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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 THIRTY-SIXTH TO THIRTY-EIGHTH MEETINGS

held at the Palais des Nations, Geneva,
from 25 to 27 August 1970

The list of participants attending the Committee's session is to be found in documents A/AC.138/INF.3 and Corr.1 and 2 and Add.1 and Corr.1, Add.2-4, Add.4/Corr.1 and Add.5.

Chairman:

Mr. GALINDO POHL

El Salvador

Rapporteur:

Mr. BADAWI

United Arab Republic

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SUMMARY RECORD OF THE THIRTY-SIXTH MEETING
Held on Tuesday, 25 August 1970, at 5.55 p.m.

Chairman: Mr. GALINDO POHL El Salvador

OPENING OF THE SESSION (item 1 of the provisional agenda)

The CHAIRMAN declared open the session of the Legal Sub-Committee of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction.

ADOPTION OF THE AGENDA (item 2 of the provisional agenda) (A/AC.138/SC.1/L.5)

The CHAIRMAN read out the provisional agenda and pointed out that for the most important item, item 3, consideration of principles and recommendations, the exact wording of the corresponding item of the agenda for the spring session had been followed, to avoid any controversy.

If there were no objections, he would consider the agenda adopted.

Mr. ENGO (Cameroon) said he would like to have details of the particular points on which members of the Sub-Committee might be asked to give their opinion.

The CHAIRMAN said that the provisional agenda before the Sub-Committee was exactly the same as the one it had approved in March 1970 in New York, except for item 4 concerning the adoption of the report and at its spring session, the Sub-Committee had not contemplated submitting a report to the Committee, since it had hoped to be in a position to make a full report at the present session.

The provisional agenda (A/AC.138/SC.1/L.5) was adopted.

ADOPTION OF THE REPORT OF THE SUB-COMMITTEE TO THE COMMITTEE (agenda item 4)

The CHAIRMAN said that, while the Sub-Committee had not so far held any formal meeting, it had nevertheless got through a good deal of work. The Sub-Committee and the full Committee had taken the view, when they met in March in New York, that informal consultations would be the most suitable way to study and work out the declaration of principles requested by the General Assembly for its twenty-fifth session. The Sub-Committee had made every effort to fulfil its mandate and had left aside all the other questions it had to consider in order to concentrate on the preparation of the declaration of principles.

A week had been spent in informal consultations in June in New York; they had been resumed at Geneva during the last week of July and had continued since the beginning of the session of the Committee. Real progress had been made, but though

complete or partial agreement had been reached on a number of points, the Sub-Committee had not yet been able to agree on the text of the declaration of principles requested by the Assembly.

As little time remained for the Sub-Committee to complete its work, the Rapporteur had prepared a draft report (A/AC.138/SC.1/L.6), which reflected what had been accomplished at the informal meetings. He had asked the Chairman of the Committee for an extra meeting of the Sub-Committee to be arranged so that delegations might be able to discuss and, if necessary, amend the draft report after considering it at leisure.

Mr. BADAWI (United Arab Republic), Rapporteur, said that the reason why the draft report he had prepared dealt mainly with procedural matters was partly that the questions discussed at the March session and the present session had not brought out any fresh aspect of the matter which had not already been discussed thoroughly and reflected in the reports of earlier sessions of the Committee, and partly that most of the Sub-Committee's time had been devoted to informal consultations which, by definition, could not be the subject of a formal report.

The draft report described the different stages in the work of the Sub-Committee at both the March and August 1970 sessions and explained that in view of the slender progress made by the Sub-Committee in March, it had been considered advisable to hold informal consultations. The report also stressed that those consultations had enabled the Sub-Committee to make a certain amount of progress, without however reaching complete agreement.

In the light of that situation, he had thought it proper to attach an annex to the draft report containing the different formulations on which provisional agreement had been reached, with an indication in each case whether agreement had been reached in the drafting group at Geneva or in New York or in the course of the informal consultations themselves.

He had also listed in the annex a number of matters that had been the subject of a large number of different proposals, which had been discussed but on which no decision had been taken.

The CHAIRMAN suggested that the Sub-Committee should interrupt its work for the time being and postpone consideration of the draft report which had just been submitted to it till the next day.

Mr. STEVENSON (United States of America) said he thought it might be helpful to have informal consultations before the next formal meeting.

Mr. SEATON (United Republic of Tanzania), referring to the last sentence in paragraph 1 of the draft report, said that the Committee's informal consultations had unfortunately not led to any satisfactory results. That failure was partly to be explained by the excessive size of the drafting group, which had made it difficult to control the discussions.

The time had now come for the Sub-Committee to hold official sittings. The records of those meetings would enable them to keep track of the work accomplished and the positions adopted. If it were thought useful to have informal consultations, they should take place outside the Sub-Committee's normal meeting hours. The Rapporteur had also said that the informal discussions had been only on matters which had already been discussed thoroughly; so he was afraid that if they continued they would still propose nothing new.

Mr. ENGO (Cameroon) said he supported the representative of the United Republic of Tanzania.

What was needed now was to find some way of reporting to the Committee on the informal consultations held by the Sub-Committee and recognizing that the Sub-Committee's task had been made more difficult by the fact that the number of countries taking part in the consultations had been greater than the number originally invited. It would be disastrous now if still further informal meetings took up time for work which could not be recorded in the report.

The CHAIRMAN said that the positions could be reconciled. The Sub-Committee could meet in the regular way, as the representatives of Cameroon and the United Republic of Tanzania had asked, but it could also go on with informal consultations outside meeting hours, as the representative of the United States had suggested.

In reply to a question by the representative of Malta, he said that the next meeting would be devoted mainly to the draft report, but other suggestions for the future work of the Committee could be considered.

The meeting rose at 6.30 p.m.

SUMMARY RECORD OF THE THIRTY-SEVENTH MEETING

Held on Wednesday, 26 August 1970, at 4.30 p.m.

Chairman: Mr. GALINDO POHL El Salvador

ADOPTION OF THE REPORT OF THE SUB-COMMITTEE TO THE COMMITTEE (agenda item 4)
(A/AC.138/SC.1/L.2, A/AC.138/SC.1/L.4/Rev.1, A/AC.138/SC.1/L.6) (continued)

The CHAIRMAN suggested that it might save time if members confined their comments to the draft report (A/AC.138/SC.1/L.6) as a whole, excluding the annex.

Mr. ENGO (Cameroon) said he thought it would be better not to do that, as some paragraphs in the first part of the draft report were closely connected with the annex.

Paragraphs 1-10

Mr. EVENSEN (Norway) said that at the end of the meetings in New York his delegation had submitted a draft resolution (A/AC.138/SC.1/L.4) in the hope that it would help the Sub-Committee to find a compromise solution. However, the draft report before the Sub-Committee revealed the extent of the difficulties it had yet to overcome. He could not conceal his disappointment at the fact that after three years of work, so much still remained to be done. It was therefore with some hesitation that he submitted a revised version of the draft resolution (A/AC.138/SC.1/L.4/Rev.1). He did not want members to take a majority decision on it but to try and reach a consensus. It was in that hope that his delegation submitted its revised draft resolution, in which it had attempted to combine the first two draft declarations which had been presented, in the light of the provisional agreement reached in June and at the present session.

Mr. SEATON (United Republic of Tanzania) said that, on reading the draft report, his delegation, no doubt in common with many others, had felt that the work of the present session had not culminated in the desired agreement. However he wished to pay tribute to the efforts of many delegations to reach an agreement. In spite of those efforts, it had proved impossible to reach agreement on every point. Some delegations had attempted to draw up a list of the areas of agreement. The Norwegian delegation, for instance, which had set out its views once already in a document, had just submitted a revised version of that document. His own delegation was a sponsor of draft resolution A/AC.138/SC.1/L.2, which embodied the views of a large number of delegations. There were two points in the Norwegian draft declaration which he regarded as particularly important. First, paragraph 5, which

expressed the idea that efforts should be made to minimize fluctuations in prices of raw materials that might result from the exploitation of marine resources; that proposal, which was also to be found in paragraph 5 of draft resolution A/AC.138/SC.1/L.2, was very useful in that it could help many of the developing countries to weather the interim period while the commodities discovered in the seabed were beginning to be exploited and to compete with those already produced by the developing countries. Secondly, paragraph 11 (b) set forth an admirable idea which was also to be found in paragraph 7 of draft resolution A/AC.138/SC.1/L.2. He preferred the formulation in the latter, which seemed to him to be more balanced; in fact, equitable sharing "by the international community" was rather an ambiguous expression. Lastly, paragraph 1 of the Norwegian draft declaration spoke of the "area and its resources"; he would point out that draft resolution A/AC.138/SC.1/L.2 was also based on the principle that the area and its resources were the common heritage of mankind. In short, his delegation welcomed the initiative of the Norwegian delegation; it showed a constructive spirit that should encourage the Sub-Committee to embark with optimism on the final stage of its work.

Mr. STEVENSON (United States of America) said that many difficult problems had been overcome but unfortunately others still remained. He thought that it would be useful to review some of those problems, particularly as a number of delegations had expressed the opinion that so many problems had been discussed in the course of the informal meetings that it had not been possible to ascertain the views of certain delegations on the matters left pending. He visualized the problems as divided into two major types. On the one hand, there were those presented by the establishment of an interim régime. In that respect many of the delegations, including his own, believed that the declaration of principles could not replace an internationally recognized régime established by treaty. All the members of the Sub-Committee agreed that the principles should not prejudice the different positions of delegations as regards the exploitation of resources prior to the establishment of a régime.

In informal discussions, formulations had been made with a view to ensuring that that was the case. However some aspects still presented problems, notably the principle that the activities should be conducted in accordance with applicable principles of international law, including the Charter of the United Nations. His delegation had been unable to understand why some of the other delegations had had misgivings about that principle, as it was in no way incompatible with the Sub-Committee's aim of finding a neutral formulation which would not be prejudicial to the positions of delegations, especially those which considered

that the principle of the freedom of the high seas was applicable to the exploitation of resources. That principle did not in fact preclude those delegations from maintaining that the applicable international law did not include the freedom of the high seas.

Moreover, his delegation hoped that at that stage the Sub-Committee would avoid taking any decision which might prevent new approaches from being put forward with respect to the proposed international régime. It wished to express its concern over certain proposals made in the course of the informal consultations. For instance, in cases of pollution from sea-bed exploration and exploitation, at the present time, in the absence of international machinery, the international community was forced to rely on the States themselves to take action. That state of affairs should not become permanent. His delegation therefore considered it necessary to avoid any formulation which would tend to endorse as a principle unilateral action by the coastal State in an undefined area of the ocean. The working paper presented by the United States (A/AC.138/25) had laid stress on an international approach to the problem of pollution. It was thus necessary to try to establish a régime that would enable the problem to be settled on a truly international basis before reaching the all too easy conclusion that each State should do as it wished.

His delegation was also concerned over the question of the rights and interests of the coastal State. The system it had proposed was specifically designed to accommodate a variety of interests. Under that system, coastal States would have more than the right of consultation, but they would also be required to act in certain ways in conformity with an internationally agreed régime. His delegation did not wish that aspect of its draft Convention to be included in the declaration of principle because the problem of the interests of the coastal State could only be dealt with effectively in the context of an international régime. The issue was whether coastal States would obtain such broad concessions from the international community with respect to the sea-bed that it would eventually be impossible to speak of genuine internationalization, whereas the task of the Sub-Committee was to promote such internationalization. It was necessary, in the last analysis, to ensure that the term the "area beyond national jurisdiction" was not deprived of all meaning.

He went on to speak of the nature and scope of the régime. Although his delegation had originally favoured the establishment of a fairly long list of matters to be dealt with, it was prepared to accept a shorter list in order to accommodate those delegations which felt that that would facilitate the Sub-Committee's work. The main points to emerge from the discussions were that the Sub-Committee should not at the present stage restrict the number of problems bearing on the area that might be dealt with in a treaty, that the régime should provide for the rational development and management of resources and the equitable sharing of benefits by the international community and that it should apply to a clearly defined area. His delegation hoped that all delegations would approve those principles.

His delegation was aware that the question of limits was important to all delegations. In fact, it was the solution of that question that would determine the significance of all the Sub-Committee's efforts. It appeared that delegations were agreed that the declaration of principles should not fix any definite boundaries, but many of them had said that it was inconceivable that an international organization should be set up to issue exploration and exploitation licences without prior international agreement on a clear and precise definition of the area for which it would issue those licences. Past failures should not make them lose sight of that goal. Two questions could be raised with regard to the boundaries of the area: how to fix them and when. His answer was that they should be fixed by international agreement. That was necessary because, ever since the Committee's inception, it had been pointed out that the industrially advanced States should not be the sole beneficiaries of sea-bed exploitation. Moreover, it was the treaty establishing the régime that should define the boundaries of the area. It was difficult to believe that a definitive agreement could be reached on either a boundary or a régime alone. If the Committee was prepared to recommend that preparations should be made for a conference of plenipotentiaries to adopt a treaty on an international régime and machinery on the boundaries of the area, his delegation would firmly support that recommendation.

There was one question which had been settled easily during the informal consultations in New York, but was now presenting difficulties to some delegations: it was the question of the status of the waters above the area as high seas. For his delegation it was clear that the use of the term "high seas" in no way prejudiced the right of States, including coastal States, on the high seas.

His delegation was greatly encouraged by the fact that considerable progress had been made since the 1968 meeting at Rio de Janeiro. It should not be forgotten that members of the Committee represented States with very different needs and interests, but that diversity of interests had not prevented them from reaching a significant measure of agreement. For instance they had agreed that there was a need for new laws to rationalize the use of the sea-bed in the interests of all mankind. The mere fact that that principle had been recognized was very important. His delegation believed that it was possible to find a way of accommodating all the interests represented there, while giving the international community the possibility of exploiting that last frontier for the benefit of the whole of humanity.

Mr. PARDO (Malta) said he thought that the drafting of the report should be improved, without, however, changing the substance. In paragraph 4, the end of the third sentence should be reworded to read "and which it was believed should be included in the statement of principles". In paragraph 5, the last sentence should be clarified and if necessary split into several sentences. Paragraph 6 should be amended so as to make it clear what exactly was meant by the expression "such working paper".

Subject to the comments of the Maltese representative, paragraphs 1 to 10 were adopted.

Paragraphs 11 and 12 and the annex

Mr. DENORME (Belgium) said that for the purpose of assessing the progress achieved, the proper basis of comparison was neither the document of 26 March 1970,^{1/} nor even the "synthesis" in the Committee's report to the General Assembly at its twenty-fourth session,^{2/} but the report which the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction had adopted at Rio de Janeiro in 1968.^{3/}

^{1/} Document prepared at the request of the informal group established by the Legal Sub-Committee at its 30th meeting on 10 March 1970.

^{2/} See Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 22 (A/7622), part two, paras. 83-97.

^{3/} Ibid., Twenty-third Session, document A/7230.

At the time, his delegation had supported variant "B", which contained seven general and concise principles; variant "A", which was more detailed, was a draft statement of general principles. But even compared with that text, the progress made was considerable.

Although, despite every effort, the Sub-Committee was apparently unable to fulfil the mandate which had been assigned to it, differences of view, which at the beginning, had been very wide, were now a good deal narrower. On fundamental questions, a possibility of agreement had emerged, thanks to the general acceptance of a few methodological premises and some fundamental principles. With regard to the former, for instance, the Legal Sub-Committee had endeavoured to formulate concepts without prejudice to the positions of delegations on the so-called moratorium resolution, thereby obviating the need to set up a transitional or interim régime. Again, it had embarked on its task without prejudging a number of pending problems of the law of the sea, in particular questions relating to the extent of the national jurisdiction of coastal States.

It was unfortunate that the draft report did not reflect that fundamental approach, which might make it easier to reach a compromise. If there were a consensus on that point, he would like it to be recorded in the report.

With reference to fundamental principles, various proposals had emerged in the course of the Sub-Committee's work and were now supported by nearly all delegations. They included (a) the concept of the common heritage of mankind, (b) the need to establish an international régime applicable to the area and its resources, (c) the setting up of an international authority, which was considered desirable in order to ensure adequate co-operation, (d) the principle of the sharing of proceeds of the exploitation of the area, and (e) special attention to the needs and interests of the developing countries.

But the Sub-Committee still had one decisive step to take: final acceptance of a text for submission to the General Assembly.

In seeking to analyse the obstacles which had so far prevented the Sub-Committee from doing that, his delegation had reached the conclusion that the difficulty lay in the fact that, whereas each delegation participating in the Sub-Committee's work could submit its own statement of principles, none could sponsor a compromise text. If a compromise text was what they were trying for, the nearest approach was the anonymous document which had served as a basis for the informal consultations during

the last few days, and which had the advantage of meeting the two-fold condition laid down by the General Assembly in its resolution 2574 B (XXIV), that the statement should be "comprehensive and balanced".

Perhaps that anonymous compromise text could be published as an annex to the Sub-Committee's report. Although in the past his delegation had opposed the publication of separate drafts representing different schools of thought, since that might encourage a hardening of positions round a few rigid views, it now felt that the publication of the anonymous draft would help to focus efforts on that single text. A paragraph might then be added to the report to the effect that all members proposed to continue their efforts at conciliation with a view to working out, on the basis of the compromise proposal, a text which they could agree, without objection, to have transmitted to the General Assembly, in the hope of being able to submit a draft resolution to it at its twenty-fifth session. The Rapporteur could decide what title should be given to the text containing that document and mention, for example, that it was a working paper which had been drafted by a few delegations as a basis for fresh consultations. The document would be the counterpart, as it were, of last year's "synthesis". There would then once again be a common basis for the Sub-Committee's efforts, and it might be possible, before the end of the session, to agree on a text.

If the Committee was unable to agree on the text of the statement during the present year, there was very little hope of its doing so in the future. The only possibility left would be to have the statement adopted by the General Assembly by vote, majority against minority. If that was what the Committee wanted, there was absolutely no point in wasting time in discussions. But what possible value could a régime have that had been established by a vote of the General Assembly? If existing international law did not provide an adequate basis for activities which present-day technology encouraged them to believe might be undertaken in the area of the sea-bed and ocean floor beyond the limits of national jurisdiction, a régime resulting from a decision taken without the agreement of all delegations would have very little chance of providing a more satisfactory basis for such activities.

Moreover, if no positive conclusion had been reached after a month of consultations, the prospects of any effective work being accomplished by the international machinery for regulating the exploitation of the sea-bed and ocean floor to

which the Sub-Committee was looking forward were very bleak. In order to show that the establishment of such a machinery was a viable solution, the Committee, on which only about forty States were represented, must be demonstrably capable of reaching a constructive conclusion.

His delegation had not lost hope that, through a spirit of conciliation and compromise, the final obstacles would be overcome. He sincerely trusted that that would be the case.

Mr. ENGO (Cameroon) said there was an essential link between paragraphs 11 and 12 of the draft report and the annex. In his delegation's view, it would be difficult to justify the inclusion in the Sub-Committee's report of documents which had been drafted by a limited number of delegations and had not been considered by the Sub-Committee as a whole.

However, his delegation would have no objection to those documents being annexed to the report, if the majority so wished. But in that case, paragraphs 11 and 12 must indicate the origin of those documents. It must state clearly that the texts annexed represented nothing more than the result of informal talks between a limited number of delegations and reflected only the points on which agreement had been reached between those delegations which had participated in the consultations. Such an explanation would be all the more important since there would be nothing in the summary records of the Sub-Committee's meetings to show the origin of the documents.

What the Sub-Committee proposed to include in its report represented only some of the results of the informal discussions that had taken place both before and during the session. The formulations in the annex to the draft report were liable to give the impression that no result had been achieved, which was not the case. Moreover, paragraphs 11 and 12 were open to different interpretations and could encourage false hopes which would be dangerous for the Committee's future activities.

Mr. ZEGERS (Chile) said he regretted that, despite all its efforts, the Sub-Committee had been unable to agree on a statement of legal principles which was what the General Assembly had asked it to prepare.

His delegation believed that the chief source of difficulty was the establishment of the international régime for the utilization of the resources of the sea-bed and ocean floor for the benefit of all mankind. Whether or not the idea was

acceptable politically, those resources were none the less part of the common domain of Roman law, and therefore retained their international character. The intention of the General Assembly, in adopting resolution 2340 (XXII) had been to give legal substance to that idea, in order to develop the concept of the common heritage of mankind.

In essence, the positions adopted by States were governed by their approach to the fundamental problem of who was to exploit the resources of the sea-bed: the international community, under an international régime and machinery, or those States which were capable of exploiting the submarine areas beyond the limits of national jurisdiction?

Only if there was the political will to achieve some result would it be possible to overcome the present disagreements. He joined with the Tanzanian representative in praising the very real efforts made by the Norwegian representative, who had submitted a very interesting compromise text and from the start had done his utmost to help to find a consensus on a statement of basic principles.

As to the draft report, it would appear from paragraph 6 that the document of 26 March 1970 mentioned in paragraph 5 had been accepted as the only working paper for future deliberations. But that was not the case, and the Sub-Committee should also include draft resolution A/AC.138/SC.1/L.2. It would be better to delete paragraph 6 and to make clear in paragraph 5 that the document of 26 March 1970 had been drafted at the request of an informal meeting of the Sub-Committee and should itself be treated as informal.

With regard to paragraph 4, the first sentence should be suitably expanded, since obviously the "synthesis" in question could only mean the reflection of all the pages of the report and of the debate that preceded it.

With regard to paragraphs 11 and 12, his delegation might have something to say about them later.

Mr. FERNAND-LAURENT (France) said he felt that the draft report underestimated what the Legal Sub-Committee had achieved. In fact, delegations had made a real effort to go beyond their national or regional positions, and appreciable progress had been made. Unfortunately, however, that session had not produced a consensus on the question of the equitable sharing of the benefits of the

exploitation of the sea-bed. Such a consensus would have given substance to the concept of the common heritage of mankind. It was too early to state legal principles, but there should at least have been some expression of a political will, so as to answer the hopes of the developing countries.

The question of the equitable sharing of benefits was particularly important, since it was tied up with the question of the definition of the limits of the area that lay beyond the limits of national jurisdiction. If the proposed régime ensured an equitable sharing of all benefits, the coastal States would be more willing to agree to a wider area. Agreement must therefore be reached on those two closely linked questions. That might be possible at the General Assembly if in the meantime the Sub-Committee organized informal or formal discussions or adopted some other device for that purpose. Draft resolution A/AC.138/SC.1/L.4/Rev.1, and the anonymous working paper which had just been prepared by some twenty countries, would provide a background for the discussions. The Secretariat would have to arrange for the distribution of the anonymous document.

Mr. BALLAH (Trinidad and Tobago) said he thought the draft report fairly reflected the extent of the disagreement which still persisted, due to the differing needs and interests of the members of the Sub-Committee.

In paragraphs 5 and 6 undue emphasis had been placed on the working paper of 26 March 1970, which, as already pointed out by the Chilean representative, had been produced by an informal consultative group. Draft resolution A/AC.138/SC.1/L.2 and draft resolution A/AC.138/SC.1/L.4/Rev.1 were at present the only official documents of the Sub-Committee. Paragraphs 5 and 6 should therefore be rewritten so as not to give too much weight to the working paper of 26 March 1970.

He shared the view of the Cameroonian representative about paragraphs 11 and 12. The annex introduced in paragraph 12, "Elements of the Declaration provisionally agreed upon", did not reflect any formal agreements. What was meant by "provisionally agreed upon?" Was it possible to speak of agreement on an element when it was accepted by a working party of some 15 members, against the opposition of two others who obviously represented the views of a much larger number of countries? In fact, the only element in the annex which had been genuinely and unreservedly agreed was that on "Settlement of Disputes." He was therefore afraid that the annex might mislead people who had not followed the actual consultations; it should be deleted and the Sub-Committee's working paper of 24 August 1970 should be issued in New York instead.

Mr. YANKOV (Bulgaria) said that delegations had shown a spirit of co-operation during the consultations, the Chairman had shown complete impartiality and the documents prepared by the Secretariat had helped to bring some order into the confusion of the informal consultations.

The annex to the draft report was a factual statement indicating the points on which agreement had been reached, at what level and by what kind of body. The elements mentioned had been agreed, as had already been explained, at informal consultations and by fairly representative drafting groups - fifteen to twenty-four members - which had been open to anyone wishing to participate. It might be possible to correct the annex and add footnotes, but it would be a pity to delete it, since it reflected constructive work. In particular, the first two elements of the annex, "Non-appropriation" and "Non-acquisition of rights" reflected a general agreement which might one day become the nucleus of international legislation on the sea-bed. The Sub-Committee had also made progress on the "Elements of the Declaration still under consideration." The existence of an area beyond the limits of national jurisdiction was now no longer disputed, there were still differences of opinion over the limits, but they were not insuperable. The concept of the common heritage of mankind had also been agreed; it would of course have to be defined for the purposes of the legal régime. A good deal of work had still to be done to decide the scope, nature and elements of that régime. His delegation would examine carefully any proposals on that subject. However, many difficulties remained with regard to elements such as the status of waters and air space above the area and the use of the area for peaceful purposes; in the case of the latter element, it would be better to specify the final aim which should be the prohibition of all military activities.

He supported the French representative's suggestion that further informal consultations should be held at the twenty-fifth session of the General Assembly. If they produced encouraging results, an additional meeting of the Legal Sub-Committee might be considered for the purpose of examining a draft declaration of principles. If the Sub-Committee could submit a draft to the twenty-fifth session of the General Assembly, it would contribute towards the success of the Assembly's work on the question. As a basis for such a document, the Sub-Committee had so far the draft declaration of the developing countries and that of Norway, as well as

its own report. As soon as Governments had been consulted, it was to be hoped that a declaration of principles would be submitted to the Assembly at its twenty-fifth session.

Mr. KHANACHET (Kuwait) said that in his opinion, the "Elements of the Declaration still under consideration" listed in the annex to the draft report should in fact constitute the basis for a declaration of principles. If the Sub-Committee's report was adopted in its present form, it might look like an admission of failure. The Sub-Committee would then be displaying an unjustified masochism. He accordingly supported those representatives who had urged that the annex to the draft report should not be submitted to the General Assembly.

The anonymous document submitted to the Sub-Committee should not be officially transmitted either. It did not constitute a basis for negotiation; even in the view of its authors, it was no more than a compromise text. It might perhaps be distributed as an informal working paper, however, because during negotiations it was desirable that all available working documents should be put to use.

He supported the French representative's suggestion that the Sub-Committee should hold informal consultations at the twenty-fifth session of the General Assembly. The Sub-Committee was morally bound to submit a comprehensive and balanced statement of principles to the Assembly at its twenty-fifth session, and informal consultations would give it a last chance of reaching agreement on the statement. It should therefore hold a short session to adopt that document, and the plenary Committee would then hold another to approve its work. He would ask the Chairman to put that proposal to the Sub-Committee, so that it would not have to present the Assembly with an admission of failure.

Mr. NJENGA (Kenya) said he would like first to make it clear that, although the Sub-Committee had not been able to reach agreement on a statement of principles, that was not the fault of any particular delegation, since all had done their best to reach agreement. As the Norwegian delegation had just submitted a revised version of the document it had prepared, his delegation, which was among the sponsors of draft resolution A/AC.138/SC.1/L.2, would like to clarify its position in regard to the documents of the Sub-Committee. Any delegation which wished to submit a working document had, of course, the right to do so; but there could be no question of submitting as an official document a document based on an

unsuccessful compromise and of uncertain status. It was wrong to speak in paragraphs 11 and 12 of the draft report about documents which had never been before the Sub-Committee and, for that reason, he supported the proposal of the representatives of Trinidad and Tobago and Kuwait for the deletion of the annex. Though there might have been provisional agreement on some points, it must be pointed out that many delegations had taken no part in the discussions which had led to that agreement. As far as his delegation was concerned, there had never been any question of conferring full powers on the delegations taking part in the working groups, since its view was that any element agreed must be submitted to the Sub-Committee before it could be included in the Sub-Committee's report. It followed that if the Sub-Committee decided to include the annex in its report, paragraphs 11 and 12 would have to be amended.

It was by no means his intention to make the Sub-Committee's task more difficult; he simply wanted to save the Sub-Committee from the possibility of finding itself in the unfortunate situation of having a text that had come out of informal discussions subsequently disowned. Furthermore, his delegation considered that the elements on which, according to the annex, agreement could not be reached were the most important elements of the future statement, and for that reason it could not accept any provisional agreement. To proceed on those lines could very well lead to the establishment of an interim régime, which was something his delegation had consistently opposed.

Mr. GALLAGHER (United Kingdom) said that after listening to the speeches that had just been made, his delegation would like to pay tribute to the Chairman, the Vice-Chairman and the members of the Sub-Committee for the efforts they had made to reach a solution. The results of those efforts should be set out in the report of the Sub-Committee. The Rapporteur had suggested one way of doing that and the United Kingdom supported him. If certain delegations objected to the inclusion of an annex in the draft report, it was for them to suggest a method by which the results achieved might be recorded in the report.

In paragraphs 11 and 12, the provisional character of the agreements that had been reached should be emphasized, and it should be pointed out that the formulations contained in the annex had not yet been discussed by the Sub-Committee.

His delegation joined with the French delegation in regretting that no agreement had been possible regarding the sharing of benefits from the exploration and exploitation of the sea-bed and ocean floor beyond the limits of national jurisdiction. The United Kingdom attached great importance to the principle and had put forward a solution in its statement made at the thirty-sixth meeting of the main Committee, on 14 August 1970.

Lastly, his delegation hoped that whatever form the report was to take, the progress achieved during the present session would provide a springboard for the conclusion of an agreement on the declaration of principles requested by the General Assembly.

Mr. PARDO (Malta) said that, if paragraphs 4 and 5 were to be re-drafted as the representative of Chile had asked, he too would like to propose some changes to the part of the report that had already been adopted.

First, paragraph 8 was drafted in very poor English and should be revised. Secondly in the first sentence of paragraph 11, it should be made clear whether the informal discussions referred to were those held in New York or those in Geneva. Lastly, in the last line of paragraph 11 of the English version, the expression "these provisions", should be altered, since there was nothing in the preceding sentences to justify the use of the demonstrative.

Some delegations objected to any mention in the report, even in an annex, of any agreement whatever, even provisional. There would be little value in retaining a text if its contents were rejected by some delegations. For that reason he would not oppose the deletion of the annex and paragraph 12. But if those sections of the report disappeared, an addition should be made to paragraph 11 to the effect that objections had been raised to any mention in the report of provisional agreement having been reached during the Sub-Committee's August session.

His delegation had some doubts regarding the suggestion that a short session of the Legal Sub-Committee, formal or informal, should be held during the next session of the General Assembly. However much his delegation might wish to see a declaration of principles adopted that could be transmitted to the General Assembly, it was convinced that if there were no greater readiness to co-operate than at present, the new session could scarcely be more successful than the session now drawing to a close. The time was rapidly approaching when delegations would have to accept their responsibilities more explicitly.

Mr. VALLARTA (Mexico) said that his delegation was one of those which wished the progress made and agreements reached to be recorded in the report. The answer would perhaps be to retain the annex but to replace its present title by the following: "Agreement was reached on the inclusion in the present report of the following unofficial texts as a basis for future negotiations". The parentheses would then be deleted in the body of the annex, but it would be made clear that any agreement on the text in the annex was subject to agreement on the other paragraphs or elements of the declaration of principles.

He noticed that in the last section of the annex the question of the relationship between the declaration of principles and the future international régime was not mentioned among the elements of the declaration still under consideration.

With regard to the Belgian representative's proposal that the anonymous document should be reproduced in the report, his delegation thought that the solution would be to attach it as an annex, prefaced by some such wording as: "Some delegations thought it desirable that the following document should be included in the report:".

Mr. CABRAL de MELLO (Brazil) said that his delegation fully supported the position of the representatives of Trinidad and Tobago, Kuwait and Kenya with regard to the inclusion of the annex in the draft report.

In view of the fact that the summary records of the discussions in the Sub-Committee would contain no account of the informal consultations, his delegation was of the opinion that, if the text proposed were transmitted to the General Assembly direct, it would mislead delegations that had not participated in the Sub-Committee's work. In any case, his delegation did not see the utility of sending to the General Assembly texts that had not been considered either by the Sub-Committee or by the Committee.

He was afraid that if the Sub-Committee were to meet during the twenty-fifth session of the General Assembly, as some representatives had suggested, the delegations concerned would not be in a position to give sufficient attention to its work in view of the volume of work they would already have to deal with in the Assembly itself.

Mr. BADAWI (United Arab Republic), Rapporteur, replying to the representatives of Chile and Trinidad and Tobago, said that the reason why the paper dated 26 March 1970 was mentioned in paragraph 5 was not in order to attribute to it any special status, but simply what it had at that time been discussed at length by the Committee, and it had been understood that it would be utilized during the informal consultations between the March and August sessions.

In view of the comments on paragraphs 11 and 12 of the draft report and annex, the best solution would perhaps be to delete everything after paragraph 9, and replace it by two or three paragraphs reflecting the discussion that had just taken place. If that proposal was agreed to, he would hold himself at the disposal of delegations to draw up an acceptable text with their assistance.

The proposal by the representative of Malta regarding paragraphs 11 and 12 did not seem acceptable. If any progress had been made, it should be stated accordingly. If it were considered there had been no progress, there was no point in mentioning the question.

The CHAIRMAN suggested that the Rapporteur be invited to draft the final paragraphs of the report on the lines he had indicated in consultation with the delegations concerned.

It was so agreed.

The meeting rose at 7.10 p.m.

SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

Held on Thursday, 27 August 1970, at 4.30 p.m.

Chairman: Mr. YANKOV Bulgaria

In the absence of the Chairman, Mr. Yankov (Bulgaria), Vice-Chairman, took the Chair.

ADOPTION OF THE SUB-COMMITTEE'S REPORT TO THE COMMITTEE (agenda item 4)
(A/AC.138/SC.1/L.6 and revised draft) (concluded)

Mr. BADAWI (United Arab Republic), Rapporteur, said that paragraph 4 of the revised draft report which had just been distributed in dittoed form had been modified to take account of the comments made at the thirty-seventh meeting by the representatives of Chile and Trinidad and Tobago. Paragraphs 11 and 12 had been rewritten in the light of comments at the same meeting on the preparation of a draft declaration of principles.

The CHAIRMAN invited members to comment on the text which had just been submitted by the Rapporteur. At the thirty-seventh meeting, members had been in almost complete agreement on the first paragraphs. He hoped those paragraphs would be speedily adopted.

Mr. EVENSEN (Norway) requested the addition to the end of paragraph 4 of the following sentence: "A revised version of the draft resolution contained in document A/AC.138/SC.1/L.4 was submitted during the August session (A/AC.138/SC.1/L.4/Rev.1)."

The Norwegian representative's amendment was adopted.

Mr. SCIOLLA-LAGRANGE (Italy) said he regretted that the Sub-Committee had been unable to reach agreement on a draft declaration of principles. Italy felt that in fulfilling its mandate the Sub-Committee ought to try to find reasonable and equitable solutions. It could be said that the establishment of a régime to ensure the harmonious exploitation of the sea-bed and fair distribution of the benefits derived therefrom was equitable, and that the setting up of flexible machinery was reasonable. On the other hand to set up machinery which would grant licences without defining the geographical limits of the area would not be reasonable.

In future, in preparing a declaration of principles more consideration than in the past must be given at every stage to earlier work. At the present session, important results had been achieved which should enable members to reach quick agreement.

Mr. AJAYI (Nigeria) said that the present session of the Sub-Committee had been characterized by much hard bargaining. No agreement had been reached but that should not discourage the Sub-Committee from embarking on fresh consultations. Conflicting national and regional positions should be reconsidered in the spirit of compromise which had prevailed throughout the session.

Along with several other delegations, Nigeria was opposed to the inclusion of the annex in the Sub-Committee's report to the Committee. Again, although the anonymous compromise document submitted by a number of delegations was interesting, for the reasons already explained by other delegations he hoped it would not be distributed as an official document. If, however, it were submitted in due and proper form to the Sub-Committee, it should be studied carefully. Draft resolutions A/AC.138/SC.1/L.2 and A/AC.138/SC.1/L.4/Rev.1 could not be regarded for the time being as anything more than working papers.

The Nigerian delegation shared the view that paragraphs 11 and 12 should be redrafted in order to bring out clearly on what points there was agreement and on what points there was no agreement at the present stage.

Mr. SCHRAM (Iceland) said he had hoped that, at the present session, the Sub-Committee would fulfil its mandate in accordance with the wishes of the General Assembly. It had to be admitted that the Sub-Committee had not achieved the anticipated results. However, progress had been made on questions such as the prevention of pollution and the equitable distribution of benefits. The annex to the draft report gave an accurate picture of the present situation and should be retained so as to bring out clearly the points on which agreement had been reached. Like the representative of Belgium, he felt that the anonymous document submitted by a number of delegations should also be transmitted to the General Assembly as a basis for a compromise.

Iceland attached great importance to two subjects: the equitable sharing of benefits, with particular consideration for the interests of the developing countries, and the protection of the marine environment. The draft convention submitted by the United States (A/AC.138/25) contained important provisions on

the latter subject. It would be desirable that in future the problem of pollution should be treated as a separate item on the Committee's agenda. Given the date laid down for the submission of the report requested under paragraph 2 of General Assembly resolution 2566 (XXIV), that might be done at the August 1971 session.

The Norwegian delegation was to be congratulated on draft resolution A/AC.138/SC.1/L.4/Rev.1, which would be the only official annex to the Sub-Committee's report. It would certainly prove a useful text at future discussions.

Mr. BRECKENRIDGE (Ceylon) suggested that, in the last sentence of paragraph 7 of the revised draft report, the words "comprehensive and balanced" be inserted before the words "draft declaration of principles".

The amendment by the representative of Ceylon was adopted.

Paragraphs 1 to 9 of the revised draft report, as amended, were adopted.

Mr. LAPOINTE (Canada) said that, generally speaking, the Sub-Committee's report should not be pessimistic, as that would lead to confusion in the future. Some progress had definitely been made. At the present stage of the Sub-Committee's work, countries should not be pressed to change their attitudes; instead, efforts should be concentrated on how to transmit to the General Assembly the best message possible, in the circumstances.

Before considering paragraphs 10 to 12, a decision should be taken on whether or not the annex to the draft report should be retained.

Mr. ENGO (Cameroon) said that paragraphs 10 to 12 of the revised draft report, which dealt with the same subject, should be considered together. He was not satisfied with some of the changes that had been made in those paragraphs. Paragraph 10 stated that some progress had been made with respect to a number of principles and elements for inclusion in the declaration, but still did not give a faithful account of what had happened in the Sub-Committee. In some of the informal consultations, only a limited number of delegations had participated, so that the significance of the progress mentioned gave rise to confusion. Paragraphs 11 and 12 did not fill in the gaps in paragraph 10.

The annex did not appear to be supported by any delegation. No one seemed to know exactly by whom the elements of the declaration listed had been "provisionally agreed upon". It would therefore be better to delete the annex so

as not to mislead international public opinion. Moreover, it was not the only document available; the Norwegian draft resolution was much more important. Draft resolution A/AC.138/SC.1/L.2 was also interesting. It was to be hoped that those two documents would be annexed to the Sub-Committee's report.

The CHAIRMAN requested delegations with observations to make on any particular paragraph to follow up their comments with concrete proposals, if possible in writing. That would considerably facilitate the Rapporteur's task.

Mr. HOLDER (Liberia) said he regretted that the members of the Sub-Committee had failed to reach agreement on a set of principles concerning the international sea-bed area and that the Legal Sub-Committee had consequently been unable to fulfil the task entrusted to it by the General Assembly. The success or failure of the Sub-Committee's work would obviously depend on the willingness of members to subordinate their own selfish interests to the interests of mankind as a whole. It was not sufficient merely to appear to be willing; there must be tangible evidence of the will to formulate a set of principles that would command general acceptance, without however, excluding the possibility of a reasonable compromise. Unlike most of the other delegations, his delegation felt that the will to seek common ground was lacking. Everyone knew what were the fundamental problems. They were the problems of the régime and the problems of boundaries. Like most members of the Sub-Committee, Liberia favoured the establishment of an international régime. In defining the nature and scope of the régime, account must be taken of the existing rights and interests of States. It was in that respect that the question of boundaries became all-important. If all the members of the Sub-Committee wished to reach international agreement on the sea-bed, they would have to adopt a realistic approach, in other words, to abandon the traditional concepts founded on ignorance and take the hopes and aspirations of the peoples of the world into account. To make clear what he meant, he would take the question of the applicability of international law to the international sea-bed area. It had been suggested that one of the Sub-Committee's difficulties arose from the opposition to the proposal that the relevant principles of international law, including the Charter, should apply to activities in that area, whereas acceptance of that principle did not involve any real difficulty because it could subsequently be denied that the expression "applicable principles and rules of international law" covered the "freedom of

the high seas". In his delegation's view, such an interpretation might suggest that the rules of international law were limited to matters relating to the freedom of the high seas; it also ignored the real implications of accepting such a principle in relation to the concept of the equitable sharing by States in the benefits to be derived from the exploration and exploitation of the international sea-bed area. In view of those considerations, his delegation believed that the establishment of an international régime would have to be based not on certain facts alone, but on all the pertinent facts, including the hopes and aspirations of all peoples. A realistic analysis of the problems did not indicate pessimism. His delegation was convinced that the success of the Sub-Committee's work and even of that of the Committee itself would depend to a very large extent on the degree of co-operation shown and the spirit of compromise in which members set about attaining their common objective.

Mr. SEATON (United Republic of Tanzania) asked whether draft resolution A/AC.138/SC.1/L.2 was still considered as one of the Sub-Committee's working documents, or whether only draft resolution A/AC.138/SC.1/L.4/Rev. 1, submitted by Norway, would be annexed to the Sub-Committee's report.

The CHAIRMAN replied that draft resolution A/AC.138/SC.1/L.2 was referred to at the end of paragraph 4 of the draft report. It had merely been proposed to add at the end of the paragraph that a revised version of draft resolution A/AC.138/SC.1/L.4 had been submitted at the August session. Consequently, all that the Sub-Committee had done was to put both draft resolutions on an equal footing. Both had been submitted officially and both were mentioned in the draft report.

Mr. SEATON (United Republic of Tanzania) said he was not satisfied by that reply. He wanted to know whether draft resolution A/AC.138/SC.1/L.2 would be annexed to the Sub-Committee's report.

He understood the attitude of those who felt that the annex should be deleted, but since other delegations took the opposite view, the debate was liable to go on for a very long time. To prevent that happening, he would suggest as a compromise, first, deleting paragraph 10, since it expressed the views of those who were in favour of deleting the annex and therefore served no purpose; that idea could then be expressed simply by adding a sentence at the end of paragraph 9. The annex would thus remain, but its title would have to be expanded to read: "Elements of the Declaration provisionally agreed upon by some of the delegations participating in the informal consultations, but not considered by the Legal Sub-Committee".

Mr. ALVAREZ de SOTO (Peru) said he agreed with the Cameroon representative that paragraphs 10, 11 and 12 should be considered together. He also agreed with the Canadian representative that before considering the wording of those three paragraphs, it was necessary to decide the fate of the annex; for that, the Sub-Committee would have to decide whether it wanted an annex, and on that point the Rapporteur's views might be very useful. Many delegations, relying on paragraph 12, had the idea that the sole purpose of the annex was to set forth certain formulations for certain elements of the declaration on which agreement might be reached. But the Rapporteur's task was practically impossible. All who had taken part in the consultations knew what had happened: the points agreed upon had been so vague and subject to so many conditions that it had been impossible for the Sub-Committee to reach agreement on a single element of the declaration. He doubted, therefore, whether the Rapporteur had adopted the proper method for recording the "agreement" reached, which was entirely subjective. Although the suggestion by the Tanzanian representative was interesting, the first essential was that members of the Sub-Committee should know what they wanted to say. Like other delegations, the Peruvian delegation considered that, for the purpose of informing the General Assembly, the best course would be to take both draft resolutions as a basis.

Mr. BRECKENRIDGE (Ceylon) said that the Sub-Committee's difficulties had begun at the end of its March 1970 session when it had adopted certain procedures which it had afterwards been unable to apply. It was undeniable that consultations were necessary, but there was also an undoubted need for some formality. The need for public discussion on the substance was felt all the more because members of the Sub-Committee had to take policy decisions if they wished to adopt principles and get on with their work. Paragraphs 10, 11 and 12 of the draft report might give the impression that the Sub-Committee was suffering from schizophrenia, which was certainly not the case. Delegations had different views, but there had also been positive results which were not reflected in paragraphs 10, 11 and 12. He agreed with the representative of Cameroon that paragraph 10 should be re-drafted in a more positive form which would allow paragraphs 11 and 12 to be dispensed with. He accordingly proposed the following wording for paragraph 10:

"during the informal consultations, several formulations were considered as well as the draft principles submitted in documents A/AC.138/SC.1/L.2 and A/AC.138/SC.1/L.4 and Rev.1, annexed to this report. A certain degree of agreement was arrived at on some of those formulations. It was felt, however, that the formulations had to be considered in the context of the declaration as a whole. No consensus was reached on other formulations. The agreements and disagreements were not placed before the Sub-Committee in formal session. The Sub-Committee therefore felt that those agreements and disagreements need not be reflected in its records. The Sub-Committee proposes at its future sessions to consider all formulations and working papers, formal and informal, in order to arrive at a declaration of balanced and comprehensive principles. The informal working papers will be made available to all delegations on request".

Mr. ENGO (Cameroon) said that all the remarks he had made about informal consultations related to consultations held before the beginning of the present session and not to the consultations which had taken place during the session. In response to the Chairman's appeal for constructive proposals, he proposed that paragraph 10 of the draft report should be replaced by the following:

"The informal discussions had their value, but this was reduced by the fact that the participants were limited and, at times, insufficiently representative of the various geographical regions of the world. Nevertheless, some common ground was found among the participants in those consultations with respect to a number of principles and elements for inclusion in the declaration. Annex I to this report shows the areas of tentative agreement reached at the informal meetings referred to in paragraph 7 above. It also contains a list of the areas in which no consensus was obtained".

He also proposed that the annex should become annex I and that its title should be amended to read: "Elements of the declaration provisionally agreed upon by a limited number of participating delegations in the informal consultations".

He further proposed that the words "the drafting group" in the body of the annex should be replaced by the words "the participants" and that the title of the second part of the annex should be amended to read: "Elements of the declaration on which participants were unable to agree".

Lastly, he proposed that draft resolutions A/AC.138/SC.1/L.2 and A/AC.138/SC.1/L.4 and A/AC.138/SC.1/L.4/Rev.1 (or the latter alone) should be annexed to the draft report as annexes II and III.

Mr. KADANACHEE (Kuwait) said that the discussion had been extremely interesting in that it had served to bring out clearly the differences between the various points of view.

His delegation considered that the Sub-Committee should give priority to the discussion of paragraph 13. If a consensus emerged on that paragraph, informal consultations could be organized during the twenty-fifth session of the General Assembly, to which consideration of paragraphs 10; 11 and 12 and the annex could be referred. If those consultations led to positive results it would be possible to submit a conclusive report to the General Assembly. If not, it would always be possible to revert to discussions of the kind now taking place.

The CHAIRMAN thanked the representative of Kuwait but suggested that the Sub-Committee should first consider the Cameroon representative's proposal, which would perhaps enable it to reach a rapid conclusion on the report as a whole.

Mr. JAGOTA (India), referring to the first sentence of paragraph 5, said that the difficulty lay in the fact that the informal consultations it had been decided to hold had continued until 25 August and that the various groups which had participated in those consultations had not made any formal report to the Sub-Committee on the results. Had they done so, the Sub-Committee would have realized that agreement had still to be reached on a good many points before the declaration of principles could be adopted, and delegations would then have been able to express their views.

The problem had been complicated by the fact that attempts had been made to reach agreement by consensus, which had been particularly difficult because the work had been carried on in small groups.

Some progress had nevertheless been made and a means should be found to indicate that in the report. He therefore proposed that the Sub-Committee should (a) delete paragraph 10, (b) retain paragraphs 11 and 12, (c) discuss paragraph 13, (d) delete the proposed annex and (e) include as annexes to the draft report draft resolutions A/AC.138/SC.1/L.2 and A/AC.138/SC.1/L.4/Rev.1.

Once it had reached a decision on those points, the Sub-Committee could consider the direction its work should take.

Mr. BADAWI (United Arab Republic), Rapporteur, summing up, said that the proposals of the representatives of Cameroon and Ceylon had a number of points in common. The seventh and eighth points raised by the representative of Ceylon, however, were new and very important. The fundamental difference between the two proposals concerned the treatment of the annex.

After listening to the Indian representative's proposal he was inclined to think that, in view of the criticism it had aroused, the annex might be deleted.

To meet the seventh and eighth points made by the representative of Ceylon, he proposed adding to the report a paragraph which might read:

"In the course of the informal consultations, certain delegations attempted to put together a number of formulations which in their view could serve as a basis for the elaboration of a declaration of principles. These formulations will be made available to delegations upon their request."

Replying to the question by the representative of Peru, who had asked why an annex was attached to the draft report, he said that he did not think that, after six months' work, the Committee could send the General Assembly a report containing absolutely nothing of substance, especially as some kind of progress had been made and differences of view had been narrowed. For that reason, he had thought it right, without prejudicing anybody's position, to include certain formulations in an annex to the report, indicating at the same time the reservations to which the tentative agreements had been made subject.

He invited members of the Sub-Committee to comment on the new paragraph he had proposed for inclusion in the report.

Mr. ENGO (Cameroon) said that the Rapporteur's proposal was not satisfactory to his delegation. Some representatives seemed to attach great importance to the annex. The real point was to indicate the exact status of the formulations it contained. That was precisely the purpose of the new paragraph his delegation had proposed. It should be made quite clear that those formulations, which their authors were in some cases no longer inclined to support, were the result of informal consultations, with limited and, at times, insufficiently representative participation. If those facts were not stated, a reading of the report might give the impression that all the delegations had taken part in the elaboration of those formulations and had been able to express their views on them.

Mr. NJENGA (Kenya) said he thought the positions were now very close and he therefore suggested a brief suspension of the meeting to enable a generally acceptable formula to be reached.

It was so agreed.

The meeting was suspended at 6.40 p.m. and resumed at 6.55 p.m.

Mr. BADAWI (United Arab Republic), Rapporteur, said that the consultations that had just taken place had resulted in the following compromise:

First, the first two sentences of the paragraph proposed by the representative of Cameroon would be retained, except the words "of the various geographical regions of the world" in the first sentence, which would be deleted; secondly, the end of the paragraph proposed by the representative of Cameroon would be replaced by the following:

"Those elements, however, had to be considered in the context of the declaration as a whole. In the course of those consultations, several delegations attempted to put together a number of formulations which in their view could serve as a basis for the elaboration of a declaration of principles. The Sub-Committee agreed that these formulations would be available to delegations at their request."

In the light of that proposal, a new sentence, "The texts of the draft resolutions are annexed to this report" should be added at the end of paragraph 4.

Mr. EVENSEN (Norway) said that it should be sufficient if the Norwegian draft resolution were given in its final form (A/AC.138/SC.1/L.4/Rev.1).

The CHAIRMAN said that that comment would be borne in mind.

Mr. BRECKENRIDGE (Ceylon) said that the Rapporteur's proposal was acceptable, but it would entail certain changes in the presentation of the draft report. Coming after the original paragraph 7, the proposed new formulation referred to the informal consultations that had taken place first in New York and at Geneva before the opening of the session and then during the session, up to 25 August 1970. That portion of the proposed text should be redrafted to indicate that the informal consultations continued during the Committee's normal meeting hours. In addition, paragraph 9 of the original draft report should be redrafted to distinguish between the informal consultations between sessions and those which it had subsequently been decided to pursue after the opening of the present session.

He stressed that point because the representative of Cameroon had pointed out to him during the suspension of the sitting that, while it could be said that participation in the informal consultations taking place at Geneva before the opening of the present session had been limited and insufficiently representative, that comment was not necessarily true of the informal consultations which had been held after the opening of the present session. He hoped the Rapporteur would be able to bring that out in his final text.

Again, he thought it would be better to speak of "participation" rather than "participants" in the first sentence of the new paragraph, so as to avoid any ambiguity with regard to their representative capacity.

The CHAIRMAN thanked the representative of Ceylon for his very valuable remarks, which would be taken into consideration. In his opinion, the solution would be to specify in the first sentence of the new paragraph that "In the consultations between 27 and 31 July, the participation was limited and at times insufficiently representative". In any event, the views of the representative of Ceylon would be recorded in the summary record of the meeting.

Mr. VALLARTA (Mexico) said that when it had been decided to continue the informal consultations after the opening of the session, the consultations had begun with a nucleus in which the different regions of the world were represented and which any interested delegation could join. In those circumstances, it was not because the participation was limited or insufficiently representative that the value of the consultations had turned out to be limited, but because it had not been possible to reach agreement at the regular meetings on the results of the informal consultations.

The CHAIRMAN said he thought the observations of the representative of Mexico were quite correct and should be taken into account in the report.

He appealed to the members of the Committee to consider the compromise formula which had just been reached as a means of escape from the difficult situation in which the Sub-Committee found itself.

Mr. ENGO (Cameroon) said he did not think that his use of the word "representative" was in any way ambiguous. He also thought he had clearly distinguished between the consultations held before and those held during the session.

He could accept the text the Rapporteur had just proposed.

Mr. ZEGERS (Chile) said he thought the Rapporteur's text gave the impression that the reason why agreement had not been reached on a draft declaration was that the participation in the consultations had not been sufficiently representative, whereas the real reason was that no agreement had been possible. He therefore proposed two amendments to the text the Rapporteur had just read out. First, in the second sentence, it would be better to say "some principles", instead of "a number of principles"; secondly, at the end of the same sentence, the words "although no agreement had been found possible on other elements" should be added.

Mr. SEATON (United Republic of Tanzania) said he could accept the amendments proposed by the representative of Chile. He appealed, however, to delegations to refrain from submitting amendments if the Rapporteur's text appeared to them substantially acceptable.

Mr. HOLDER (Liberia) said he was surprised that the elements "provisionally agreed upon" in the revised draft report should differ from those included in the first draft. It was not the Rapporteur's function to submit proposals to the Sub-Committee for their acceptance; he should confine himself to reflecting the substance of the discussions.

Liberia had not been a member of the informal group which had adopted the formulations referred to in the last sentence of the Rapporteur's text, which had, moreover, never been officially submitted to the Sub-Committee, and it could not therefore be bound by them.

The CHAIRMAN said that the positions adopted by delegations would be duly reflected in the summary records.

Mr. BADAWI (United Arab Republic), Rapporteur, said he could accept the amendments proposed by the representative of Chile to the text he had read out.

At the CHAIRMAN'S request, he stated that his text would form the new paragraph 8 of the report of the Sub-Committee; paragraphs 8 and 9 of the revised draft which had been distributed before the meeting would become new paragraphs 9 and 10 respectively; the present paragraph 10 would be deleted and paragraph 11 would keep that number.

Mr. HOLDER (Liberia) said he must insist on the view he had expressed regarding the last sentence of the text proposed by the Rapporteur. In that sentence, it was implied that there was a consensus in the Sub-Committee; since Liberia had not agreed, he must ask for the addition of the sentence: "The delegation of Liberia objected".

Mr. JAGOTA (India) suggested that in view of the comments of the representative of Liberia, the last sentence of the Rapporteur's text should be deleted. The substance of the sentence could be expressed elsewhere than in the report.

It was so agreed.

The new paragraph 8, as amended by the representatives of Chile and India, was adopted, paragraphs 8 and 9, already adopted, becoming paragraphs 9 and 10 respectively.

Paragraphs 11 and 12

Paragraphs 11 and 12 were adopted.

Paragraph 13

Mr. SEATON (United Republic of Tanzania), supported by Mr. JAGOTA (India) and Mr. NJENGA (Kenya), proposed that paragraph 13, which seemed to him to serve no useful purpose, should be deleted.

Mr. SMIRNOV (Union of Soviet Socialist Republics) said that a proposal had been made at the thirty-seventh meeting and comments had been made on that proposal. The Sub-Committee should record that proposal and the comments in its report. Besides, paragraph 13 was perfectly inoffensive.

Mr. KHANACHET (Kuwait) said he agreed that paragraph 13 should be retained.

Mr. SEATON (United Republic of Tanzania) said that only the more important matters should appear in the report. He would like to suggest a compromise formula, however, consisting in deleting the second sentence of the paragraph and retaining the first, with the addition of the words "but no decision was taken on this proposal."

Mr. BRECKENRIDGE (Ceylon) said he thought paragraph 13 was balanced and comprehensive.

Mr. CABRAL de MELLO (Brazil) said he was in favour of paragraph 13 as it appeared in the draft and opposed the deletion of the second sentence.

The CHAIRMAN appealed to the representative of the United Republic of Tanzania not to insist on his amendment, since paragraph 13 simply stated a fact that no-one could deny.

Mr. SEATON (United Republic of Tanzania), supported by Mr. HOLDER (Liberia), proposed, in a spirit of compromise, that paragraph 13 should be retained as it appeared in the draft report, with the addition of the sentence, "No decision was taken on this proposal".

The CHAIRMAN said that if there were no objections, he would take it that the amendment just proposed by the representative of the United Republic of Tanzania was adopted.

It was so agreed.

Paragraph 13, as amended, was adopted.

The draft report of the Sub-Committee to the Committee, as a whole, as amended, was adopted.

CLOSURE OF THE SESSION

After the customary exchange of courtesies, the CHAIRMAN declared the session of the Legal Sub-Committee closed.

The meeting rose at 8 p.m.