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

LEGAL SUB-COMMITTEE

SUMMARY RECORDS OF THE THIRTIETH TO THIRTY-FIFTH MEETINGS

Held at Headquarters, New York,
from 9 to 24 March 1970

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

The list of representatives is to be found in documents A/AC.138/INF.2 and Corr.1 and 2, and Add.1-5.

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SUMMARY RECORD OF THE THIRTIETH MEETING

Held on Monday, 9 March 1970, at 3 p.m.

Chairman: Mr. GALINDO POHL El Salvador

OPENING OF THE SESSION

The CHAIRMAN recalled that the Sub-Committee's task was clearly laid down in resolution 2574 B (XXIV), in which the General Assembly had requested the Committee to "expedite its work of preparing a comprehensive and balanced statement" of principles - an explicit document which would have to meet the needs of the international community. The Sub-Committee, in carrying out that task, could take as a basis its previous work which was summed up in document A/7622. It was now necessary to go into details and draw up specific proposals. It would be useful to set up an informal consultative and drafting group in order to study point by point the conclusions previously reached and formulations proposed; such a group would help the Committee in its very complex work, and would also make it possible to use the limited time available more rationally.

The Chairman declared the session open.

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

Mr. ZEGERS (Chile) said that he approved the proposed programme of work, which should make it possible to achieve some progress in the elaboration of legal principles. The Committee's report to the General Assembly, particularly the synthesis of previous discussions, should be used as a basis for the Sub-Committee's work. The various parts of General Assembly resolution 2574 (XXIV), the discussions in the Assembly at its previous session and the proposals made therein, and also the main Committee's discussions and proposals should likewise be taken into account. His delegation was ready to take part in the work of an informal working group.

The provisional agenda was adopted.

PROGRAMME OF WORK

Mr. CABRAL DE MELLO (Brazil) said that as his delegation had already observed, considerable agreement existed on a number of questions: for example, the reservation of the sea-bed exclusively for peaceful purposes, reasonable regard for the interests of other States, pollution and other hazards, and the obligations and liability of States. A final agreement depended on the solution

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to be found for four basic problems: the legal status of the area, the applicability of international law, the use of the resources of the area for the benefit of mankind as a whole and freedom of scientific research. That being so, his delegation felt that the most productive way to proceed might well be to concentrate, during the next two weeks on those four points; the other matters could be considered later during the August session. Efforts should be made, during the debates, to enlarge the area of agreement already established - the so-called "common denominators" - in order to avoid the need for inter-sessional consultations. The interesting proposals made by the Belgian and United Kingdom delegations could be discussed either in March or in August, provided that the main purpose of such a discussion was kept clearly in mind. The proposals referred only to the exploitation of sea-bed resources, and should not be regarded either as a parallel declaration of principles to be adopted by the General Assembly or as a substitute for the Sub-Committee's efforts to produce a comprehensive and balanced statement of principles, whose scope would necessarily be much broader than that of the United Kingdom proposal. That proposal could be regarded as a new "common denominator", which might be very useful provided that the Sub-Committee did not lose sight of the ultimate goal - an international régime. It had been said in the Committee that delegations should make up their minds whether the declaration of principles was to serve only as a guide for the elaboration of an international régime or was to be the legal basis for the exploration and exploitation of sea-bed resources until the régime was concluded. In his delegation's opinion, that question was now no longer relevant. Since the adoption of General Assembly resolution 2574 B (XXIV), a declaration of principles could serve only as a guide for the elaboration of the régime, since no exploitation activity could be carried out before the régime had been concluded.

Mr. EVENSEN (Norway) said that the Sea-Bed Committee, after two and a half years of work, should now try to achieve specific results. The Legal Sub-Committee's task, as defined in paragraph 83 of Part Two of document A/7622, was to steer its discussions "away from a generalized approach towards the task of devising specific formulas for a number of defined ideas". The General Assembly, in resolution 2574 B (XXIV), had noted "with interest the synthesis at the end of

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the report of the Legal Sub-Committee which reflected the extent of the work done in the formulation of principles". In the next paragraph of the resolution, the General Assembly requested the Committee "to expedite its work of preparing a comprehensive and balanced statement" of the principles and to "submit a draft declaration to the General Assembly at its twenty-fifth session". The Sub-Committee must therefore proceed at once with its work of formulating basic principles. In that connexion, two points should be noted. First, the General Assembly had requested the formulation of principles "designed to promote international co-operation in the exploration and use of the sea-bed and ocean floor". The General Assembly made no distinction between legal and political principles; any such distinction would be artificial and would only add complications to the work in hand. Secondly, the "common denominators" mentioned in paragraphs 85-97 in Part Two of document A/7622 might well be taken as a point of departure.

During the general debate in the main Committee a number of delegations had already stated their views in regard to the applicable principles. A number of interesting proposals had been submitted by the Ceylonese, Kuwaiti, Soviet and other representatives. The Sub-Committee should adopt practical working methods and in that connexion his delegation supported the proposal to create an informal working group.

His delegation wished to mention various concepts which might be useful in drafting a declaration of principles.

Existence of an area of the sea-bed and the ocean floor beyond national jurisdiction

The first element to be emphasized in a draft declaration should be that "There is an area of the sea-bed and ocean floor and the subsoil thereof, which lies beyond the limits of national jurisdiction". That starting point was derived from the principles of international law and was also implicitly accepted in General Assembly resolutions 2340 (XXII), 2467 A (XXIII) and 2574 B (XXIV). Some representatives had maintained that it was a question of fact, not of law; but it seemed obvious that if such an area existed beyond national jurisdiction, it was, inter alia, because international law provided for it. If the proposal to include

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that principle in the draft declaration met with opposition, it might possibly be placed in the preamble, in the following form:

"The General Assembly,

"Affirming that there is an area of the sea-bed and the ocean floor and the subsoil thereof which lies beyond the limits of national jurisdiction;".

The concept of the common heritage of mankind

That was a general formulation which did not lend itself easily to strict legal interpretation. It was however valuable inasmuch as it conveyed the idea that the area and the riches contained therein had been passed on to the international community as a heritage of mankind and for the benefit of mankind as a whole, and that the international community should administer those resources for the good of all and with a view to protecting the interests of future generations. To meet possible objections, that concept could as a compromise be placed in the preamble of the draft declaration in the following form:

"The General Assembly,

"Considering this area to be part of the common heritage of mankind;".

The concept that the area is not subject to appropriation and that no State may claim sovereign rights over it

Since a consensus had been reached on that point, the following legal principle could be adopted:

"The sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction shall not be subject to appropriation by any means by States or persons, natural or juridical. No State shall exercise or claim sovereign rights over any part of these areas."

Reservation exclusively for peaceful purposes

A declaration of principles should likewise contain a reference to reservation of the area for peaceful purposes, and a text might be adopted to the effect that:

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

In any event, his delegation agreed with the Belgian delegation that it would not be appropriate for the Sub-Committee, at the present stage of its work, to discuss in detail the military aspects of the use of the sea-bed and the ocean floor - particularly since in resolution 2602 (XXIV) the General Assembly had called upon the Committee on Disarmament to continue its work on that subject. On the other hand, it seemed obvious that a general principle along the lines he had proposed should be one of the main principles.

The applicability of international law

During previous discussions many delegations had expressed the view that the draft declaration of principles should contain a reference to the applicability of the principles of international law. It had however proved difficult to find a common denominator to express that view. His delegation felt that there were various principles of international law, including those contained in the United Nations Charter, which were applicable to the sea-bed and the ocean floor and the subsoil thereof. Nevertheless, it must be admitted that those principles were not sufficiently detailed or specific to solve the complex problems of the use of the sea-bed and the ocean floor and the subsoil thereof. His delegation was therefore proposing a text which might satisfy both those who considered that the existing principles of international law answered all the problems and those who held a different opinion. That text would read:

"All activities with respect to the sea-bed and the ocean floor and its subsoil shall be carried out in accordance with international law - including the Charter of the United Nations - as well as the legal principles to be internationally agreed upon for the exploration, use and exploitation of these areas".

Use of the resources for the benefit of mankind as a whole

Since the basic concept raised many complicated problems, particularly with regard to the international régime and the machinery to be established, some difficulties were involved in defining a common denominator. Nevertheless, the

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following general wording could, as a compromise, be included in the draft declaration:

"All activities on the sea-bed and the ocean floor and the subsoil thereof relating to their exploration, exploitation, use and conservation shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, and taking into account the special interests and needs of developing countries".

That principle could be supplemented by a reference to the international régime to be established, formulated as follows:

"An international régime to be agreed upon shall be established for the exploration, exploitation, use and conservation of these areas".

Freedom of scientific research

Since general agreement existed with regard to that concept and to the concept of international co-operation in the conduct of scientific research, the following text might be adopted:

"The sea-bed, the ocean floor and the sub-soil thereof shall be open to scientific research for peaceful purposes by or on behalf of all States without discrimination. In order to promote international co-operation in this field, States shall, inter alia, undertake to make the results of their research available and, to the extent practicable, promote and participate in common research programmes".

Freedom of the high seas and reasonable regard for the interests of other States

The first of those two principles might be formulated as follows:

"In the exploration, exploitation, use and conservation of the sea-bed, the ocean floor and the subsoil thereof, States and their nationals shall not infringe upon the freedom of the high seas, in particular with reference to navigation, fisheries, the laying and maintenance of cables and pipelines, the conservation of the living resources of the seas, and the freedom of scientific research".

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The second principle might read:

"In the exploration, exploitation, use and conservation of the sea-bed, the ocean floor and the subsoil thereof, States and their nationals shall have reasonable regard for the interests of other States and their nationals".

Anti-pollution concept etc.

Basing itself on previous proposals submitted by the delegations of the Soviet Union and Ceylon and also on the existing measure of agreement on the subject, his delegation suggested that the following wording might be used:

"In carrying out any activities on the sea-bed, the ocean floor or in the subsoil thereof, a State shall adopt and ensure the application of appropriate international and national measures and procedures in order: (a) to prevent pollution and other harmful effects or hazards to the areas concerned and to the marine environment; (b) to protect the safety of life and property; (c) to protect and further the conservation of the natural riches of these areas inter alia by preventing wasteful extractive practices of such riches; and (d) to protect and preserve the living resources of the superjacent waters."

The concept of international responsibility

The Sub-Committee had not discussed in detail the applicable rules of international responsibility, and it was probably inappropriate for it to do so. However, basing itself inter alia on proposals submitted by the delegations of the Soviet Union and Ceylon, his delegation thought that the following formulation might be acceptable:

"A State shall bear international responsibility for any activity carried out on the sea-bed, the ocean floor or in the subsoil thereof irrespective of whether these activities are carried out by governmental agencies or non-governmental entities or persons acting under its jurisdiction or on its behalf."

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In his statement on 4 March, the representative of Iceland had touched briefly upon the question of the limit between the area of the sea-bed and ocean floor which came within the national jurisdiction of coastal States and the area which constituted the common heritage of mankind, and had suggested that the limit might be placed either at 200 miles or at the 500-metre depth mark. The Norwegian delegation had itself suggested those figures as a possible solution. However, it held that the discussion of such a complicated question was not part of the Sub-Committee's current mandate, particularly because in resolution 2574 (XXIV) the General Assembly had envisaged somewhat different action for the solution of the problem. In any event, it seemed realistic to admit that an approach whereby coastal States obtained jurisdiction over a somewhat extended area of the adjacent sea-bed - whether or not that area formed a typical continental shelf - might enhance the Sub-Committee's chances of arriving at an agreement on the question of the internationalization of the sea-bed and the ocean floor.

Concerning the proposals submitted by the United States and those presented by the United Kingdom and Belgium, while the Sub-Committee must of course keep the former in mind, it would recall that the United States representative had expressly stated that they did not constitute a formal declaration that would displace the declaration of principles requested by the General Assembly. The main task of the Sub-Committee therefore remained to prepare a draft declaration on basic principles and not to enumerate various objectives in a statement or recommendation. His delegation was afraid that a certain amount of confusion might be caused by the Belgian proposal that the Sub-Committee should concentrate its efforts on the proposals submitted by the United Kingdom delegation on 4 November 1969. To concentrate on proposals concerning the details of the international régime before drawing up the basic principles was to start the work in the wrong order. His delegation therefore fully endorsed the views expressed on the subject by the Romanian delegation at the twenty-first plenary meeting on 5 March. In any event, according to the General Assembly's request, the Sub-Committee should concentrate on the preparation of a draft declaration of basic principles.

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The CHAIRMAN suggested that in view of the importance of their proposals, the delegations of Brazil and Norway might wish to circulate the texts of their statements to the members of the Sub-Committee.

Mr. HARGROVE (United States of America) agreed with others that the synthesis in the Committee's report (A/7622 and Add.1) should serve as a basis for the further work in the formulation of legal principles and that emphasis should be placed on those points in the synthesis that had caused most difficulties. However, it would be unwise to try to make any preliminary division between which were agreed and which were not. The problems requiring solution were clearly understood by delegations, and there was no point in delaying the work by trying to reach a formal decision.

The United States delegation agreed with the suggestion made by the Chairman and a number of delegations that it would be useful to proceed to set up informal consultation machinery to expedite agreement.

As to the nature of the legal principles, most of the proposals so far submitted had contained propositions of two types. Either they were propositions to govern the conduct of States, under international law, or they concerned the régime to be established by treaty. His delegation took the view that both types of propositions remained legitimate for inclusion in a declaration of principles. Propositions of other kinds could of course also be used to advantage by the Committee - such as those submitted by the United States delegation, which were of a practical nature and intended to indicate the proper objectives of a legal régime for the sea-bed and the ocean floor. In that connexion, the Norwegian delegation had fully understood the purposes of the United States delegation in submitting the twelve proposals concerned.

The CHAIRMAN, summarizing the various statements that had been made, noted that the Sub-Committee agreed that machinery should be set up to conduct informal consultations and to review the drafting of principles. It was further accepted that the synthesis in the Committee's report (A/7622 and Add.1) would serve as the basis for the work, although existing and any future proposals would also be taken into account. The emphasis of the work would lie on the four of five points which gave rise to most difficulties.

He suggested that the Sub-Committee should commence its work at the next meeting by taking up the question of legal status.

It was so decided.

The meeting rose at 5.15 p.m.

SUMMARY RECORD OF THE THIRTY-FIRST MEETING

Held on Tuesday, 10 March 1970, at 3.35 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF PRINCIPLES AND RECOMMENDATIONS THEREON PURSUANT TO PARAGRAPH 2 (a) OF GENERAL ASSEMBLY RESOLUTION 2467 A (XXIII) AND PARAGRAPHS 3 AND 4 OF GENERAL ASSEMBLY RESOLUTION 2574 B (XXIV):

LEGAL STATUS

Mr. BRAZIL (Australia) considered that the way in which the Sub-Committee's working arrangements for the present session had been settled on the previous day was most conducive to reaching agreement on principles governing activities on the sea-bed. The aim of the principles had been clearly delineated by General Assembly resolutions 2467 A (XXIII) and 2574 B (XXIV). His delegation shared the hopes of other States, particularly the developing countries, that the establishment of international arrangements for the sea-bed beyond the limits of national jurisdiction would be of value not only in itself but would also serve as a model of international co-operation based on considerations of equity and the common good. The arrangements should therefore facilitate the orderly and peaceful development and exploitation of the resources of the sea-bed, and also their conservation.

Without going into matters of detail, his delegation wished to refer to five points in connexion with the item at present before the Sub-Committee. First, there was obviously a close relationship between the various aspects - the international régime, the international machinery and the declaration of principles - of the great undertaking on which the Committee on the Peaceful Uses of the Sea-Bed had embarked. The Sub-Committee had before it proposals for a list of practical objectives with which the declaration of principles would have to be consistent, and which any international régime would have to serve. This would help the Sub-Committee to concern itself with practical results. It should not, under one aspect of the exercises, prejudge matters which might arise in connexion with other aspects still under review. Secondly, it should not attempt to formulate too detailed a set of principles covering every contingency, since a detailed statement of principles would inevitably prejudge issues which required further study. The United Kingdom delegation, in its speech in the main Committee on 4 March 1970, had clearly defined the two possible functions of a declaration of principles. His own delegation considered that the proper function of a declaration of principles was the second of the two alternatives mentioned, namely to act as a stepping stone towards agreement on the future régime. However, pending agreement on a detailed and explicit international régime,

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the principles could also to some extent serve as guidelines for the regulation of activities by States and their nationals on the sea-bed.

The third point related to the inclusion in the declaration of a reference to the existence of an area beyond the limits of national jurisdiction. It seemed that a general agreement had been reached on that point. Presumably, national jurisdiction in that context meant the exclusive authority of the coastal State. Fourthly, the essential point in respect of the legal status of the area was to acknowledge that the area of the sea-bed and ocean floor beyond the limits of national jurisdiction was not subject to national appropriation and therefore that no State could claim sovereignty over any part of it. The fifth point concerned the concept of the "common heritage of mankind", to which a number of delegations had attached the highest importance. That phrase was capable of being understood in different senses depending on whether it was used in a moral, political or legal context. The present context was in fact a legal one. His delegation had misgivings about the phrase which at first sight seemed to be lacking in precise legal content but might, on the other hand, have far-reaching legal implications. Consequently, his delegation would prefer to consider the matter from the standpoint of the particular propositions which stated the precise implications of the phrase, so that the question could be considered on the basis of specific facts.

The question was obviously one of great importance and difficulty. His delegation suggested that the Sub-Committee should wait until the final stage of the forthcoming consultations in the working group before considering how to express the general concern that the resources of the sea-bed beyond the limits of national jurisdiction should be used in the interests of the international community.

Mr. ODA (Japan) recalled that his delegation had urged that during the current session priority should be given to the elaboration of principles designed to promote international co-operation in the exploration and use of the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction; it should be possible, on the basis of the synthesis of legal principles prepared by the Legal Sub-Committee at the last session, to formulate an agreed declaration of principles to be submitted to the General Assembly at its twenty-fifth session.

It would be necessary to stress in the declaration that there was an area of the sea-bed and ocean floor and the sub-soil thereof beyond the limits of /...

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national jurisdiction. It appeared from General Assembly resolutions 2340 (XXII) and 2467 (XXIII) that there was no doubt about that concept, which should therefore be spelt out in the declaration. With regard to the question of determining the boundary of the area, his delegation did not intend to go into the question of the competence of the Committee in that regard - which certain representatives had contested - but it felt that the need for establishing a boundary should be universally recognized and should therefore be explicitly mentioned in the declaration.

With regard to the Sub-Committee's consideration of the legal status of the area, his delegation thought, first, that there was no point in trying to define the area by referring to existing legal terms such as res nullius or res communis. It would be sufficient to declare that no State could claim sovereignty over the area or acquire rights over any portion of it. That was a fundamental principle, and the concept set forth in paragraph 86 of the report of the Legal Sub-Committee on its last session (A/7622, Part Two) seemed to constitute a common denominator on the legal status of the area. Secondly, his delegation had on several occasions expressed its support of a universally agreed régime to govern the exploration and exploitation of the sea-bed. It would therefore accept the wording proposed in paragraph 87 of the report to the effect that "except as may be provided in a régime, no State shall claim or exercise or grant exclusive rights over any part of this area". Thirdly, however, pending the establishment of such an international régime - which should be agreed upon as soon as possible - there should be no slowdown in - or ban on - the exploration and exploitation of the resources of the sea-bed. Fourthly, his delegation agreed that no individual exploiting the sea-bed could acquire property rights over the area he exploited; individuals would merely be granted a licence to explore and exploit certain parts of the area. However, there was no need for a reference to the concept of property in the declaration of principles, because it might cause unnecessary confusion in the field of international law. The concept of non-appropriation of the area would suffice to eliminate any apprehension in that respect. Lastly, the concept of the "common heritage of mankind", however valid it might be, was extremely vague from the legal point of view. His delegation would prefer not to use such an equivocal expression in the declaration of legal principles, where it

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would not produce any constructive effect. The formulation "for the benefit of all mankind" had already been agreed upon in General Assembly resolutions 2540 (XXII) and 2467 (XXIII), and it did not therefore seem necessary to add the concept of the "common heritage of mankind", particularly since the Sub-Committee would probably reach agreement on more substantive legal principles. However, his delegation was not opposed to including a reference to the concept in the preamble of the declaration, as suggested by the representative of Norway.

Mr. PINTO (Ceylon) thanked the Norwegian representative for his statement which had made it possible to clarify certain perspectives and remedy certain vocabulary difficulties. Discussion had often centred on "general principles", "legal principles", and "general legal principles"; and "guide lines", "régimes" and "interim régimes", as well as "objectives" and "aims and purposes", had also been mentioned. As the Norwegian representative had pointed out, the main task of the Legal Sub-Committee was to prepare a draft declaration of basic principles, not to enumerate various objectives in a statement or recommendation. His delegation agreed with that view and recalled that the task assigned to the Sub-Committee by the General Assembly was the elaboration of a complete and balanced statement of principles.

In his delegation's view, the sea-bed and ocean floor and the subsoil thereof beyond the limits of present national jurisdiction, including the resources of the area (which might be referred to collectively as the "international zone"), were the common heritage of mankind. Secondly - and as a logical consequence of the first principle - no State or person, natural or juridical, could claim or exercise any right, title or interest in the international zone or any part thereof by use or occupation or by any other means except as might be permitted pursuant to the régime to be established for the zone. The term "common heritage of mankind" was of course a new concept of uncertain legal content. However, his delegation felt that it did accurately reflect the aspirations of the great majority of peoples to remove economic disparities, and that it was in harmony with the modern trend towards collective efforts to resolve world problems arising from those economic disparities. The "common heritage" concept should not be judged in a strictly legalistic manner. In effect, it embodied the grand design for a new

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international co-operative effort which, in the words of the Charter, was to "promote social progress and better standards of life in larger freedom". A number of delegations had expressed the fear that some of the heirs - no doubt those who were at present the most powerful - might proceed to divide up the inheritance and claim the lion's share for themselves. His delegation shared those misgivings, and precisely for that reason it supported the principle of "non-appropriation" as formulated above.

It seemed that the question of the status of the area was inextricably bound up with two other aspects of the problem - namely, the management of the international zone, and its limits. His delegation held the view that the status of the international zone approximated to that of property administered for the benefit of the international community. That concept implied of course the appointment of a trustee. The basic legal philosophy of a "trust" - in other words, property held and administered by one person for the benefit of others - was also found in many other legal systems. Mention might be made in that connexion of the fideicommissum of Roman law, from which the legal systems of many countries were derived. It would even be possible to establish that the "trust" concept was a general principle of law common to all nations. But it was clear that the status of the international zone of the sea-bed required the creation of a strong and just managerial mechanism, and the appointment of a trustee who would see to it that the status was maintained and the property defended, and who would ensure an equitable distribution of the benefits which could be derived from it. In his delegation's view, the only possible trustee would be an international institution to which the task would be entrusted. In that connexion, he recalled that the United Nations Charter itself provided for the possibility of "employing international machinery for the promotion of the economic and social advancement of all peoples". Finally, the status of the international zone of the sea-bed, as well as the question of its management, were related to the actual physical limits of the area. The international zone of the sea-bed should therefore be delimited with precision by an international conference to be held as early as possible. If that enterprise were unsuccessful, the common heritage of mankind might be reduced to a "damnosa hereditas".

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Mr. DEBERGH (Belgium) recalled that his delegation was among those which had always had certain doubts regarding the need for a basic concept to describe the legal status of the sea-bed beyond the limits of national jurisdiction. It still thought that it might be possible to decide, independently of any preconceived ideas on the legal nature of the sea-bed, how a newly emerging interest could best be served in view of current trends in international law, international relations and technology. That argument was based, first, on certain preambular and operative paragraphs of the relevant General Assembly resolutions, which could be summarized as follows: it was in the interests of mankind as a whole to prevent an uncontrolled and conflict-provoking rush for the resources of the sea-bed which would soon be exploitable. The only question was - how could that objective be achieved, or what legal techniques were required? A pragmatic and finalistic approach seemed preferable to a rather academic discussion, which was no longer relevant in modern times. Moreover, there was a striking parallelism between the régime of outer space and the future régime of terrestrial hydrospace. No one had ever asked questions about the legal status of outer space and the celestrial bodies, but legal principles had nevertheless been drawn up and agreement had been reached on binding conventions governing their exploration and utilization.

The problem of the delimitation of the area was more urgent. Though discussion on that subject had been temporarily deferred, and though it might just be possible to start by drafting a declaration of legal principles, the problem could no longer be shelved when the time came to incorporate the principles in a single legally binding convention on the use, exploration and exploitation of the resources of the ocean depths.

As his delegation had stated earlier, it did not believe that the legal principles for which formulations had already been submitted could be derived automatically or logically - as some speakers seemed to think - from the "common heritage" concept. They could, however, unquestionably and in every case, be deduced from the general idea of the objectives which the international community was trying to achieve in the exploitation of the sea-bed. Moreover, it did not seem that the conclusions drawn from the "common heritage" concept were necessarily true and verifiable. The principle of non-appropriation, for example,

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was not a reliable and irrefutable deduction. Some persons argued - with equal justification it appeared - that efforts might possibly be made to divide the "common heritage". Further, the "common heritage" concept did not automatically involve an obligation to grant preferential treatment to developing countries. The willingness to grant them such treatment was due to considerations of justice which were inherent in contemporary international society. Similarly, the "common heritage" concept did not imply any need for an international machinery to regulate and administer the resources of the sea-bed. His delegation favoured the creation of such machinery, but simply because it thought that a well-ordered, economical and effective régime was the only way of enabling peoples to use the oceans in their common interest.

It was therefore preferable to avoid concepts which were ambiguous and contradictory in law. Though his delegation doubted the legal value of the "common heritage" concept, it had always recognized that the supporters of the concept had been motivated by high ideals and a commendable political faith. It had therefore been the first to propose that the "common heritage" concept should be considered, not in terms borrowed from the legal category of property, but as a moral value, a political ideal and as a keystone of the statement of principles: and it had consequently proposed that the following formula: "Asserting that this area shall be considered as part of the common heritage of mankind" should be included in the preamble to the declaration of principles. His delegation was glad that that idea had been taken up by the Norwegian representative. If the Belgian proposal was not supported by all delegations and if other delegations insisted on trying to define in legal terms the political ideal underlying the "common heritage" concept, it would still be possible to show some imagination and use general formulas which would clearly define the common aim that was being pursued. One possible approach would be to extend the concept of common property, as had been done on several occasions in the past. In that regard, the Sub-Committee could take as a basis General Assembly resolution 2340 (XXII) - which was the very foundation of the Committee's work and contained some fundamental ideas which could usefully be considered and reformulated.

To sum up, his delegation felt that the problem of the legal status did not arise at the practical level, that the notion of "common heritage" was not

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altogether free of ambiguities and contradictions from the legal standpoint, that it did have some ethical and political value and, as such, could be included in the preamble of the future declaration of principles, and that - if some imagination were used - it would be possible to find other formulas which would avoid ambiguity.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE THIRTY-SECOND MEETING

Held on Wednesday, 11 March 1970, at 3.30 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF PRINCIPLES AND RECOMMENDATIONS THEREON PURSUANT TO PARAGRAPH 2 (a) OF GENERAL ASSEMBLY RESOLUTION 2467 A (XXIII) AND PARAGRAPHS 3 AND 4 OF GENERAL ASSEMBLY RESOLUTION 2574 B (XXIV) (continued):

LEGAL STATUS

Mr. VARGAS (Chile) observed that the legal status of the sea-bed and the ocean floor beyond the limits of national jurisdiction had not yet been defined either by general international law or by international law deriving from conventions, and that it was now for the Sub-Committee to make good that omission. In doing so, it would necessarily have to take into account the rules and principles at present in force, but existing rules were obviously inadequate for achieving the desired aims. The area in question must - by its very nature - be treated differently from other international geographical areas or spaces, and the problem to be solved was not purely a problem of legal technique. It was clear that mechanical application of the existing law of the sea, which permitted free exploitation of the resources of the sea-bed, was liable to create injustices, in that it would prevent the technically and economically less developed countries from benefiting from the resources of the sea-bed. Instead of defining the lex lata, therefore, the Sub-Committee should try to formulate the lex ferenda.

The main problem was to determine which countries were to benefit from the vast resources of the sea-bed and the ocean floor, and also how they would do so. There were only two possible solutions: either the resources of the area beyond the limits of national jurisdiction would be used for the benefit of mankind as a whole, and in particular the developing countries, which would in that case be able to participate in the administration and exploitation of them along with other States, or else the resources of that area would be subject to the legal régime of the high seas, which would mean that they would be used for the benefit only of those States which were in the best position to exploit them. His delegation unreservedly favoured the first solution, and recalled that it had already advocated a régime based on the idea that the sea-bed and the ocean floor beyond the limits of national jurisdiction were the common heritage of mankind. That principle - with its corollary that the proceeds of the exploitation of the resources of the sea-bed should be used for the benefit of mankind as a whole - had in fact already been affirmed in General Assembly resolutions 2340 (XXII), 2467 (XXIII) and 2574 (XXIV). Consequently, outstanding differences of opinion, which were essentially of a legal nature, were due almost exclusively

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(Mr. Vargas, Chile)

to the difficulty of defining the concept of the common heritage of mankind - a difficulty which seemed far from insuperable.

From the legal standpoint, the concept of the common heritage had two distinct meanings: it contained a negative element - namely, that the sea-bed and the ocean floor and the subsoil thereof could not be the property of any particular State and that no State could claim any form of sovereignty or right over them - and also a positive element, in that the concept of the common heritage implied that all States, whether coastal or land-locked, should share in the proceeds from the exploitation of the resources of the sea-bed. It necessarily followed that an international body would have to be set up to administer those resources on behalf of all mankind. Since, however, the new legal concept of the common heritage could not be defined by reference to the Roman law concepts of res nullius or res communis, his delegation felt that in the case of the sea-bed and the ocean floor beyond the limits of national jurisdiction, there was a res communis, communitatis usus: in other words, the property rights belonged to mankind as a whole and the user's rights belonged to the organized international community.

His delegation was of the opinion that the Sub-Committee was not competent to deal with the question of the limits of the application of the legal régime. Its position on that point was based on the provisions of General Assembly resolution 2574 A (XXIV), in which the Secretary-General was requested to ascertain the views of Member States on the desirability of convening at an early date a conference on the law of the sea, particularly in order to arrive at a clear-cut, precise and internationally accepted definition of the area in question. As it had said before, his delegation was not opposed to a definition of the sea-bed and the ocean floor beyond the limits of national jurisdiction, provided that the criterion used for the purpose was not too rigid and that the economic and, above all, the geographical characteristics of the coastal States were taken into account. In that connexion his delegation had been very pleased to hear the Norwegian delegation say, in particular, that national jurisdiction over the sea-bed could not be based solely on geomorphological considerations. It also endorsed the idea expressed by the Norwegian and Icelandic delegations that the limit of the international zone should not be fixed at a distance of

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(Mr. Vargas, Chile)

less than 200 miles from the coast or at a depth of less than 500 metres. His delegation reserved the right to speak again, if necessary, on questions of substance or procedure.

Mr. DARWIN (United Kingdom) said that, in view of the Chairman's suggestion that delegations should meet informally with a view to reaching agreement, his delegation would refrain at the present meeting from expressing its views on the proposals which had already been made. However, since the working paper submitted by the United Kingdom had prompted strong reactions from several delegations, his delegation felt that it called for some explanation.

As was apparent from the working paper itself, it had been submitted in order to facilitate the Sub-Committee's consideration of the question of the international régime to be set up. Several sections of the paper therefore related to the provisions of the relatively complex code which would be necessary for the establishment of the régime, and which would have to be drafted in much more detail than the declaration of principles to be prepared by the Sub-Committee. Some of the points set forth in the working paper, however, could reasonably be included in the declaration of principles. Paragraphs 2, 7 and 8, for example, dealt with concepts which would have to be considered in the context of the declaration.

At all events, the Sub-Committee should try to produce a declaration which would be as comprehensive and balanced as circumstances would permit, and for that purpose a number of "common denominators" already existed. It should not be forgotten, however, that in the case of outer space, for example, the elaboration of the declaration of legal principles had taken not merely a few days but several years of work. The General Assembly had, it was true, requested the Committee to "expedite its work of preparing a comprehensive and balanced statement"; but his delegation thought that the adjective "comprehensive" should be understood to mean "sufficiently comprehensive to be useful". His delegation hoped that the Sub-Committee would bear that point in mind when it came to consider the question.

One of the first points which could appear in a statement of principles was the point stated in paragraph 85 of the report of the Committee (A/7622 and Add.1) namely, that there existed an area of the sea-bed and ocean floor and the subsoil thereof which was beyond the limits of national jurisdiction.

(Mr. Darwin, United Kingdom)

Some delegations had expressed the view that that was not a de jure but a de facto proposition; his delegation held the view that it was sufficient merely that it was true. However, with regard to the concept that the area was part of the common heritage of mankind, his delegation agreed with those who felt that the concept was not sufficiently clear and needed to be properly defined.

With regard to the question of the applicability of international law - and in particular the United Nations Charter - to the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, his delegation was aware that the concept raised difficulties for some delegations. However, since the question of the delimitation of the area and its use was also dealt with in the synthesis already produced by the Committee, delegations should be able - while maintaining their respective positions - to devise a satisfactory formula for the concept of applicability.

His delegation reserved the right to speak again on the proposals which had already been made, and also on those which might later be submitted to the Sub-Committee.

Mr. KOZLUK (Poland) said that he hoped that the Sub-Committee would be able to fulfil the task assigned to it by the main Committee at its present session. At previous meetings, a number of delegations had stressed the importance of the concept that the areas under discussion were the "common heritage of mankind", since they regarded the concept as a fundamental element in any declaration of principles, especially from a moral point of view. As his delegation had stated on a number of occasions, the "common heritage of mankind" concept was not a legal principle. Those who quoted paragraph 1 of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space in support of the "common heritage" concept forgot that that paragraph referred to the exploration and use of outer space, and not to outer space itself. The term "common heritage" was in fact a neologism and, as could be observed during the last session of the General Assembly, meant different things to different delegations. For example, for some of them it implied the existence of a right of common ownership in one form or another. Its inclusion in a declaration of principles, whether in the preamble

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(Mr. Kozluk, Poland)

or in the operative part, could have far-reaching legal implications not only in regard to the sea-bed area, but also to other sections of hydrospace. Everyone knew that there was a close vertical interdependence between the sea-bed, the superjacent waters, the surface of the sea and the overlying air mass. There was also a corresponding horizontal interdependence between the high seas, the contiguous zone, the territorial waters and even inland waterways. It would therefore be illogical to consider the sea-bed area separately, and great care should be taken in creating new rules and principles.

The declaration under consideration was not an end in itself but a means to an end - namely, the promotion of international co-operation in the exploration and exploitation of the resources of the sea-bed and the ocean floor and subsoil thereof beyond the limits of national jurisdiction. Although there were different legal régimes applicable to the different uses of hydrospace, and certain sections of hydrospace were subject to State sovereignty, the fact remained that the area had only one natural function; to serve the interests of mankind as a whole. For that reason his delegation, although unable to accept the "common heritage of mankind" formulation, fully supported the idea that the exploration and exploitation of the resources of the sea-bed and the subsoil thereof beyond the limits of national jurisdiction should be carried out for the benefit of mankind as a whole, taking into account the special needs of the developing countries.

Mr. SULEIMAN (Libya) said that his delegation considered that the statement of principles which the Committee had been called upon to prepare was a basic element for the establishment of an international régime governing activities in the area under consideration. In that connexion, the interesting statement made on 9 March by the Norwegian representative would certainly facilitate the Sub-Committee's work. With regard to the item under consideration namely, legal status - the starting point should be the inclusion in the draft declaration of the concept of the existence of an area beyond the limits of national jurisdiction, an area which should be considered separately from the superjacent waters of the high seas. The concept could appear either in the preamble or, more logically, in the body of the declaration. As he had already stated during the previous week, it was not essential at the moment to define

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(Mr. Suleiman, Libya)

the boundaries of the area and at the present stage it would be sufficient to accept the principle of its existence. The concept of non-appropriation of the area was also perfectly acceptable. There could be no peaceful or rational exploitation of the resources of the area unless the international community decided to explore them in the interests of mankind as a whole. One logical consequence of that was the acceptance of the concept that the area was "the common heritage of mankind". That concept implied recognition of the need to establish an international régime to regulate the use and exploitation of the resources of the area. Furthermore, all activities in the area should be carried out exclusively for peaceful purposes and the prohibition of military activities of all kinds in the area would considerably strengthen international peace and security. Finally, the concept also implied that the international community would develop ways and means of ensuring that all States would benefit, without discrimination, from their common heritage.

Mr. YANKOV (Bulgaria) congratulated the Chairman and the officers of the Sub-Committee on their election. He said that the Bulgarian delegation was fully aware of the obstacles which had to be overcome before the Committee could accomplish the task assigned to it by the General Assembly in paragraph 4 of resolution 2574 B (XXIV). The formulation of principles in a draft declaration was a very complicated task, but, in view of the results already achieved and the constructive suggestions submitted by several delegations, the Bulgarian delegation had a certain degree of optimism about the Sub-Committee's current session. The synthesis in the Sub-Committee's most recent report indicated several areas on which agreement had been reached. It had in fact been unanimously agreed that the synthesis constituted an appropriate starting-point for drafting the statement of principles. The Sub-Committee had reached the stage at which the general ideas contained in the synthesis should be transformed into specific principles which would constitute the basis of the régime to be worked out. The best way of doing that would probably be to prepare a single draft text which would serve as a basis of discussion.

The first essential principle directly related to the legal status of the area under consideration was the concept that there was an area of the sea-bed and the ocean floor and the subsoil thereof which was beyond the limits of

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(Mr. Yankov, Bulgaria)

national jurisdiction. The Sub-Committee had, moreover, adopted that formulation as a "common denominator" in its synthesis. Other delegations, including those of the Union of Soviet Socialist Republics, Norway, Japan and Belgium, had suggested an almost identical wording at the current session. It seemed therefore that all members of the Sub-Committee could easily accept that principle.

It was obvious that the delimitation of the area would have a decisive effect on the whole régime and would have practical implications of an economic, technical and legal nature. The situation would be quite different depending upon whether the limits of national jurisdiction were set at a depth of 200 metres or whether it was decided that they should extend to the continental rise, as some delegations had suggested, which would in practice mean that national jurisdiction would extend to depths of 2,000-5,000 metres or even more. In the latter case, the so-called "international zone" would have no practical importance from an economic point of view. It was obvious therefore that the legal status of the area under consideration and the economic importance of its resources would depend directly on the internationally agreed limits. It was also important that any exploration or exploitation carried out before the area was delimited should not affect the delimitation, regardless of whether the coastal State concerned considered that such exploitation had taken place on its own continental shelf. That idea had been expressed in 1969 during the discussions of the informal drafting group, and had been mentioned again in the statement by the delegation of the Union of Soviet Socialist Republics.

Another important concept relating to the legal status was the principle of non-appropriation, which had been adequately expressed in paragraphs 86 and 87 of the Sub-Committee's most recent report (A/7622). Judging by the suggestions made by the delegations of the Union of Soviet Socialist Republics, Norway, Ceylon and other countries, it would seem that that principle could be generally accepted without much difficulty.

Finally, with regard to the concept of the "common heritage of mankind", the Bulgarian delegation thought that while the concept was morally and politically valid, it was too vague to serve as the point of departure for the Sub-Committee's work. The supporters of the concept asserted that it would

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(Mr. Yankov, Bulgaria)

prevent any colonization of the sea-bed by Powers having the means to do so, and would also ensure that the resources extracted from the ocean floor would be distributed ipso facto among the developing countries. The Bulgarian delegation rejected that interpretation, and agreed with the Belgian delegation that the concept had no legal value. The matter should therefore be viewed more pragmatically, and no attempt should be made to base an international régime on moral or social concepts.

Mr. PARDO (Malta) said that the concept of "common heritage" was not a mere slogan or utopian ideal. While it was a neologism, as the representative of Poland had said, it was nevertheless based on realities. It was perfectly possible that the natural resources of the area might be exploited in an improper manner or too fast; and such exploitation might have disastrous effects on the marine environment. No State could allow the rights of exploitation to be so carelessly exercised. That was a situation which had been unforeseeable twenty-five years ago, and, it was therefore essential to adopt new concepts such as "common heritage". However, it was true that the wording was imprecise from a legal point of view; and the Maltese delegation would prefer the formulation suggested by the Norwegian delegation on the previous day - namely, that the area constituted "part of the common heritage of mankind". It might later be necessary to include in that "common heritage" the air which men breathed in order to live.

The meeting rose at 4.50 p.m.

SUMMARY RECORD OF THE THIRTY-THIRD MEETING

Held on Tuesday, 17 March 1970, at 11 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF PRINCIPLES AND RECOMMENDATIONS THEREON PURSUANT TO PARAGRAPH 2 (a) OF GENERAL ASSEMBLY RESOLUTION 2467 A (XXIII) AND PARAGRAPHS 3 AND 4 OF GENERAL ASSEMBLY RESOLUTION 2574 B (XXIV) (continued):

LEGAL STATUS

APPLICABILITY OF INTERNATIONAL LAW, INCLUDING THE UNITED NATIONS CHARTER

Mr. VALLARTA (Mexico), referring to the synthesis concluding the Legal Sub-Committee's report (A/7622, Part Two), noted that, with regard to the applicability of international law, including the Charter, it had been possible to establish as a common denominator that there were principles and norms of international law which applied to the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (para. 89), although, on the other hand, there had been no agreement as to the extent to which the rules of existing international law applied or should be applied in the future or as to whether any rules of existing international law applied to economic activities in the exploration and exploitation of the area (para. 90).

If the latter difficulty was to be resolved, the inapplicability of the principle of the freedom of the high seas must be taken as a basic assumption. That principle had been evolved to apply exclusively to the water column and not to the sea-bed and the subsoil thereof. To contend that a freedom analogous to the freedom of fishing, as defined in article 2, paragraph 2, of the Geneva Convention on the High Seas, should be applicable to the sea-bed would be a misapplication of the principle of analogy, which was not specified among the recognized sources of international law listed in Article 38 of the Statute of the International Court of Justice. Moreover, international law was continually evolving, however slowly. In maritime law, the principle of the freedom of the high seas had superseded the arbitrary rule of the onetime sea Powers. It would be anachronistic to attempt to embody that principle in the law on the sea-bed - a new law created in an age of increasing economic differences between developed and developing countries, when the latter were becoming aware for the first time of their needs and rights.

As the legal régime of the high seas was not applicable to the sea-bed, the only principles and norms applicable to the latter were so universal as to be applicable to all areas accessible to man and were not concerned with

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(Mr. Vallarta, Mexico)

exploitation. The question of which law was applicable to such exploitation would still have been obscure had not the General Assembly quite recently expressed its wishes categorically by setting forth, in resolution 2574 B (XXIV), rules which applied directly to the exploitation of the sea-bed and which remained the only existing guideline with respect to the exploitation of the resources of the area. Since that resolution had been adopted, the legal situation of the sea-bed was the following: proceeding from the shore towards the abyssal depths, the first features encountered were the bed and the subsoil of the territorial sea, over which the coastal State had full and complete sovereignty, in accordance with article 2 of the Convention on the Territorial Sea and Contiguous Zone. Then came an area over which the coastal State exercised sovereignty in respect of the exploration and exploitation of natural resources - rights similar to those which it exercised over the sea-bed and subsoil of the submarine areas situated in the proximity of islands which belonged to it. That area extended from the limit of the territorial sea to a depth of 200 metres or, beyond that limit, to the point where the depth of the superjacent waters allowed exploitation of the natural resources of the areas in question. The boundary between the continental shelf and the sea-bed beyond the limits of national jurisdiction had yet to be precisely defined. None the less, third parties were bound by certain obligations, stemming both from the extension to the marine depths of the rights of the coastal State, an extension which was clearly recognized in article 1 of the Convention on the Continental Shelf, and from the express affirmation in General Assembly resolution 2574 A (XXIV) that there existed an area of the sea-bed and ocean floor and the subsoil thereof which lay beyond the limits of national jurisdiction, whose resources should be utilized for the benefit of all mankind. That same resolution (2574 D (XXIV)) thus established the existence, beyond the area which could give rise to controversy, of an area which could not be subject to any claim and where States and persons physical or juridical, were bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor, and the subsoil thereof, so long as no international régime with appropriate international machinery had been established. The main purpose of General Assembly resolution 2574 A (XXIV)

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(Mr. Vallarta, Mexico)

was to establish a clear, precise and internationally accepted definition of the area in question and, to that end, it provided for a procedure which was perfectly regular. That being so, it was reasonable to press for the inclusion in the future declaration of the passage in the synthesis which affirmed the existence of the area outside jurisdiction (para. 85, Part Two of the report (A/7622)), particularly as there were States which would prefer the Committee to take no decision on the question of boundaries.

Paragraph 86 of the synthesis indicated as a common denominator the idea that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, should not be subject to national appropriation by any means and that no State should exercise or claim sovereignty or sovereign rights over any part of it. Some would regard that as a sufficient guarantee of the rights of the legitimate beneficiary of the resources of the area in question. Yet, in view of the tendency on the part of certain States to exploit in their own interests that which belonged to all, the international community should establish more categorical prohibitions. Those appearing in paragraph 86 could be interpreted as authorizing exploitation provided there was no question of national appropriation or of claims of sovereignty or sovereign rights over it. The belief that the statement in paragraph 86 was inadequate in the absence of a régime enabling exploitation to be controlled had led to the elaboration of the idea set forth in the first part of paragraph 87 of the synthesis.

Paragraph 88 of the synthesis referred to what was, in his delegation's opinion, a fundamental principle. During the general debate in the plenary Committee his delegation had requested that political guidelines should be worked out in accordance with which the Committee would be able to determine - apart from any questions of legal form - whether it could be accepted as the political intention of the international community that the area concerned should be considered the common heritage, or patrimony, of mankind. Moreover, his delegation was prepared to accept different wordings to express the idea of the exclusive rights of all mankind over that area. It was therefore surprising that the States which did not accept the notion of the common heritage, or patrimony, of mankind had failed to propose a parallel formulation; as a result,

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(Mr. Vallarta, Mexico)

it might be feared that some held positions completely at variance with the spirit of General Assembly resolution 2574 A (XXIV) and with the affirmative vote of those same States in favour of that resolution.

As to its legal content, the word heritage, or patrimony, should be examined not from the point of view of civil law but rather from the point of view of public law. The Constitution of Mexico excluded from the sphere of private property many goods and resources which in other countries could be acquired and exploited by private individuals. For example, the fourth paragraph of article 27 stated that the nation had direct ownership of all natural resources of the continental shelf and the underwater bases of the islands. It was natural that a State like Mexico, which had nationalized basic industries and treated various resources, such as petroleum and mineral resources in general, as belonging to the State, should entrust the management of those industries to administrative organs. In Mexican administrative law, the responsible organ was the ministry in charge of the national patrimony. Accordingly, in Mexican public law the notion of national patrimony had a strictly legal content and was used to designate all wealth and resources which could not be owned privately and all the wealth of the State in general. It should therefore be possible to give a legal content to the expression "common patrimony" (heritage) "of mankind".

Whatever its economic system, each State reserved for itself certain goods and natural resources. Thus it could be assured that legal terms to designate that common property of the nation existed in the public law of each State. Consequently, it would be possible, as in the Mexican Constitution, to consider declaring that all mankind had direct ownership of all natural resources of the area in question; or, again, it would be possible to borrow from the socialist countries the term used by them to express the idea of the common property of the State, a fundamental concept in their system, and use that term to define a "common property of mankind", a term of which it could not be said a priori that it did not have legal content.

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Mr. HOLDER (Liberia) said that his delegation agreed with the Sub-Committee's decision to use the synthesis contained in the Committee's report (A/7622) as a starting-point for its work. That synthesis clearly indicated the progress made so far. However, the many proposals made by various delegations shall also be taken into account.

With regard to the questions concerning legal status and the applicability of international law, including the United Nations Charter, his delegation continued to believe, all questions of wording aside, that there was an area of sea-bed and ocean floor and the subsoil thereof which was beyond the limits of national jurisdiction. That idea had been recognized by the General Assembly in its resolutions 2340 (XXII) and 2467 (XXIII). The precise boundaries of the area concerned would eventually have to be established, but it was not essential to include an indication of these boundaries in the declaration of principles, since in addition to the fact that there was some doubt as to the competence of the Committee to deal with that question, it seemed possible to separate the problem of principles and the problem of boundaries.

The idea that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction should not be subject to national appropriation by any means and that no State should exercise or claim sovereignty or sovereign rights over any part of that area, shall also be affirmed. However, if that idea were not accompanied by any other provision its effects could be more harmful than useful. For that reason, it seemed necessary to add a provision designed to promote international co-operation in the exploration and use of the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction and to ensure that their resources would be exploited for the benefit of all mankind. Accordingly, it should also be stated that under certain conditions the sea-bed and its resources could be exploited for the benefit of mankind. There was an important distinction between those two ideas. In the first case, the possibility of State ownership of the area or any part of it must be entirely ruled out. Secondly, States or private enterprises would be permitted to use parts of that area, for the benefit of mankind, but only under certain conditions to be prescribed by the international community.

(Mr. Holder, Liberia)

In the 1969 sessions of the Committee his delegation had stated its difficulty in accepting the second part of the proposal set forth in paragraph 87 of the synthesis. It still felt that the use of parts of the area did not constitute the exercise of a sovereign right over that area and that such use should be permitted under certain universally agreed conditions if the resources were to be exploited for the benefit of mankind. If such rights were granted, there should be individual property rights over the extracted resources, for the same reasons. That was the point at which his delegation drew a distinction between the sea-bed and the resources extracted from it with the permission of the international community. In addition, that distinction would remove doubt as to the concept of the common heritage of mankind, which he felt to be completely valid.

With regard to the question of the applicability of international law, during the March session of the Ad Hoc Committee his delegation had attempted to show how the later rules of international law had made their impression on earlier ones. For example, the impact of the Latin American regional rules on some rules of general applicability had been evidenced in arrangements and in the settlement of disputes among States of that region. All members of the Committee seemed to accept the idea that the exploration and exploitation of the sea-bed and ocean floor and of their resources should be governed by principles and norms to be universally agreed upon and that such activities should take account of relevant rules of international law, including certain provisions of the United Nations Charter. The question therefore arose of the precedence to be applied in case of conflicts or overlapping. He wondered whether the purpose sought would not be better served if those rules, including certain provisions of the Charter, to which vague references were constantly being made were incorporated. Otherwise, the fulfilment of the Committee's work might be delayed and possibly obstructed. If that suggestion was generally supported, it could then take the form of a proposal for the consideration of the Committee, which might even include a request to the Secretary-General to provide assistance in collecting the relevant rules of international law that might apply to activities in the area.

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Mr. GOWLAND (Argentina) said he regretted that it had not yet been possible for the Sub-Committee to reach agreement on a detailed and balanced declaration of principles which would make it possible to promote international co-operation with regard to the matter under consideration. That was because a number of delegations had not yet accepted the basic principle underlying resolutions 2340 (XXII) and 2467 (XXIII) with respect to the essential concept of the "common heritage of mankind". Although there already existed some general principles of international law which were applicable in that connexion, they did not provide for detailed legal machinery which would make possible the economical, peaceful and safe exploitation of the resources in question. A special international régime should therefore be instituted within a legal framework which would make it possible to explore and exploit the area with the utmost effectiveness and in a spirit of equality and justice - a matter of concern both to those States and individuals who would be involved in exploitation and to the rest of the international community, including coastal countries and developing countries. For that reason, his delegation believed that the declaration should be based on the concept of a common heritage. Accordingly, the existence of an area beyond the limits of national jurisdiction which no one could appropriate should also be recognized, and it should be decided that the exploitation of the area was to be carried out in accordance with an international régime established for that purpose. Thus, a declaration with that underlying concept would also have to be based on resolutions 2340 (XXII) and 2467 (XXIII), setting forth the fundamental principles by which the General Assembly had been guided. Some delegations were opposed to the idea of a "common heritage" because, in their view, such a principle would imply a contradiction, in that it would create a joint sovereignty of all States while at the same time preventing any individual State from exercising that sovereignty over all or part of the area. He did not think that that was a valid argument, since the concept of a common heritage was based not on sovereignty but on the idea that the resources of the area should be utilized for the benefit of the world community. If that idea was accepted, there was hardly any alternative but to designate the area as a common heritage; otherwise, as the representative of Chile had said, it would be necessary to extend the concept of the freedom of the high seas to the area

(Mr. Gowland, Argentina)

beyond the limits of national jurisdiction and to activities there, and that would amount to sanctioning the special advantages enjoyed by the technically advanced States, no matter what their intentions might be with regard to using part of the profit from their operations to help the developing countries.

The "international co-operation" formula proposed by certain delegations would not provide adequate legal support for the status of the area. It was no more than a proposal which could be taken as a basis both by those who supported the idea of a common heritage and those who thought that the freedom of the high seas should be extended to the area in question. He pointed out that the Geneva Convention on the High Seas also referred to international co-operation.

Some delegations had suggested recognition of the existence of the area as the first element of the declaration. However, such a statement of fact would be out of place in the main body of a declaration of principles. It had not been thought necessary to begin either General Assembly resolution 1721 (XVI) or the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space (resolution 222 (XXI), annex) by recognizing the existence of an area beyond the air space of States. Nor did the Convention on the High Seas say that high seas existed beyond the territorial waters of States. If such a statement was really needed, the only place for it would be in the preamble of the declaration.

In short, his delegation believed that, if the formulation of the legal status was to be complete, it must state that the ocean floor beyond the limits of national jurisdiction could not be subject to any appropriation or claim of sovereignty and that, unless otherwise provided in an international régime relating to the exploration and exploitation of resources, no State could exercise an exclusive right over any part of the area whatever.

It was to be hoped that the consultations currently in progress would lead to more positive results than had been achieved at the Committee's 1970 sessions. As in the past, his delegation would do all it could to facilitate the work of the Sub-Committee.

The CHAIRMAN requested representatives who wished to put their names on the list of speakers to do so before 1 p.m. on the following day, indicating the specific topics on which they intended to speak since the Sub-Committee was going to consider the synthesis paragraph by paragraph.

It was so decided.

The meeting rose at 11.50 a.m.

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SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

Held on Monday, 23 March 1970, at 10. 35 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF PRINCIPLES AND RECOMMENDATIONS THEREON PURSUANT TO PARAGRAPH 2 (a) OF GENERAL ASSEMBLY RESOLUTION 2467 A (XXIII) AND PARAGRAPHS 3 AND 4 OF GENERAL ASSEMBLY RESOLUTION 2574 B (XXIV) (concluded):

LEGAL STATUS

APPLICABILITY OF INTERNATIONAL LAW, INCLUDING THE UNITED NATIONS CHARTER

Mr. de BERGH (Belgium) said that, the year before, it had been his view that the elaboration of legal principles concerning the law applicable to the sea-bed and ocean floor should not creat insurmountable difficulties, but the subsequent discussion had not justified his optimism. The difficulties seemed to arise from the fact that, while it had been agreed that it was not enough to state that international law was applicable, it had not always been borne in mind that the system of international law was made up of many categories. The first category might be said to include the general principles governing relations between States, such as the prohibition of the use of force, respect for international treaties, State responsibility, the obligation to settle disputes by peaceful means, etc. A large number of those principles and norms had been incorporated in the Charter, where they appeared as declarations of pre-existing customary and treaty law. However, it was obvious that the Charter did not contain all of them. Accordingly, it would not be enough for the future delcaration to stipulate conformity with the Charter - it must specify that the aforementioned first category of international law was applicable. However, mention must also be made of the applicability of the Charter. Although not the whole of international law, the Charter was at the same time something more. Not only had it stated some of the rules of the pre-existing law, it had created new rules which unquestionably constituted a category of international law which, though more limited, proclaimed a whole series of social obligations and mutual commitments for all the Members of the United Nations, and in some cases, indirectly for non-Members. Because they had some connexion with the problem of exploitation of the sea-bed and ocean floor, he was thinking particularly of Articles 55 and 56, which formed the basis of the pledge by Member States to promote, through international co-operation, solutions of their economic and social problems. Indeed, the Preamble to the Charter stated that States were determined to employ international machinery to that end. It was therefore undeniable that undersea activities must be conducted in conformity with

(Mr. de Bergh, Belgium)

international law - in the broad sense of the term - and with the Charter - and not merely the purposes and principles of the Charter. Reference solely to the purposes and principles of the Charter could be regarded as a somewhat surprising mental reservation on the part of the Members of the United Nations.

The real difficulties arose, however, when it came to determining whether a limited part of international law - the law of the sea in the present case - applied to activities undertaken on the sea-bed and ocean floor. Clearly, the law of the sea had not provided for those activities, which had existed only in the form of the laying of cables and pipelines, anchoring and scientific research. It was true that the 1958 Convention on the High Seas contained a provision concerning the prevention of pollution resulting from the exploitation and exploration of the sea-bed and its subsoil (art. 24), a fact which demonstrated that some international legal rules did already exist and that they could not be overlooked. On the other hand, it was clear that the existing law of the sea did not provide an adequate legal framework for the exploitation of undersea resources. His delegation did not believe that the freedom of the high seas applied to the sea-bed "mutatis mutandis", since analogy was not a direct source of international law. It could be pointed out that freedom of the high seas did not apply to the continental shelf, for which special laws had been created. Hence, freedom of the high seas did not necessarily extend to the sea-bed. It seemed, however, that exploration and exploitation activities in that area might be ruled out until a special legal régime had been set up. The principle of freedom to exploit the resources of the sea-bed and ocean floor - which could be contested since it did not appear in the Convention and the ILC would obviously have proposed establishing rules for it if such a course had appeared practical in 1956 - did not in any case apply because article 1 of the Convention on the Continental Shelf expressly stated that a State's sovereign rights extended to where the depth permitted exploitation. The imprecise definition of the continental shelf could therefore be contrasted with an alleged freedom which had been neither stated nor regulated in the Convention on the High Seas. The theory of the "legal vacuum" fell before the same argument.

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(Mr. de Bergh, Belgium)

It was therefore possible to conclude that some rules of international law, in the restricted sense of the term, did exist. Reference could be made to them, but with the qualification that they did not on any account furnish an adequate legal framework for the exploitation of the resources of the sea-bed and ocean floor. The situation at the present time involved risks which would make wary operators hesitate to make the necessary investments, so long as the international régime to be set up did not offer them security. Accordingly, no alternative remained but to endeavour, as the Committee had been requested by the General Assembly to do, to formulate precise recommendations concerning a lex ferenda for both the definition of the precise limits of the continental shelf and the régime to govern the sea-bed and the ocean floor beyond the limits of national jurisdiction.

Mr. SCHRAM (Iceland) said that exploitation of the resources of the sea-bed was now being carried out at a distance of almost 100 miles from the nearest coast and that it was therefore high time for the international community to start to regulate the activities undertaken in that area, for the benefit of all mankind. The view had frequently been expressed that, without a prior definition of the area under discussion, it would not be possible to reach any conclusion regarding the establishment of an appropriate régime. On the other hand, it had been maintained that the question of boundaries went beyond the terms of reference of the Sea-Bed Committee. The difficulties caused by that divergence of opinion had been resolved, at least so far as procedure was concerned, by the adoption of resolution 2574 A (XXIV). While members did not yet know the results of the Secretary-General's efforts to ascertain the views of Member States on the desirability of convening a conference on the law of the sea, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the sea-bed and ocean floor which lay beyond the limits of national jurisdiction, it could be assumed that the conference would be held in the next few years.

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(Mr. Schram, Iceland)

The Committee still had a duty to seek to clarify that question, since it was directly linked to the nature of the régime which the Committee was responsible for setting up. As the representative of Norway had pointed out at the 30th meeting of the Sub-Committee, it seemed realistic to admit that an approach whereby coastal States obtained jurisdiction over a fairly large area of the sea-bed might enhance the chances of arriving at an agreement on the subject of internationalization of the deep ocean floor. The representative of Malta had also stated that at the present initial stage the most useful course would be to stress to the General Assembly the crucial importance of delimitation of the area, for the purposes of utilization of its resources. The question of the limits of national rights over the continental shelf was of the greatest interest to a large number of States Members of the United Nations. Some of them, including several which were represented in the Committee, claimed jurisdiction up to a distance of 100 miles, and others up to a distance of 200 miles from their coasts. It was probably unrealistic to hope that those States would agree to more limited jurisdiction over their continental shelf. Consequently, it would be easier to reach agreement on a régime for the international area if States were assured of jurisdiction over a sufficiently wide portion of their continental shelf. They might then agree to give up their present open-ended rights. In that case, even if a fairly broad definition of the shelf was adopted, only a small portion of the total area of the sea-bed would be appropriated, since the continental shelf, if its limits were fized at the 200 metre isobath, represented only 7.5 per cent of the total area of the sea-bed. His delegation therefore considered that the boundary between the two areas could be fixed at 150 to 200 miles from the coast, and such a definition could possibly be combined with a new depth limit, such as 500 metres.

There was an added reason for drawing the boundary between the two areas at a fair distance from the coast. Paragraph 96 of the synthesis stressed the necessity for the adoption of appropriate safeguards to protect the living resources of the marine environment. It was well known that the comparatively shallow waters of the continental shelf were the most important breeding-grounds for fish and other marine animals. That was true, for example, in the case of

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(Mr. Schram, Iceland)

Iceland, which derived 90 per cent of its foreign exchange from coastal fisheries. If the international area boundary was drawn 150 to 200 miles from the coastline, the coastal State would have full powers to regulate the exploitation of the sea-bed within that line and to protect the living resources from the deleterious effects which indiscriminate exploitation of the sea-bed might cause.

With regard to the area beyond national jurisdiction, his delegation was gratified that at the last session of the Legal Sub-Committee it had been generally agreed that safeguards should be adopted against the dangers of pollution and to protect the living resources of the marine environment. On the question of pollution, at its August session the Committee would have, in pursuance of resolution 2467 B (XXIII), a report by the Secretary-General dealing particularly with the effects of exploitation of the sea-bed on pollution. The danger was a real one, as could be seen from the accidents which had occurred at sea since the beginning of the Committee's work. At its twenty-fourth session, the General Assembly had adopted resolution 2566 (XXIV), submitted by Iceland and other countries, which advocated effective measures for the prevention and control of marine pollution and requested a study of the possibility of an international treaty on the subject. It was to be hoped that such a treaty would shortly be drafted. The 1972 Conference on the Human Environment would be an ideal forum for finalizing it and opening it for signature by Member States. The protection of living resources was equally important, for the sea was an immensely valuable source of food for coming generations, and the riches of the sea-bed must not be exploited at the expense of the resources of the superjacent waters. The two main aims of the Committee in that respect must therefore be to negotiate an international agreement on the prevention and control of marine pollution, especially pollution caused by exploitation of the sea-bed, and to make provision in the projected international régime for adequate safeguards for the living resources of the sea. Those concerns should be reflected in a declaration of general principles and he wished to suggest the following wording:

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(Mr. Schram, Iceland)

"In the exploration and exploitation of the sea-bed and ocean floor and the subsoil thereof, States shall adopt and apply appropriate regulations, national and international, for the prevention and control of marine pollution and other harmful effects to the marine environment. Furthermore, States shall adopt and apply appropriate regulations, national and international, for the protection and preservation of the living resources of the marine environment."

The declaration should also refer to the necessity of adopting safety measures.

A matter closely related to the topics he had referred to was the extent of the rights of the coastal States outside national jurisdiction with regard to activities undertaken in the area, including scientific research, exploration and the prevention of pollution. It was clearly of great importance in preventing or controlling accidental pollution on the high seas that the coastal State should be granted certain rights for action outside its national jurisdiction; that would allow swift remedial action in a matter where time was often a vital factor. The text of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, which had been finalized by the International Legal Conference on Marine Pollution Damage held at Brussels in November 1969, expressly authorized the coastal State to take action on the high seas to protect its interests when there was a threat of pollution. In his statement on 13 March, the representative of the United States had spoken of the possibility that coastal States moght be given certain rights in controlling activities in adjacent waters - for example the right not only to inspect such activities to ensure that they were not interfering with fisheries, but also to have an opportunity of approving them in the planning stage.

It would therefore be appropriate to include similar provisions on the rights of the coastal State in the Sub-Committee's report and perhaps even in a declaration of general principles.

The question of liability for damage caused by activities in the area was one of the most important topics on the agenda and must be regulated in any future international régime. It was still too early to go into details, but it would suffice to establish, in a declaration of general principles, that States should

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(Mr. Schram, Iceland)

bear responsibility for their own actions in that respect, as well as for the actions of their citizens. His delegation favoured the notion of strict liability and suggested the inclusion in the declaration of a passage reading: "A State shall bear international responsibility for any activity carried out on the sea-bed, the ocean floor or the subsoil thereof, irrespective of whether these activities are carried out by governmental agencies, non-governmental entities or persons acting under its jurisdiction or on its behalf".

Those suggestions were along the lines drawn up the previous year by the Committee in the synthesis, and it should not be difficult to reach at least an agreement of principle on them.

Mr. MICU (Romania) said that in his delegation's view the formulation of a draft declaration of principles was the Committee's central task. The progress shown by the synthesis in the Legal Sub-Committee's report gave grounds for hope that it would be possible to broaden the area of agreement in 1970 to the point where it would constitute a satisfactory basis for formulating the declaration. The suggestions made by the Rapporteur after the consideration of proposals presented during the current session should permit further progress towards agreement.

There were admittedly still differences of opinion as to the means of ensuring that the exploitation of the resources of the sea-bed benefited mankind as a whole, but it had at least been recognized that there was an area of the sea-bed which lay beyond the limits of national jurisdiction, that the area was not subject to appropriation by any means and that no State could exercise sovereign rights over any part of it. It had also been recognized that the exploration and exploitation of the area and its resources should be for the benefit of all States, taking into account the special interests and needs of the developing countries. Finally, no one had disputed the fact that the area should be used exclusively for peaceful purposes. The declaration of principles called for by the General Assembly in resolution 2574 B (XXIV) would be most useful, since it would encourage international co-operation in the important area under discussion. In addition, once the principles of the declaration were formulated, they would necessarily lead to international negotiations for the purpose of

(Mr. Micu, Romania)

giving them concrete and detailed contractual expression, which would eventually lead to the establishment of the régime required for the application of the provisions adopted.

In order of importance, it appeared that a statement of the principle of the sea-bed should be used exclusively for peaceful purposes was the basic assumption underlying all international co-operation in the matter. It would then be possible to go on to draw up international measures to protect the marine environment against pollution resulting from exploitation activities. Finally, the declaration's adoption would promote a more concrete approach to the question of intensifying international co-operation and to the training of personnel, especially in the developing countries. The exploitation of the resources of the sea-bed and the subsoil thereof for the benefit of the whole of mankind presupposed the existence of an international flow of scientific information and a broad exchange of experience to facilitate the training of specialists and the development of techniques for exploiting mineral resources at great depths.

It was hard to see how progress could be made towards establishing an international régime unless the general principles on which it would be based were first formulated. His delegation hoped that it would be possible, through negotiations conducted in a spirit of co-operation and conciliation, to draw up a draft declaration at the Committee's next session at Geneva.

Mr. ODA (Japan) considered it unlikely that the Legal Sub-Committee would be able to adopt a paper and submit it to the main Committee during the current session. His delegation was fully aware of the complexity of the problems under consideration and felt that the most important thing for the time being was to understand the views and positions of all the countries concerned and to make the necessary effort to achieve a compromise. His delegation would confine itself to making a few comments on several items mentioned in the synthesis. As for paragraphs 91 and 92 of the synthesis, his delegation fully supported the idea that the general principle that that area should be reserved exclusively for peaceful purposes should be included in the main part of the declaration of principles. On the other hand, he considered that it was not proper to go into

(Mr. Oda, Japan)

detail on that point, since there were more appropriate forums than the Committee for dealing with the question. He also considered that the question of the delimitation of the area to which that principle applied should be decided in the context of international negotiations relating to disarmament, particularly at Geneva. With regard to paragraph 93 of the synthesis, his delegation supported the idea that the area should be exploited for the benefit of mankind as a whole, taking into account the special interests of the developing countries. Therefore, it recognized in principle that arrangements should be made to ensure the orderly exploitation of the resources of that area. The question whether the régime should apply to the area or only to the exploration and exploitation of its resources had not yet been settled; for his delegation, the most important thing was to utilize fully the resources of the sea-bed, and the entire régime should therefore be conceived so as to ensure that those resources were used for the benefit of all States. His delegation's position on that point was wholly consonant with the spirit and the letter of the Convention on the Continental Shelf, as well as with the purposes of the resolutions of the General Assembly, particularly resolution 2467 A (XXIII).

Like most other delegations, his delegation supported the idea put forward in paragraph 94 relating to freedom of scientific research. In that connexion, particular stress should be placed on the fact that all States should be able to engage in that type of research in total freedom - i.e. that freedom should be protected from any interference by any State - and that the results obtained should be made available to all countries. That being so, his delegation, although not opposed to the idea of prior notification by States of their intention to begin operations, feared that such an obligation might cause some technical difficulties. It hoped that, if that idea was adopted, the necessary steps would be taken to remove those difficulties, so that freedom of scientific research would not be impaired.

With respect to paragraphs 96 and 97 of the synthesis, his delegation considered that the question of the exploration and exploitation of the resources of the zone under consideration could not be dissociated from that of the use of

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(Mr. Oda, Japan)

the superjacent waters of the high seas. For that reason, in regulating initial activities, due regard should be paid to other uses of the high seas, particularly navigation and fishing. In any event, as his delegation had suggested at the Committee's session in March 1969, activities relating to the exploration and exploitation of the resources of the area under consideration could not be fully exempt from the application of the regulations governing the use of the high seas, unless otherwise provided for. Since the risks of pollution and the other possible hazards of the exploration and exploitation of the resources of the sea-bed might cause a major problem, the international community should do everything in its power to eliminate those hazards and to protect the marine environment.

In regard to paragraph 97 of the synthesis, his delegation wished to recall that the question of State responsibility was one of the most complicated issues of international law. It therefore considered that extensive new legal and scientific studies would have to be undertaken before it could be said definitively that a State would be responsible for damages caused by non-governmental entities as a result of the exploration or exploitation of the resources of the area under consideration. At the same time, every State should take the necessary measures to ensure that persons subject to its jurisdiction exploring and exploiting the resources of that area adopted appropriate safeguards against the risks of pollution and the other hazards which might result from their activities. His delegation strongly urged that the point be made clear in the declaration.

Mr. de SOTO (Peru) said he wished to make a few general observations on two items in the work programme.

With respect to legal status, his delegation had stated on several occasions that the concept of the common heritage of mankind could be used. That concept had been the object of much criticism, perhaps directed more against the expression itself than against its content. In that connexion, the elements set out in paragraph 20 of Part Two of Report A/7622 would provide a useful basis for discussion.

The basic problem now seemed to be that of the applicability of international law. His delegation had considered it unnecessary to include

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(Mr. de Soto, Peru)

that item in the Sub-Committee's work programme. As yet there were no rules of international law which could be applied directly to the exploration and exploitation of the sea-bed. At best, certain existing provisions could be taken into account. During the informal discussions, it had appeared that the idea of the applicability of international law could not be included in the declaration of principles. There could be no question of applying to the sea-bed the principles of international law relating to the freedoms of the high seas. Moreover, his delegation could not accept the position of certain States which interpreted existing international law as applicable to the exploration and exploitation of the resources of the sea-bed. Efforts should certainly be made to bring together the different points of view, but in doing so a realistic criterion should be used. A satisfactory solution was not necessarily to be found in a position midway between the two extremes.

ORGANIZATION OF FUTURE WORK

Mr. EVENSEN (Norway) said that significant efforts to formulate concrete proposals relating to the basic principles had been made during the current session. To that end, a great many useful proposals had been submitted in a spirit of compromise and goodwill. The Rapporteur of the Sub-Committee had recently been requested to prepare an interim paper on the principles and specific formulas submitted during the detailed discussions in the Sub-Committee. That proposal had been unanimously accepted by the Sub-Committee, and the Rapporteur had begun work immediately. He had drawn up detailed proposals concerning eleven principal questions. The paper he had prepared appeared excellent, but there was no time to examine it in detail, and basic disagreements concerning it had already arisen.

It should be remembered that the Sub-Committee was responsible for the preparation of a complete, balanced statement of principles to be submitted to the General Assembly at its twenty-fifth session. The Committee could not make progress in its work if it did not apply the rule of unanimity. A majority decision would be insufficient and could not be binding on the minority.

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(Mr. Evensen, Norway)

Compromise formulas should therefore be sought, but it would be difficult to achieve satisfactory results at the August session unless some preparatory work had been done in advance. For that reason, his delegation proposed that the Sub-Committee should meet between the spring and summer sessions in order to prepare a draft compromise which would serve as a basis for the debates at the next session. The text would state the principles on which agreement had been reached and would give, in brackets, those principles on which delegations disagreed and those for which various formulas could be envisaged. The Working Group which had met in the past few days had not succeeded in drawing up a compromise formula, and, in view of the signs of fatigue which were becoming apparent, the atmosphere was now hardly favourable for further efforts of that nature. If the Working Group did not produce results very soon, arrangements should be made for a small intersessional working group to meet, for instance, for one week during the period: May-June, or July-August, before the summer session.

The CHAIRMAN said that the Rapporteur would continue to seek reconciliation of the various points of view. If the consultations produced results, the latter would be considered by the Sub-Committee before the end of the present session. However, if the desired outcome was not forthcoming, the Norwegian representative's proposal could be taken up.

Mr. CABRAL MELLO (Brazil) endorsed the Chairman's suggestion and the Norwegian delegation's proposal, but expressed the hope that the intersessional meetings would be held one week before the August session, at Geneva.

Mr. HARGROVE (United States of America) said his delegation was not opposed to either suggestion. However, it would be necessary to await the end of the consultations to know whether intersessional meetings would be required.

Mr. WATANAKUN (Thailand) said he favoured both suggestions, but if intersessional meetings were held he would prefer them to take place in New York in July.

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Mr. GOWLAND (Argentina) endorsed the Chairman's suggestion and the Norwegian proposal as amended by the representative of Brazil.

Mr. YANKOV (Bulgaria) considered that the Rapporteur should continue his efforts. With regard to the intersessional meetings, it would be useful to know whether the Secretariat would be able to assist the Sub-Committee. The Chairman could continue his consultations on that matter and inform the members of the Sub-Committee of the outcome at the final meeting of the current session.

Mr. SMIRNOV (Union of Soviet Socialist Republics) said he was not opposed to the Chairman's suggestion. The Norwegian proposal also deserved consideration, since intersessional consultations might prove helpful. A decision on the venue and date of such meetings could be taken later. His delegation considered that the consultations should take place immediately before the summer session at Geneva.

Mr. PARDO (Malta) supported the Norwegian proposal, but stressed the need to ascertain before hand whether the necessary Secretariat services would be available.

Mr. VALLARTA (Mexico) felt that the majority of delegations were in favour of holding informal meetings for one week between the two sessions. Each delegation should be given an opportunity to consult its Government about the date and venue, and asked the Chairman whether the views of delegations on that subject could be obtained by correspondence.

Mr. HOLDER (Liberia) supported the Chairman's suggestion. Further consultations at the present session should enable the Sub-Committee to take a decision on the Norwegian proposal.

Mr. PAVICEVIC (Yugoslavia) supported the Norwegian delegation's proposal but agreed with the Liberian delegation that the Sub-Committee should take a decision on that proposal during the current week. His delegation would prefer the envisaged consultations to take place a Headquarters.

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Mr. DARWIN (United Kingdom) endorsed the Norwegian delegation's proposal, but thought it would be expedient to settle the question before the Plenary Committee concluded its proceedings.

The CHAIRMAN, summing up, said he believed that the Sub-Committee agreed that the Rapporteur should continue his consultations during the next few days. The Sub-Committee also seemed to favour the idea of holding intersessional consultations but apparently thought that the time was not yet ripe for a decision on that matter. Before the end of the week he would inform the Sub-Committee of the outcome of his consultations with the Secretariat and the various delegations.

The meeting was suspended at 12.20 p.m. and resumed at 12.40 p.m.

Mr. ENGO (Cameroon) said that, as his delegation had previously indicated, the Afro-Asian group and Yugoslavia had reached agreement on a draft text (A/AC.138/SC.1/L.2) setting forth the principles which they thought should govern activities on the sea-bed and the ocean floor and their subsoil. The text was substantially the same as the one which had been circulated informally among members of the Committee and the Sub-Committee. As the topics concerned had already been debated, his delegation hoped it would be acceptable to a great many delegations. It also trusted that the spirit in which the text had been drafted, which signified a real advance in that it showed that agreement was possible between a very large number of countries, would continue to attend the subsequent negotiations with the other groups represented on the Sub-Committee. In any event, the document should not prejudice but rather assist those negotiations.

The document he was introducing took account of several factors, particularly the views of several delegations and the synthesis in the Committee's most recent report (A/7622). His delegation was aware that some of its ideas did not necessarily accord with those of some of the countries outside the Afro-Asian group; it nevertheless hoped that those countries would give the document the attention it deserved.

In any event, the terms "rules" and "norms" used in the draft submitted by the Afro-Asian group should be understood as applying only to the relevant rules of international law, including the provisions of the United Nations Charter,

(Mr. Engo, Cameroon)

since the sponsors considered that the régime for the high seas was not applicable to the area in question.

In conclusion, he expressed the hope that the document which he had just introduced would contribute to the formulation of a text acceptable to all delegations.

Mr. VARGA (Chile) expressed his pleasure at being one of the sponsors of the document introduced by the Cameroonian representative, which was constructive, comprehensive and well-balanced. Since it was a working document, it could, of course, be amended in order to win the widest possible support. Like the Cameroonian delegation, his own delegation also wished to stress that the régime for the high seas could under no circumstances be applied to the exploration and exploitation of the sea-bed and the ocean floor and their subsoil.

Mr. PINTO (Ceylon) supported the draft introduced by the Cameroonian representative, which displayed a spirit of compromise in that it reflected the views of many countries. In any event, the document should not be thought of as prejudicial to the Rapporteur's efforts; on the contrary, it had been submitted with constructive intent. His delegation therefore hoped that it would receive the support of a great many delegations.

DRAFT LETTER FROM THE CHAIRMAN OF THE LEGAL SUB-COMMITTEE TO THE CHAIRMAN OF THE COMMITTEE

The CHAIRMAN said that since the Sub-Committee was not going to submit a partial report to the Committee, it would seem appropriate to send its Chairman a letter stating in substance that the Legal Sub-Committee had worked from 9 to 23 March on the preparation of a comprehensive and well-balanced statement of principles, in accordance with General Assembly resolution 2574 B (XXIV). He would add in the letter that the Sub-Committee had concentrated its efforts on the preparation of that statement and that accordingly, without prejudice to due consideration of other topics, had adopted the work programme outlined in document A/AC.138/SC.1/L.1. Since the Sub-Committee had decided to base the preparation of the statement of legal principles on the synthesis which appeared in the Committee's report on its last session (A/7622), it had for that purpose held

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(The Chairman)

five formal and seven informal meetings, during which it had considered individually each of the topics dealt with in the synthesis. It had also decided to consider other matters which should be included in the statement of principles but which were not touched on in the synthesis. Informal consultations had made it possible for the delegations to express their opinions freely. As a number of formulations had been advanced in that connexion, the Rapporteur had been given the responsibility of bringing the proposals closer together and preparing a single text with the co-operation of delegations. Owing to differences of opinion, it had not yet been possible to prepare that text, but that should come about in the course of the session which the Committee would hold in August. Finally, the document prepared by the Rapporteur could be annexed to the above-mentioned in accordance with the request of a number of delegations.

Mr. de SOTO (Peru), supported by Mr. ENGO (Cameroon) and Mr. GOWLAND (Argentina), thought that it might be premature to give the informal document prepared by the Rapporteur the formal importance that would attach to it by virtue of its being annexed to a letter addressed to the Chairman of the Committee: the document should rather be used as a point of departure for the future work of the Sub-Committee.

Mr. HARGROVE (United States of America) thought that it was still too early to pass judgement on the entire letter which had been proposed by the Chairman of the Sub-Committee. It was possible in any case that the situation would evolve before the end of the session as the delegations held further consultations.

The CHAIRMAN pointed out that the Sub-Committee must take a decision on the letter to be addressed to the Chairman of the Committee, if not at the current meeting, then at least before the next meeting of the Committee, to be held on Tuesday, 24 March, since the Sub-Committee would have to submit the document to the Chairman by that date.

Mr. DARWIN (United Kingdom) stated that if the Chairman thought it necessary to inform the Chairman of the Committee of the Sub-Committee's activities, he should also take into account the preliminary document prepared by the Rapporteur.

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Mr. PAVICEVIC (Yugoslavia) said that he could not accept the suggestion to annex to the letter to be sent to the Chairman, a document which did not reflect the position of the majority of States. It would therefore be preferable to confine the discussions to the consideration of that letter.

Mr. EVENSEN (Norway) thought that it might be useful for the Sub-Committee to examine the Chairman's letter to determine whether some delegations might not want the informal proposals they had made to be regarded now as formal proposals.

The CHAIRMAN proposed that the Sub-Committee should hold a brief informal meeting the next day.

It was so decided.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

Held on Tuesday, 24 March 1970, at 11.30 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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ORGANIZATION OF WORK

Mr. ENGO (Cameroon), referring to the letter which the Chairman of the Legal Sub-Committee proposed to address to the Chairman of the main Committee (A/AC.138/SC.1/L.3), said that, since informal consultations were taking place, a document might possibly be prepared which would make it unnecessary to refer to the document prepared by the Rapporteur. In any case, it would be better for the Sub-Committee to postpone its deliberations until Friday 27 March so that the delegations concerned could continue their consultations and draw up a meaningful document.

Mr. HARGROVE (United States of America) said he supported the Cameroonian delegation's proposal, for the same reasons.

Mr. YANKOV (Bulgaria) said that he too supported the Cameroonian proposal, but would prefer the actual date of the Sub-Committee's next meeting to be left open for the time being.

Mr. de SOTO (Peru) said that unfortunately, since his delegation had not been informed that informal consultations were taking place, he was unable to state his position in regard to the Cameroonian delegation's proposal.

Mr. ENGO (Cameroon) expressed his regret that the Peruvian delegation had not been informed of the consultations in question. The latter were by no means clandestine, and any delegations that so wished could take part in them.

Mr. GOWLAND (Argentina) said that, if consultations had to be held, it would be preferable to follow the procedure previously adopted and have them conducted by the Chairman.

The CHAIRMAN pointed out that the Sub-Committee could have the use of the necessary Secretariat services once the main Committee had completed its work.

Mr. ENGO (Cameroon) said that the Rapporteur had been informally entrusted with the task of drawing up a document which might serve as a basis for the Sub-Committee's work. Since the document had been prepared and reservations had been expressed about it by some delegations, it had been decided that the Rapporteur would continue his consultations. The sole purpose of the present talks was to assist the Rapporteur in the preparation of a fresh text.

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Mr. de SOTO (Peru) said he had thought that the purpose of the Sub-Committee's present meeting was to consider the letter to be addressed to the Chairman of the main Committee and also to enable delegations to state their views concerning the consultations to be held before the summer session. At all events, his delegation failed to see why the Sub-Committee should not abide by the decision which it had already taken.

Mr. EVENSEN (Norway) said that, in his view, it was essential for the Sub-Committee to have a common basis to work on when the summer session began. His delegation therefore supported the Cameroonian delegation's proposal and though it would be better for the Sub-Committee to postpone further discussion until 26 or 27 March.

The CHAIRMAN suggested that the meeting should be suspended so that delegations might exchange views.

The meeting was suspended at 11.50 a.m. and resumed at 12.20 p.m.

The CHAIRMAN informed the Sub-Committee that the delegations concerned had decided to inform the main Committee of the outcome of their consultations.

Mr. VALLARTA (Mexico) proposed that the Sub-Committee should appoint a small unofficial working group which would co-operate with the Rapporteur. It would comprise one representative each from the Latin American, Asian, African and wester European countries and one representative each from the Soviet Union and the United States.

Mr. de SOTO (Peru) said he supported that proposal, which would enable the framework for the informal consultations to be determined.

Mr. EVENSEN (Norway), supported by Mr. DEJAMMET (France) and Mr. ODA (Japan), said he took it that other delegations which so desired could take part in the work of such an informal working group.

Mr. de SOTO (Peru) replied that, in his delegation's view, the informal working group should be similar to the drafting group which had been formed after the inter-sessional informal consultations in 1969. It should not, therefore, be regarded as a working group open to all delegations.

Mr. HARGROVE (United States of America) said that his delegation, as it had already had occasion to state, would like the Rapporteur to be able to continue his work; it therefore found the Mexican delegation's proposal acceptable. It should be noted, however, that at the previous session there had been an arrangement whereby delegations so desiring could participate in the drafting group's discussions on certain questions - a method which had worked very well.

Mr. WATANAKUN (Thailand) said he would like the Norwegian representative to clarify how, in his view, other delegations would take part in the meetings of the informal working group. If they participated in any other capacity than that of observers, the very purpose of the working group might be defeated.

Mr. DARWIN (United Kingdom) said that the many delegations which had submitted proposals or expressed views ought to have an opportunity to explain them to the Rapporteur. His delegation therefore shared the United States delegation's view that any group should adopt a practice similar to that of the previous year, by allowing other delegations to participate.

Mr. CABRAL DE MELLO (Brazil), said that he realized that all delegations wished to be represented in the group but felt sure that the latter's work would be more fruitful if its membership was limited than if it was open to all. In any case, the group would only be preparing documents which would be submitted to the Committee for approval. He failed to see how a plenary working group consisting of the forty-two members of the Committee - which was what some delegations seemed to be advocating - could serve any purpose. The previous year's working group had been open to all in the sense that delegations that so wished might either participate in the work as observers or state their views on matters of particular interest to them.

Mr. HARGROVE (United States of America) said he had no objection to the working group to be conducted by Mr. Badawi being formally constituted. Moreover, if the Sub-Committee decided to set up the working group proposed by the Mexican delegation, on the understanding that interested delegations would

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(Mr. Hargrove, United States)

be at liberty to attend and state their views, it would have at its disposal practical machinery which would not be inconducive to efficiency. His delegation assumed that, while consultations with representatives were being conducted on these questions, Mr. Badawi would continue the work he had already under way at the Committee's request.

Mr. ENGO (Cameroon) recalled that he had already stated several times that informal discussions were the best method of arriving at satisfactory results. He wondered whether the proposed group would be a working group of the Sub-Committee or an informal working group. In the latter case, the group's report would be of an unofficial nature, and in the former case the report presented would be that of the Rapporteur. He had no objection to the establishment either of a working group comparable to that of the previous year or of a new group set up on the lines proposed by the representative of Mexico. All geographical groups had been represented in the informal negotiations which had been taking place for some days, although two regions had had one representative more than the Mexican representative recommended, In any case, a decision on the subject should be taken as quickly as possible.

Mr. de SOTO (Peru) said that the working group would be an informal body with the task of assisting the Rapporteur in his work, which was also of an informal nature. Since negotiations were not involved, it would not be necessary for observers from other delegations to participate in the work. The document prepared by the group would not become official until it had been studied and adopted by the Committee.

Mr. DARWIN (United Kingdom) agreed with that view that the group and its document were informal. The problem was simply to ensure that the Rapporteur was able to carry out his task under the best conditions. The role of the Rapporteur was to know and understand the views of all delegations and he had already made an effort to do so. No new measures therefore seemed necessary, except to ensure that the delegations of the South American countries, which were having difficulties regarding the delimitation of the area, were able to express their views clearly on the subject, so that they could be reflected in the report. It was certain that,with their help,the Rapporteur would be able to complete his work successfully.

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Mr. ZEGHERS (Chile) said that the point at issue was not the position of the Latin American delegations but rather a problem of procedure. What the Rapporteur had tried to do was to use the synthesis arrived at during the previous year as a starting-point for his work and to specify the new elements which had been mentioned in the discussions held during the present year. The Rapporteur's task was not to submit a declaration of principles, which would be Utopian. The informal group would merely help to complete the synthesis of the previous year, if possible, and to present the various proposals in systematic form. The group could have the composition proposed by Mexico and the sponsors of concrete proposals could state their views in that body.

Mr. EVENSEN (Norway) thought that there was no consensus on the Mexican proposal. In any case, the Rapporteur's work seemed to be progressing satisfactorily. He therefore shared the opinion of the United States representative that any procedure which might delay matters should be avoided, in view of the shortness of the time still available.

Mr. CABRAL DE MELLO (Brazil) said that the question to be determined was not whether the Mexican proposal had been accepted but whether the present consultations met with general approval.

Mr. HARGROVE (United States) recalled that the Rapporteur's task was to prepare, as efficiently as possible, a document whose contents would be determined in consultation with delegations. He had undeniably accomplished that task well and should therefore be left to continue his work. On that understanding, the United States delegation would be prepared to approve the Mexican proposal, which would represent a change in the methods of work, provided that all the members of the Sub-Committee were able to reach agreement on that point. In the meantime, Mr. Badawi and his group should be allowed to complete their task.

Mr. BALLAH (Trinidad and Tobago) said that he would like the Chairman to determine whether a consensus had been reached on the Mexican proposal, since no firm objection had been expressed.

Mr. GOWLAND (Argentina) recalled that the Rapporteur's task was to record the agreement reached on some of the points considered during the informal

(Mr. Gowland, Argentina)

consultations. In his opinion, it was not certain that that mandate should be extended beyond the present meeting. Moreover, the Rapporteur also had to prepare the Sub-Committee's report. Therefore, there was nothing to prevent the Sub-Committees from approving the Mexican suggestion, which was most timely.

Mr. DARWIN (United Kingdom) said that he had not intended, in speaking collectively of the Latin American delegations, to attribute to them a unanimity of opinion which did not actually exist. He wondered to just what extent one could be certain that the Rapporteur, if his group included only one representative from the Latin American countries, would be able to accurately record the divergent views of the countries of that region. As to the question asked by the representative of Trinidad and Tobago, he wondered what consensus he had been referring to, since some delegations had envisaged the establishment of a working group similar to that set up the previous year and other delegations had thought that they would be able to participate in the group's work as observers or to submit concrete proposals to it, while others again had envisaged the establishment of a larger group than that of the previous year. To which of those three variants would the consensus mentioned by the representative of Trinidad and Tobago refer?

Mr. ALO (Nigeria) felt that it would be premature to take a decision on the Mexican proposal at that stage. The viability of the proposal would depend on the negotiations among the regional groups, since they would each have to choose a delegation which they considered to be particularly representative. That question arose particularly in the case of the African group. It would therefore be preferable at that stage to allow the Rapporteur to complete his work.

Mr. de SOTO (Peru) noted that a number of delegations would prefer the Rapporteur to continue his consultations and pointed out that no decision that the Committee might take at that stage could prevent the consultations from continuing.

Mr. CABRAL DE MELLO (Brazil) felt that the mandate of the Rapporteur could not be extended. Obviously its duration had not been precisely determined, but Mr. Badawi had prepared the document which he had been asked to draft and he could therefore not be expected to continue his consultations indefinitely.

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Mr. ENGO (Cameroon) said that, when the members of the proposed group were appointed, they would not include one representative of the African group and one representative of the Asian group but a single representative of the Afro-Asian group.

Mr. DEJAMMET (France) thought that the Sub-Committee could agree that the Rapporteur should continue his work and that a drafting group would assist him in his task. The Sub-Committee already had before it the document which had been prepared by the Rapporteur and on which it would have to take a decision. It might be advisable to agree, in principle, to follow the procedure adopted the previous year, without precisely determining the composition of the drafting group.

The CHAIRMAN asked the members of the Sub-Committee if they agreed to adopt the Mexican proposal, on the understanding that the proposed group would be invited to consult interested delegations, so that it would be allowed sufficient latitude.

Mr. VALLARTA (Mexico) asked if "interested delegations" meant those which had made concrete proposals.

The CHAIRMAN thought that the group should be allowed to take into consideration the opinions of various delegations, that is, those which had advanced concrete proposals and those which might be interested in a particular topic. It would not be appropriate to prescribe a specific method of work for the group.

Replying to a question from Mr. ALO (Nigeria) concerning the composition of the proposed group, Mr. VALLARTA (Mexico) read out his proposal again.

Mr. PARDO (Malta) said that, since he did not think his delegation belonged to any particular group, it would be somewhat difficult for him to accept the Mexican proposal. However, he would bear in mind that the Chairman had indicated that the sponsors of concrete proposals could participate in the work of the group.

Mr. CABRAL DE MELLO (Brazil) wished to know how long the drafting group would work and when it was expected to submit its report.

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The CHAIRMAN pointed out that the Sub-Committee had already used up the time at its disposal. Only if progress were made before the end of the week would it be possible to come to an agreement with the Chairman of the main Committee so that the Sub-Committee could hold a last formal meeting. He therefore asked the members to abide by the decisions which had already been taken.

Mr. LEGAULT (Canada) stated that his delegation was ready to accept the consensus which had emerged regarding the compostion of the working group. Meanwhile it should be remembered that the positions taken by the members of the group, who would be selected on a geographical basis, could not bind the individual delegations from the areas represented.

Mr. EVENSEN (Norway) requested that the draft resolution circulated by his delegation should become an official document of the Sub-Committee.

The CHAIRMAN replied that the request would be complied with.

Mr. GOWLAND (Argentina) recalled that the terms of reference of the working group would end with the current session of the Committee, simultaneously with those of the Rapporteur.

The CHAIRMAN said that he would keep in touch with delegations and that if any decisions were taken, they would be informed in the course of either the informal meetings or the formal meetings of the main Committee.

Mr. ENGO (Cameroon) pointed out that the Sub-Committee could not renew the Rapporteur's mandate since it had never assigned it to him officially.

Mr. de SOTO (Peru) supported the representative of Cameroon and recalled that the working group was informal.

The CHAIRMAN, referring to the draft letter (A/AC.138/SC.1/L.3), said that, in order to take account of any new developments which might occur, he proposed to add the following sentence to the letter: "Since informal consultations are continuing, should there be new developments in the next few days, I shall so inform you in a subsequent letter".

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Mr. STASHEVSKY (Union of Soviet Socialist Republics) proposed that the penultimate paragraph of the draft letter should be changed to read: "Governments will probably wish to study further the new formulations proposed...".

The CHAIRMAN announced that, if there were no objections, the extra sentence he had proposed would be added to the draft letter and that the amendment submitted by the USSR would also be taken into account.

The meeting rose at 12.25 p.m.