the 1973 law of the sea conference: it could not be left to the human environment and IMCO conferences alone. The law of the sea conference would provide the only law-making forum in which the international community could undertake the required development of basic principles of international law to bring them into line with present-day needs and conditions.

282. Regarding the question of rights of coastal States in relation to pollution in the vicinity of their shores, the point was made that the coastal States had the right to prescribe regulations to prevent pollution and other harmful effects from the use,

exploration and exploitation of the ocean space adjacent to their territories. Coastal States, it was said, were most directly affected by the consequences of marine pollution. Multilateral measures, while complementary, were no substitute for measures by coastal States themselves. On the other hand, it was noted that there could also be contamination of the international area resulting from exploitation of the continental shelf by coastal States. It was said that the Committee should study the problems of preserving the marine environment, and especially that of preventing pollution, and draw up a set of draft articles which would enable coastal States to take steps to prevent the various types of pollution of the marine environment and which would also solve the problems of the legal responsibility to which such pollution gave rise. Another point made was that the coastal State should be held internationally responsible for any activities undertaken in the area within its jurisdiction that might cause pollution or hazards in the marine environment outside its jurisdiction. It was also said that a coastal State should have the right to be consulted on an activity which might cause damage in its area, and in certain circumstances it should be entitled to take preventive measures, as was recognized in General Assembly resolution 2749 (XXV), paragraphs 12 and 13 (b). However, the view was also expressed that protection of the environment of the coastal State might have serious implications for the activities of all classes of vessels of all nations, in the territorial sea, in exclusive fishing zones, through international straits and on the high seas proper. For that reason, the question was important not only in environmental, but also in legal, political and economic terms.

283. At the March session of the Committee, the Chairman of Sub-Committee III raised the following questions: since General Assembly resolution 2750 C (XXV) only called for the preparation of a conference on the law of the sea, it seemed quite clear that the Sub-Committee would not have to prepare texts on the technical aspects of pollution or on technical and scientific aspects of research. It had only to prepare draft treaty articles on public international law. The extent of the Sub-Committee's competence was not as clearly defined, however. Should the texts on pollution deal exclusively with the high seas or also with the territorial sea? It might, for example, be desirable to qualify the right of peaceful passage through the territorial sea with reference to the risk of pollution. Moreover, it was not unlikely that it would be realized that oil slicks disregarded limits of national jurisdiction, and that it would be decided to treat the problem as a whole, without regard to the limits of jurisdiction.

284. Another question to be decided was whether the study should be confined to pollution arising from exploitation of the area. It would not seem so, since General Assembly resolution 2750 C (XXV) authorized the revision of the law of the sea.

B. Scientific research

285. Several aspects of scientific research were mentioned in the discussions in the First Committee and in the Sea-Bed Committee in March 1971, among them the principle of freedom of such research, the training of nationals of developing countries to ensure participation of those countries in scientific research and the dissemination of data collected on the marine environment.

286. The régime, it was said, must provide for freedom of scientific research for peaceful purposes whether by States or by academic institutions. The obligation to promote international co-operation in scientific research, laid down in paragraph 10 of the Declaration, was interpreted as being an undertaking on the part of States not to interfere with scientific research conducted with a view to open publication for the benefit of all mankind. Indeed, the freedom of scientific research on the high seas was one of the accepted and recognized tenets of international law.

287. The point was made that any exploration or exploitation of the seas depended on a precise and extensive knowledge of the sea, hence the importance of scientific research and of favourable conditions for such research. The first condition was the recognition of the principle of freedom, but just as important was the improvement of training facilities for research workers and for making the results of research available to all. Another view was that there should be total freedom of research in the international area of ocean space, subject to reasonable notice, to the possibility of officials of international institutions participating in such research, to publication of the results and to reasonable care to avoid unnecessary disturbance of the marine environment. Total freedom also would be favoured within the area of ocean space subject to national jurisdiction under the same conditions, mutatis mutandis. It was said that scientific research must enjoy maximum freedom and the provisions of the 1958 Geneva Conventions, particularly paragraph 8 of article 5 of the Convention on the Continental Shelf, were not clear enough. Distinctions made between research for peaceful purposes and research for military purposes and between pure research and research for the exploration of resources were not particularly useful. The only effect of such distinctions was to give

coastal States, and perhaps also the international institutions, additional pretexts to hinder, by burdensome regulations, activities that could only be useful.

288. However, it was also stressed that international co-operation should take into account the rights and interests of the coastal States. The question of scientific research, which was closely linked with the régime of the sea and, in particular, with that of the continental shelf, was said to be an extremely delicate one in view of its implications for the sovereignty and security of the coastal States. The freedom of scientific research was not unlimited and the international community should be able at any time to verify the strictly scientific nature of the work being carried out. States undertaking research might, for example, be required to make a prior declaration of the programmes in question, to publish the results obtained without delay and to facilitate access to them by all States through the intermediary of an international distribution organ.

289. It was not always possible, it was said, to distinguish between pure research and research for economic or military purposes. In the last analysis, every particle of scientific knowledge could be translated into terms of economic gain or national security and, in a technological society, scientific knowledge meant power. Consequently, it was imperative that coastal States should exercise some form of control over scientific research off their coasts, even when carried out under the auspices of purely scientific institutions.

290. On the other hand, it was considered that since the 1958 Conventions on the Continental Shelf and on Fishing and Conservation of the Living Resources of the High Sea already contained provisions relating to oceanographic and scientific research, the need for new provisions should be clearly demonstrated and, if necessary, the provisions of those Conventions could be supplemented in the light of progress made since 1958. States which carried out research did not appear to be carrying out the recommendations of those Conventions with regard to the dissemination of the results of their explorations. Before any action was taken which might yield no results, it was to be hoped that the States which had acquired the desired information should indicate to what extent they were prepared to collaborate in that field, to agree to the access of others to their operations and to publish the results of their research. It would also be desirable if the Committee could be informed of the current technical status of the research.

291. The best way to ensure the dissemination of scientific information was actual participation in scientific projects and continued support for existing scientific mechanisms for the exchange of data, such as the World Weather Watch. New opportunities for international co-operation were opened up by the new means of data collection, such as earth resource survey satellites.

292. The point was often made that it was necessary to train nationals of developing countries in all aspects of marine science and technology and sea-bed operations in order to ensure the participation of those countries in all branches of research. The view was expressed that clear priority should be given to that question. Another view was that the research capabilities of developing countries would have to be strengthened, particularly through the participation of their nationals in research programmes of developed countries or of international organizations. Support was also expressed for the establishment on a regional basis of oceanographic institutions of training in the developing countries.