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

SUB-COMMITTEE I

SUMMARY RECORDS OF THE THIRTY-SECOND TO FORTY-SEVENTH MEETINGS

Held at Headquarters, New York,
from 29 February to 29 March 1972.

Chairman:	Mr. ENGO	Cameroon
Rapporteur:	Mr. MOTT	Australia

The list of representatives appears in documents A/AC.138/INF.6 and Add.1-7.

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SUMMARY RECORD OF THE THIRTY-SECOND MEETING

Held on Tuesday, 29 February 1972, at 3.50 p.m.

Acting Chairman:	Mr. THOMPSON-FLORES	Brazil
Chairman:	Mr. ENGO	Cameroon

ELECTION OF OFFICERS

The ACTING CHAIRMAN invited the Sub-Committee to elect its officers.

Mr. SALIM (United Republic of Tanzania) nominated Mr. Engo (Cameroon) for the office of Chairman.

Mr. ZEGERS (Chile) and Mr. BALLAH (Trinidad and Tobago) supported the nomination.

Mr. Engo (Cameroon) was elected Chairman by acclamation.

Mr. Engo took the Chair.

Mr. RIPHAGEN (Netherlands) nominated Mr. Mott (Australia) for the office of Rapporteur.

Mr. SMALL (New Zealand) seconded the nomination.

Mr. Mott (Australia) was elected Rapporteur by acclamation.

ORTANIZATION OF WORK

The CHAIRMAN thanked the members of the Sub-Committee, and paid tribute to Mr. Seaton and Mr. Prohaska for the outstanding work they had performed as Chairman and Rapporteur respectively. He congratulated Mr. Mott on his election as Rapporteur.

He was convinced that by assiduous effort the Sub-Committee could improve co-operation and understanding among States. The task before it was an important and difficult one, and for that reason active participation by all the regional groups was necessary. Although the frontiers of knowledge had expanded and technology was developing, the problems of the last quarter of a century - poverty, disease and ignorance - had not been solved, and indeed were becoming more acute. The United Nations persisted in speaking of the "maintenance of peace", but wars were still being waged, while the gap between rich and poor countries continued to widen, and constituted a growing danger.

The ideals of the Charter must be translated into practical reality. A satisfactory régime for the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction might well provide a means of obtaining natural and financial resources in quantities sufficient to meet mankind's current and future needs, while at the same time making the present generation aware of the

(The Chairman)

value of co-operation among States. A draft régime must therefore be prepared which would win general support, and by thus spelling out the conditions essential to the survival of the human species the Sub-Committee would contribute towards saving succeeding generations from the scourge of war.

As the Sub-Committee's officers were still in the process of consultation on the question of its work programme, and it was too early for him to make concrete suggestions, he wished merely to remind the Sub-Committee that it had been requested:

> "To prepare draft treaty articles embodying the international régime - including an international machinery - for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, taking into account the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked, on the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction, economic implications resulting from the exploitation of the resources of the area /resolution 2750 A (XXV)/, as well as the particular needs and problems of land-locked countries /resolution 2750 B (XXV)/."

He appealed to all delegations to do everything in their power to avoid impeding a forward movement of the Sub-Committee's work. That work would be facilitated by the fact that the Declaration of Principles provided a basis for discussion. It should be comparatively easy to express the concept of the common heritage of mankind in the articles the Sub-Committee was to draft; that was fortunate, because the tremendous resources of the area beyond national jurisdiction should benefit all countries, whether coastal or land-locked. Agreement should be reached rapidly in order that those resources could be rationally managed and their exploitation, processing and marketing monitored to avoid adverse effects on the land-based resources on which developing nations depended as a primary source of income.

The concrete proposals submitted on the subject of the international régime also provided a useful basis for working out an agreement. Three of them developed the "common heritage" concept in three significant aspects: (a) common ownership

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(The Chairman)

and management of the sea-bed and the ocean floor beyond the limits of national jurisdiction; (b) non-appropriation of the area by any State or group of States; (c) equitable distribution of benefits among all States, taking into account the special needs and interests of the developing countries. It should be possible to reach agreement on other questions as well. The working paper submitted by Australia and Jamaica provided a further useful basis for work. He appealed to the regional groups to enter into consultations within and among themselves with a view to obtaining an agreed list of subjects for discussion, in order that the substantive problems could be tackled as soon as possible.

In order to accelerate its work, the Sub-Committee might consider having debates on specific subjects in an agreed order, and, if necessary, setting up working groups with specific mandates. An early decision on that point might be reached through formal and informal discussions, while at a later stage the Sub-Committee could work out the rest of its work programme.

In conclusion, he emphasized the need for co-operation and friendship among all delegations in the consideration of the vital matter before the Sub-Committee.

Mr. LEVY (Secretary of the Sub-Committee) said, in reply to a question by Mr. ZEGERS (Chile), that the comparative table which was to be issued would be available to delegations by the end of the week.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE THIRTY-THIRD MEETING

Held on Monday, 6 March 1972, at 3.30 p.m.

Chairman:	Mr. ENGO	Cameroon
later,	Mr. THOMPSON-FLORES	Brazil

ORGANIZATION OF WORK (A/AC.138/SC.I/L.8 (A/8421, Annex III)) (continued)

The CHAIRMAN said that from extensive consultations which the officers of the Sub-Committee had held with its members, it would appear that there was general agreement on a number of points. First, the Sub-Committee should hold no general debate on its mandate as a whole, but should begin immediately with general debates on specific subjects, with a view to working out actual provisions for the draft treaty it was to prepare. Secondly, it could consider the establishment of working or drafting groups as soon as a need for them was generally felt. Thirdly, it should tentatively adopt the programme of work suggested by Australia and Jamaica in paragraph 3 of their working paper (A/AC.138/SC.I/L.8), subject to the provisions of paragraph 2 of that paper, and in particular subparagraphs 2 (b) and (c). Any amendments or additional items which delegations felt necessary could be considered when they were proposed.

Mr. SOTO (Peru), speaking on behalf of the Latin American group, endorsed the approach to the Sub-Committee's work suggested by the Chairman. However, the Latin American delegations wished to propose two amendments to the working paper submitted by Australia and Jamaica. In the tentative programme of work contained in paragraph 3, the words "as well as those relating to the preservation of the marine environment and scientific research, including technical assistance to the developing countries" should be added at the end of item 2 (b), and the words "including their processing and marketing" should be added at the end of item 2 (d).

The Latin American delegations were well aware that the questions of preservation of the marine environment and scientific research came within the mandate of Sub-Committee III. It was not their intention that discussion of them by the present Sub-Committee should infringe upon the terms of reference of Sub-Committee III; nevertheless, it must be recognized that any régime which was adopted must contain provisions relating to those matters.

Mr. TUNCEL (Turkey) noted that the Chairman had referred to "tentative" adoption of the work programme. He would welcome information as to the exact scope of such adoption. In principle, he had no objection to the tentative adoption of a work programme for the whole of 1972. However, he recalled that the Secretariat had prepared an extremely valuable document, A/AC.138/L.10, containing a comparative

(Mr. Tuncel, Turkey)

table of draft treaties, working papers and draft articles. It was to have been introduced by a representative of the Secretary-General, but that had not yet been done. Such an introduction would be extremely valuable, since the Sub-Committee's work programme must be related to the proposals contained in the comparative table. Indeed, the table contained much material which was omitted from the working paper submitted by Australia and Jamaica, and his delegation was not ready to accept that paper as a whole without knowing its scope and implications. For example, the tentative work programme contained no mention of the very important problem of limits, which it seemed to him could not be left out of any discussion of general principles.

The CHAIRMAN recalled that tentative adoption of the paper submitted by Australia and Jamaica would be subject to the provisions of paragraph 2 thereof; changes in the tentative work programme could thus be suggested at any time. With regard to the question of limits, an understanding had been reached that it would be discussed only in so far as it was relevant to the other subjects allocated to the Sub-Committees. Both paragraph 4 of the working paper submitted by Australia and Jamaica and paragraph 22 of the report (A/8421) referred to that point.

Mr. LEVY (Secretary to the Sub-Committee) said that the Legal Counsel would introduce the comparative table as soon as it was available in all the official languages, which it was hoped would be within two days.

Mr. EVENSEN (Norway) said it was not clear to him how the Sub-Committee could, in accordance with the amendments introduced by the representative of Peru, discuss the preservation of the marine environment and scientific research without infringing on the competence of Sub-Committee III.

Mr. PARDO (Malta) said that he agreed substantially with the approach to the Sub-Committee's work outlined by the Chairman. However, he had one comment to make on item 1 of the tentative programme of work contained in paragraph 3 of the paper submitted by Australia and Jamaica. The Declaration of Principles was limited exclusively to the sea-bed. His delegation, however, had always felt that the régime should be of somewhat broader scope; it would be reluctant to see item 1 interpreted as limiting the scope of the Sub-Committee's discussions to the sea-bed alone. He accordingly suggested that the item should be split into two parts, the first reading "Scope and basic provisions of the régime.", and the second "Declaration of Principles...".

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Mr. BEESLEY (Canada) said that on the understanding that the programme of work could subsequently be amended as and when the need arose, his delegation could accept it either with or without the amendments proposed by the delegations of Peru and Malta. His delegation would also welcome the inclusion in item 2 (b) of the tentative work programme of some reference to the concept of resource management, which was essential to the whole question of exploitation of the resources of the sea-bed. At a later stage, it might also, if the need arose, propose the inclusion of a new item referring to transitional machinery.

With regard to the Latin American proposals, his delegation recognized the importance of the point made by the representative of Norway. However, it would appear that the mandate of Sub-Committee III with regard to pollution and scientific research was general in scope; Sub-Committee I should also discuss those questions, since any treaty would be incomplete without some mention of them.

The representative of Turkey had referred to omissions from the tentative work programme. His delegation's interpretation of that programme was that it was sufficiently broad to enable delegations to raise any further questions which they wished, including such matters as peaceful uses of the sea-bed and the ocean floor.

The CHAIRMAN endorsed that view.

Mr. EVENSEN (Norway) said that while he had no objection to the work programme, he felt it must be stressed that Sub-Committee III bore the main responsibility for discussing questions of pollution and scientific research; however, Sub-Committee I was required, on the basis of Sub-Committee III's work, to work out relevant provisions for inclusion in a draft treaty.

Mr. PINTO (Ceylon) said his delegation had no objection either to the work programme submitted by Australia and Jamaica or to the amendments introduced by the representative of Peru. However, it was important to decide how discussion of the basic provisions of the régime would proceed. Logically, it should be discussed before the international machinery, presumably on the basis of the Declaration of Principles. That being the case, some of the topics referred to in the Declaration appeared to merit priority attention, and a debate on them could proceed on a point-by-point basis.

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Mr. KHANACHET (Kuwait) said that his delegation would have no basic difficulty in accepting the excellent programme of work submitted by Australia and Jamaica; however, it would like to suggest two amendments to the present text. The first, which related to item 1, would replace the word "Scope" by "Status" so that the item would read "Status and basic provisions of the régime...". In his delegation's view, the question of scope was sufficiently covered by the reference to "basic provisions". The second amendment would add the word "status" at the beginning of item 2, which would then read "Status, scope, functions and powers...".

In light of the observations made by the representatives of Norway and Canada, his delegation would be able to support the amendments proposed by Peru on behalf of the Latin American group. With regard to the amendment to item 1 suggested by the representative of Malta, his delegation had serious reservations. That amendment implied that the Sub-Committee might envisage the possibility of modifying or expanding the Declaration; such an undertaking would, of course, be beyond the Sub-Committee's competence. His delegation would therefore prefer to retain the present formulation of item 1 in so far as it referred to the Declaration.

Mr. TUNCEL (Turkey) stressed the importance of the comparative table prepared by the Secretariat (A/AC.138/L.10). In drawing up their tentative programme of work, the delegations of Australia and Jamaica had quite properly not made any reference to that document since at that stage it had not yet been prepared. As it was now available, however, he suggested that in its consideration of specific issues the Sub-Committee should take into account the various proposals set forth in the comparative table. If that procedure were adopted, it would be possible to avoid an unnecessary reopening of the general debate and to proceed in an expeditious manner with the business at hand.

Mr. HARRY (Australia) said that his delegation's intention in co-sponsoring the tentative programme of work had been to facilitate a systematic discussion of the proposals put forward in the general debate with a view to reaching a consensus on the broad outlines of an international régime as quickly as possible. The excellent comparative table prepared by the

(Mr. Harry, Australia)

Secretariat would be of considerable assistance to the Sub-Committee in its work and would of course be taken into account at every point in the discussions. For example, in a discussion of the "basic provisions of the régime", as envisaged in item 1 of the tentative programme of work, it would be quite feasible to begin with section 2 of the comparative table and to continue seriatim with the following sections. In accordance with the agreement reached the previous year, the question of limits, which formed the subject of section 1 of the table, would not be dealt with as a separate topic, although each delegation would be free to refer to it in connexion with other matters. At the present stage it was not necessary to aim for a precise formulation of draft articles; that task could perhaps be entrusted to a drafting group which could be set up as soon as it appeared that general agreement existed among the members of the Sub-Committee in regard to a particular body of principles.

Mr. SOTO (Peru), referring to the amendments he had proposed to item 2 (b) of the tentative programme of work, said that it had not been his intention to encroach in any way on the mandate of Sub-Committee III. As to the comparative table, he agreed with the representatives of Turkey and Australia that it should definitely be taken into account in the Sub-Committee's discussions.

Mr. PARDO (Malta) said that he was prepared to withdraw his amendment to item 1 on the understanding that the present formulation of the item would not be construed as excluding a discussion of the approach of his delegation with respect to the scope of the régime.

The CHAIRMAN emphasized the tentative nature of the programme of work and said that no delegation would be denied the opportunity to express its views on the specific topics mentioned in the programme of work or on any other related matters.

Mr. BEESLEY (Canada) appealed to the representative of Kuwait to modify his amendment to item 1 of the programme of work so that the word "scope" could be retained. In his delegation's opinion, the question of the scope of the régime was a very important one and could not be subsumed under the question of "basic provisions".

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Mr. KHANACHET (Kuwait) agreed to the retention of the word in question and modified his amendment to read "Status, scope and basic provisions of the régime...".

The CHAIRMAN said that, if there was no objection, he would take it that the Committee accepted the amendments proposed by the representatives of Canada, Kuwait and Peru.

It was so decided.

The tentative programme of work for 1972 (A/AC.138/SC.I/L.8), as amended, was adopted.

STATUS, SCOPE AND BASIC PROVISIONS OF THE REGIME, BASED ON THE DECLARATION OF PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 2749 (XXV)

Mr. STEVENSON (United States of America) said that some of the principles in the Declaration of Principles adopted by the General Assembly in resolution 2749 (XXV) should form the basis of the principles to be incorporated in a treaty; others, however, were more in the nature of guidelines for the drafting of treaty articles determining the precise legal rules that would constitute the international régime. A number of the principles - including the first one, which declared that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, were the common heritage of mankind - had both those qualities. The comparative table prepared by the Secretariat (A/AC.138/L.10) revealed that the first principle was stated in numerous drafts, and he was optimistic that it would be possible to agree on its inclusion in the treaty, even though different drafts envisaged different means of giving effect to the principle.

There was merit in beginning the elaboration of the régime with certain basic principles. It should be borne in mind that the statement of a principle neither relieved the Sub-Committee of the task of drafting subsequent treaty articles where necessary to permit the realization of the principle, nor unreasonably limited decisions regarding the best means for its implementation. The draft convention in the United States working paper (A/AC.138/25) began with a chapter on basic principles which had been drafted before the final text of the Declaration of Principles had been completed and adopted by the General Assembly. Article 1 of the United States draft declared the international sea-bed area to be the

(Mr. Stevenson, United States)

common heritage of mankind and proceeded to define that area. He emphasized the significance of the precise definition of the area, referred to in the preamble of the Declaration of Principles, and of the United States proposals for dealing with the problem by establishing an intermediate zone.

The comparative table indicated a broad measure of agreement on the inclusion of principles regarding the protection of the international sea-bed from claims and national appropriation. Nevertheless, the Canadian working paper (A/AC.138/59) emphasized the importance of careful consideration and precise drafting of principles, such as those, whose application was intended to be universal rather than limited to States parties. Those comments merited very careful attention.

The wording of principle 4 in the Declaration reflected an attempt to reconcile in general language the as yet unresolved question of the precise scope of the régime. The United States draft, however, gave a precise answer to that question. It distinguished between the scope of the régime - namely, what uses of the sea-bed might be subject to one or more provisions of the treaty - and the question of the functions of the internatinal machinery and the coastal State. The United States draft, as well as the Declaration of Principles, contained a variety of provisions that applied to the area, not merely to exploration and exploitation activities in the area. A decision to lay down a legal rule regarding the area need not imply a decision regarding the functions and powers of the machinery or its organs.

There appeared to be virtually universal agreement on the inclusion of the principle that the area should be open to use by all States without discrimination. The purpose of the qualification of the principle ("in accordance with the international régime to be established") both in the Declaration of Principles and, through analogous language, in the United States draft, was to provide a necessary cross-reference to subsequent provisions regarding the system for exploration and exploitation of natural resources and, in particular, to make it clear that the non-discrimination requirement did not apply to the exercise of coastal State exploration and exploitation rights regarding natural resources in the intermediate zone. It was essential to determine, in considering the intermediate zone concept, which provisions of the treaty would apply both to the intermediate zone and to the fully international area beyond, and which should apply only to the latter.

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(Mr. Stevenson, United States)

Principle 6 of the Declaration should prove far less contentious in the negotiation of the régime itself than it had been during the preparation of the Declaration, since there was no longer any question of implying that there was no need to negotiate a treaty régime. Although the United States had strongly supported the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, it felt that some juridical questions might arise regarding the inclusion in the treaty of the reference to that Declaration.

Section 8 of the comparative table indicated that there was widespread agreement on the principle that the exploration of the area and the explcitation of its resources should be carried out for the benefit of mankind as a whole. Article 5 of the United States draft contained that idea, together with certain criteria relevant to the collection and distribution of revenues. In view of the structure of other drafts, specific provisions regarding revenues might more appropriately fit in a subsequent chapter of the treaty. Wide agreement also existed regarding the use of the area exclusively for peaceful purposes, and his delegation was pleased that progress was being made towards the entry into force of the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof. The Declaration of Principles also included a reference to the "peaceful purposes" principle in the "open to use" principle (principle 5). That was essentially a question of style and drafting.

Many of the subsequent provisions of the Declaration of Principles were more in the nature of guidelines for the negotiation of specific treaty provisions, rather than ideas which in themselves should be incorporated in the treaty. However, that was not exclusively the case. Subsequent articles in chapter 1 of the United States draft were based on other ideas expressed in the Declaration of Principles. In particular, the draft dealt with the fundamentally important question of preserving the legal status of the superjacent waters and air space; accommodation of different uses of the seas and sea-beds, drawing upon specific precedents in the high seas and continental shelf régimes; the necessity that all activities in the international sea-bed area be conducted with strict and adequate

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(Mr. Stevenson, United States)

safeguards for the protection of human life and safety and of the marine environment; the responsibility of States for ensuring compliance with the treaty, and the role of national procedures in ensuring such compliance; and the requirement that disputes be settled in accordance with the treaty.

He hoped that existing differences - as reflected in the various drafts - concerning which provisions should be considered basic and how they should be expressed would be resolved without too much difficulty, so that the Sub-Committee could proceed to the matter of implementation of basic provisions under the next item in its programme of work.

Mr. Thompson-Flores (Brazil), Vice-Chairman, took the Chair.

Mr. BEESLEY (Canada) said that the international sea-bed régime and machinery working paper submitted by his delegation (A/AC.138/59) discussed the Declaration of Principles adopted by the General Assembly in resolution 2749 (XXV), as well as the international machinery and the possibility of adopting transitional arrangements. Various parts of the paper were relevant to the question of the status of the régime - for it remained to be determined whether certain aspects of the régime would be universally applicable or binding only on States parties - and to its scope or basic provisions.

His delegation considered the principles stated in the Declaration to be the nucleus of an international sea-bed treaty and agreed with the Ceylonese delegation that the Sub-Committee should focus its attention on them. Principle 1, concerning the "common heritage of mankind", raised the question of the scope of the treaty. Although fundamental, it did not imply that the United Nations should be given sovereignty over the area. It did imply recognition of the clear need to have institutional arrangements for the protection, management and exploitation of the common heritage. He emphasized, however, that the concept of the common heritage should not be interpreted to mean that, because of the unique legal status of the area, the future sea-bed treaty could automatically be made universally binding - even upon States which might not adhere to it. That note of caution was particularly relevant in view of the fact that the treaty would affect national offshore boundaries. Moreover, difficulties could arise from the affirmation that the international sea-bed area itself, and not only its resources, was the

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(Mr. Beesley, Canada)

common heritage of mankind. That could be taken to imply that all uses of and activities on the sea-bed beyond national jurisdiction should be regulated by the international régime and machinery to be established.

Principles 2 and 3 in the Declaration, concerning the non-appropriation of the international sea-bed area and the proscription on claims on and the exercise or acquisition of rights with respect to the area or its resources incompatible with the régime and the Declaration, also raised questions relating to the scope and status of the régime.

Principle 4, to the effect that all activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international régime to be established, raised a basic difficulty because the present wording could leave ambiguity as to whether the international régime was to govern exploitation of mineral resources only or living sea-bed resources as well, and also because it did not define the "other related activities" to be governed by the international régime. The ultimate decision on the limits of the area would have a direct bearing on the possible extension of the international régime to living sea-bed resources. It was premature at the present stage to include living sea-bed resources within the scope of the treaty. Caution was required in defining the scope of the régime not only because of the complex and far-reaching problems involved in attempting to regulate all uses and activities, but also because of the danger that the establishment of a régime for resource exploration and exploitation might otherwise be indefinitely delayed.

Principle 5 was also relevant to the question of scope, for it dealt with equal access to and equal use of the sea-bed by all States, raising the question of equal access by land-locked States.

Principle 8, concerning the reservation of the area exclusively for peaceful purposes, gave rise to the question of whether the international sea-bed machinery should be granted at least the same powers of verification of suspect activities as were granted to States parties under the sea-bed arms control treaty. While further sea-bed arms control measures were essentially beyond the scope of the forthcoming law of the sea conference, such further measures would be crucial to avoiding the possibility of conflict not only between individual States but also between States and the projected international machinery.

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(Mr. Beesley, Canada)

Principle 9 dealt very extensively with the question of scope. The single most important factor in achieving the essential objectives outlined in the principle would be the creation of a sea-bed resource management system which would provide for the encouragement and maintenance of investment on a continuing and orderly basis, without which there would be no benefits accruing for humanity as a whole and the developing countries in particular. In its working paper, his delegation outlined 12 essential elements of such a system which also touched on certain basic provisions which should be covered in the treaty.

The wisdom of the Latin American amendments to the programme of work was reflected in principles 10 and 11. It might be necessary to provide that principle 10 applied to States parties only. He emphasized the importance of international co-operation in measures to strengthen the scientific capabilities of developing countries and the need to regulate scientific research on the same basis as commercial exploitation with regard to anti-pollution requirements, where such research involved the drilling of deep core holes into the sea-bed. The treaty should also establish safety safeguards and provide for their effective enforcement. With regard to principle 12, it was essential that the treaty recognize the special interests of coastal States.

Every principle of the Declaration would affect the scope of the international régime as it developed; those which he had just mentioned raised specific issues to which the Sub-Committee should turn its attention immediately.

The meeting rose at 5.30 p.m.

SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

Held on Tuesday, 7 March 1972, at 3.40 p.m.

Chairman: Mr. ENGO Cameroon

STATEMENT BY THE LEGAL COUNSEL

Mr. STAVROPOULOS (Legal Counsel) introduced the comparative table of draft treaties, working papers and draft articles (A/AC.138/L.10). It contained the texts of the 12 drafts which had been submitted so far relating to the international régime, including international machinery, for the area and resources of the sea-bed and ocean floor beyond the limits of national jurisdiction. As was known, the texts differed considerably from one another. The table had therefore been based, so far as possible, on the Declaration of Principles contained in General Assembly resolution 2749 (XXV). However, as many of the drafts contained detailed provisions - particularly with regard to the functions and organs of international machinery - which had no real equivalent in the Declaration, it had not been possible to follow the order of the Declaration throughout the table. The first 20 sections of the table were derived from the Declaration, and the others dealt with specific questions relating to the powers and organs of international machinery or miscellaneous provisions.

It should be stressed that the table was not intended to replace the actual papers submitted by delegations, but merely to help the Committee. Furthermore, a number of articles could have been put under several headings, but since that would have resulted in extra expense and a somewhat confusing presentation, texts had been reproduced only once, with cross-references where appropriate. It should also be noted that the order followed in the table in no way prejudged the order in which the main Committee or the Sub-Committee might wish to consider the articles.

The table covered only those texts relating to the international area of the sea-bed and did not therefore contain the draft articles submitted the year before by the United States delegation on the breadth of the territorial sea, straits and fisheries nor certain portions of the draft ocean space treaty submitted by Malta. An explanatory note concerning the latter had been included in the document, in accordance with the request of the Chairman of the main Committee. Addenda or other tables would be prepared at the Committee's request as further texts were submitted.

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STATUS, SCOPE AND BASIC PROVISIONS OF THE REGIME, BASED ON THE DECLARATION OF PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 2749 (XXV) (continued)

Mr. HARRY (Australia) said that he would confine himself at that stage to comments on the first three or four principles which should govern the sea-bed. When defining the scope of the "common heritage of mankind" it was essential not to prejudice the rights of States under the principle of freedom of the high seas. It should be stated in the proposed treaty that the legal status of the water and air space above the area was not to be affected. That approach had been adopted in article 3 of the 1958 Convention on the Continental Shelf and should be given a prominent place in the treaty. Subject to that requirement, his delegation considered that principle of the Declaration should be included verbatim in the convention.

In the drafting of the proposed treaty, careful consideration must be given to the content of articles whose application was intended to be universal rather than limited to States parties. In many areas the articles would embody existing international customary law, under which the sea-bed was not subject to appropriation - as was stated also in principle 2 of the Declaration. The rights of coastal States covered only exploration of the continental shelf and exploitation of its resources; in connexion with the North Sea continental shelf, the International Court of Justice had made it clear that the shelf was an extension of the land territory and that the rights of States ended at its outer edge. Neither the United Nations nor any specialized international body should be given sovereignty over the area beyond the limits of national jurisdiction.

Principle 3 was a logical extension of the preceding one. It seemed clear that rights in the area could be acquired only under the provisions of the treaty. It would be necessary to work out exactly how the proposed machinery would acquire such rights and transfer them to a third party by sale or licence. Such points should be dealt with under the section relating to the machinery.

With regard to principle 4, his delegation did not in principle see any reason why the régime should be confined to mineral resources, and exclude biological resources. At all events, the machinery should be given precisely defined powers, and it should have jurisdiction only within the terms of its charter.

The meeting rose at 4.05 p.m.

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SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

Held on Thursday, 9 March 1972, at 10.50 a.m.

Chairman: Mr. ENGO Cameroon

STATUS, SCOPE AND BASIC PROVISIONS OF THE REGIME, BASED ON THE DECLARATION OF PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 2749 (XXV) (continued)

Mr. ZOTIADES (Greece) said that the Declaration of Principles in General Assembly resolution 2749 (XXV) provided an excellent basis for the drafting of treaty articles establishing a satisfactory régime for the sea-bed. The working papers and draft articles already submitted by 10 States were very useful in clarifying differing views. The comparative table of draft treaties, working papers and draft articles prepared by the Secretariat (A/AC.138/L.10) facilitated comparison of the various texts. Since the Declaration was universally recognized, it should not be difficult to incorporate the principles contained in it in specific treaty articles, either verbatim or with minor changes.

In that connexion, two basic criteria seemed relevant to his delegation: firstly, the unanimous adoption by the General Assembly of the Declaration of Principles; and secondly, the need to provide guidelines based on those principles for the establishment of a régime for the sea-bed and the ocean floor which would be both satisfactory to all States and capable of ensuring the proper utilization of the resources of what constituted two thirds of the earth's surface.

In his delegation's view, the establishment of efficient international machinery to ensure the equitable sharing by States of the benefits and resources of the sea-bed demanded that certain principles contained in the Declaration be extensively elaborated. In so far as the status, scope, functions and powers of the international machinery were concerned, the Declaration could not be implemented unless precise legal rules were established on the basis of the principles contained in it.

With regard to the status, scope and basic provisions of the régime, however, there was no need to depart from the language of the Declaration. The universal support given to most of the principles contained in it conferred upon them the character of general principles - a fact which was particularly relevant in view of the need to secure the widest possible accession to the treaty by States.

In that connexion, reference had been made to Article 2, paragraph 6, of the Charter. In the opinion of his delegation, that provision, which related to the

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universal applicability of stipulations in the Charter concerning the maintenance of international peace and security, bore no relation to the legal status of an international régime for the sea-bed to be defined in an international treaty. The Charter had been correctly interpreted in that respect not only as a treaty, but as a Constitution of the world community, binding on all States, but only "so far as may be necessary for the maintenance of international peace and security". The first principle in the Declaration, which referred to the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction as "the common heritage of mankind" should not confuse the issue of the applicability of the treaty under preparation. That principle was new and unique in international law, but was unrelated to the fundamental norm of international law whereby treaties created rights and obligations only between parties to them. For States which were not contracting parties, a treaty was res inter alios acta; that peremptory norm of general international law had recently been codified in article 34 of the Vienna Convention on the Law of Treaties. Therefore, despite its universal value, the first principle of the Declaration should not be interpreted as making the treaty under preparation binding even upon States which were not parties to it.

However, universal acceptance of the treaty could be greatly facilitated by incorporating, intact in so far as possible, the universally accepted phraseology of the principles contained in the Declaration concerning the basic provisions of the régime. In that connexion, article 1 of the draft treaty submitted by the United States delegation (A/AC.138/25), because of its simplicity and its faithful reproduction of the first principle of the Declaration, deserved to be incorporated verbatim into the draft treaty. In that connexion, it was his delegation's understanding that the régime should not cause any interference with the freedom of the seas and, in particular, should not impede navigation and fishing or cause pollution or damage to animal and plant life. Instead, it should cover the exploration and exploitation of resources of the sea-bed.

The second principle, namely, that "the area shall not be subject to appropriation... and no State shall claim or exercise sovereignty or sovereign

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rights over any part thereof", could also be incorporated verbatim into the treaty. The third principle, providing for the prohibition of any claim, exercise or acquisition of rights incompatible with the international régime, could be reworded to read: "No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources except as provided in this Convention."

In view of the unresolved question of the limits and precise scope of the régime, the compromise text of paragraph 4 of the Declaration could also be incorporated in the treaty with the addition of the words "and the protection of archaeological and historical treasures" after the words "exploration and exploitation of the resources". The words "international régime" clearly meant that the area would be open to use by all States, without discrimination, and that principle had been provided for in the draft articles before the Committee. The idea that the sea-bed should be used exclusively for peaceful purposes should, of course, find a proper place in the treaty, for it constituted not only a fundamental principle, but also a basic need of mankind. The sixth principle in the Declaration could also be included verbatim in the draft treaty.

The idea of the "common heritage of mankind" found a natural corollary in the seventh principle, regarding the exploration and exploitation of the sea-bed "for the benefit of mankind as a whole". The draft proposal submitted by Japan (A/AC.138/63) to the effect that "due regard shall be paid to the need to protect the interests of land-locked and shelf-locked countries in the development of sea-bed resources" was pertinent in that connexion.

The comparative table (A/AC.138/L.10) evidenced widespread agreement on the interpretation of the basic principles contained in the Declaration in so far as the status, scope and basic provisions of the régime were concerned. Consequently, it should not be necessary for the Sub-Committee to draft alternative articles.

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Mr. GORALCZYK (Poland) noted that, in accordance with paragraph 9 of the Declaration, the régime was to be established by an international treaty of a universal character on the basis of the principles of the Declaration. Some of the principles, which either expressed existing rules of international law or constituted legal postulates, could be included either verbatim or with slight changes or additions in the future treaty. Others needed further clarification and elaboration or were simply general guidelines to be taken into account in formulating the provisions of the treaty.

Some provisions and concepts contained in the Declaration were drafted in such general language that their meaning was not sufficiently clear, and thus gave rise to different interpretations. That was true, for instance, of the concept of a "common heritage of mankind", which had no precise legal content. His delegation considered that the Declaration did not provide any clear definition of the concept; that view was supported by the fact that various delegations had offered different and sometimes contradictory interpretations during the March and July-August sessions of the Committee.

In his delegation's opinion, that concept should be interpreted in the light of all the related provisions of the Declaration. Paragraph 2 provided that the international area was not subject to appropriation or national sovereignty, and paragraph 5 confirmed the principle of non-discrimination in regard to access to the natural resources of the international area, while subjecting such access to the international régime. Meanwhile, paragraph 9 provided for the rational management of the area, the establishment of appropriate international machinery and equitable sharing of benefits by States. It had not been possible, however, for the Declaration to resolve problems concerning the extent to which the management of the resources of the area would influence the freedom of action of States, the character and competence of the future international machinery and the principles on which equitable sharing would be based. Those problems required further discussion with a view to arriving at solutions.

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The Declaration was particularly vague on the subject of the scope of the international régime. The wording of paragraph 4 of the Declaration raised various doubts and objections. The implication that the exploitation of all resources of the area, both mineral and living, could be internationally controlled was open to question. The paragraph also provided that "related activities" would be subject to international control but did not make clear which activities were "related". Paragraph 9 caused much more confusion since, like the preamble, it made reference to "the area and its resources". On the basis of those formulations, it was possible to conclude that not only the exploration and exploitation of the sea-bed, but all uses of the sea-bed and all activities carried out on it would be governed by the international régime.

While recognizing that international control over the mineral resources of the sea-bed and ocean floor was indispensable, many States, including his own, considered that there was no need to extend that control to harmless activities already conducted there, such as the laying of submarine cables and pipelines or scientific research. Those activities were adequately covered by the existing rules of international law, and provision was made for that fact in paragraph 6 of the Declaration.

The first problem confronting the Sub-Committee was the precise definition of the scope of the future régime, namely, the uses of the sea-bed which would be subject to its provisions. Different positions had been set forth both in the proposed drafts and working papers and in the Sub-Committee's debates. He suggested that the Sub-Committee should seek points of agreement and try to find new solutions only for new problems, leaving aside matters dealt with by the existing rules of international law.

In the opinion of his delegation, the international régime should be confined to questions relating to the exploration and exploitation of the mineral resources of the sea-bed and ocean floor and the subsoil thereof beyond the limits of the continental shelf. Firstly, it should not apply to other activities conducted in the international area, like the laying of submarine cables, scientific research,

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the limitation of armaments or present or future disarmament measures. Secondly, the international régime should not apply to the living resources of the sea-bed in the international area. The commercial exploitation of sedentary species beyond the limits of the continental shelf was of little or no practical importance. The problem of swimming fish, on the other hand, could be regulated within the framework of general arrangements for fishing and the conservation of living resources. Thirdly, since the superjacent waters should continue to have the status of high seas, the international régime should not apply to any activity conducted on the surface of the seas and oceans or in the waters thereof, unless such activity constituted part of the exploration or exploitation of mineral resources of the international area. In particular, the régime should not apply to the extraction of minerals from sea waters.

The international régime would, however, deal with the effects of the exploration and exploitation of the mineral resources of the international area and, in particular, matters relating to the prevention of pollution which could result from such activities. It would also apply to the protection of the environment against such effects and to the prevention of interference with the recognized uses of the high seas resulting from the exploration and exploitation of mineral resources of the international area. His delegation considered that such a régime would be broad enough to cover all outstanding issues which required new regulations.

In conclusion, he reserved this delegation's right to intervene on specific aspects of the item under consideration. In particular, as his delegation had noted in its working paper A/AC.138/44, it considered the reasonable and precise definition of the territorial scope of application of the international régime to be of crucial importance. The international area must not be deprived of valuable exploitable resources. His delegation was of the view that the usefulness of establishing any international régime was closely linked with the definition of reasonable limits for the international area.

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Mr. PINTO (Ceylon) recalled his earlier statement that the item under discussion was the most ripe for further intensive action. Most of the draft sea-bed treaties circulated so far contained basic principles akin to those of the Declaration of Principles, which itself approximated to a text of the International Law Commission, a type of document which traditionally had formed the basis of discussion at international conferences. The Declaration had been prepared with great care and, although it did not reflect the views of all countries, it enjoyed a wider political foundation than most such bases of discussion. The Sub-Committee would have to entrust the drafting of treaty articles to a smaller group of its members, and it should now try, therefore, to elucidate ambiguities and to decide which provisions of the Declaration required further elaboration.

The Declaration referred to "the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction" as the "area". His delegation would prefer to use the term "international sea-bed", since the sea-bed and its subsoil together constituted volume rather than area alone; the latter could perhaps be better referred to as the "international sea-bed area". Secondly, it would normally be necessary to substitute for the phrase "the international régime to be established" such a phrase as "these articles", "this Convention" or "the régime hereinafter set forth".

With those reservations, his delegation found paragraphs 1, 3, 5 and 7 of the Declaration acceptable as a basis for discussion by a future drafting group. Paragraph 2 required no comment of substance, although consideration should be given to the addition of a sentence such as "No such appropriation, or claim or exercise of sovereignty or sovereign rights shall be recognized."

Paragraph 4 of the Declaration did not make clear whether the international régime was to govern exploitation of mineral resources only or living resources of the sea-bed as well. However, most delegations seemed to have in mind the regulation of the exploration and exploitation of mineral resources of the international sea-bed. Activities relating to living resources of the sea-bed might be regulated by the régime at least to the extent necessary to ensure the achievement of its primary objective and to provide for "expanding opportunities in the use" of the sea-bed, as stated in paragraph 9 of the Declaration. The phrase "other related activities" was a further source of ambiguity in paragraph 4, but it

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clearly referred at least to activities related to exploration and exploitation of the mineral resources of the international sea-bed. Further discussion of that matter was unnecessary at the present stage, since an interpretation of that provision was likely to emerge during discussion of the powers and functions of the machinery.

With regard to paragraph 6 of the Declaration, the United States representative had referred to juridical questions regarding the inclusion in treaty form of a reference to the Declaration on Friendly Relations (A/AC.138/SC.I/SR.33). His delegation would prefer to leave the substance of paragraph 6 untouched, since incorporation by reference of the Declaration on Friendly Relations in the future treaty could not give that Declaration any greater significance or legal force than it already had by virtue of its status as a General Assembly resolution.

Paragraph 8 of the Declaration would require modification before incorporation as an article in the new treaty since, apart from the basic principle of reservation of an area exclusively for peaceful purposes, the text reflected uncertainty as to the area involved and suggested measures for the implementation of that basic principle. The forthcoming conference might well clarify the matter and make it possible to reduce the principle to a single sentence requiring that the international sea-bed be reserved exclusively for peaceful purposes and excluded from the arms race.

Although the first sentence of paragraph 9 would not actually appear in the new treaty, it should be borne in mind that the treaty was to be "of a universal character, generally agreed upon". In other words, all States must be invited to participate in preparing and concluding the treaty, and a relatively high number of ratifications should be required to bring it into force. The "status" of the régime meant the character of the régime as general international law deriving from a treaty of a universal character, to which the overwhelming majority of States should become parties. The second sentence of paragraph 9 might well be adopted by the drafting group without change of substance.

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His delegation had no special comment on paragraph 10, but regretted that the Declaration made no provision for international co-operation for promoting the rapid transfer to the developing countries of the technology necessary for sea-bed exploitation. That was a serious shortcoming, which should be remedied by the inclusion of a supplementary general principle.

While paragraph 11 was an adequate statement of principle, his delegation would wish to discuss appropriate powers for its implementation under item 2 of the programme of work.

Paragraph 12 was important since it recognized the special position and interests of coastal States. The Committee might wish to specify in the treaty appropriate procedures to give effect to the obligation of consultation. It might also wish to consider supplementing that principle by an additional provision to the effect that resources of the international sea-bed lying across the limits of national jurisdiction should be explored or exploited only in agreement with the coastal State or States concerned and that exploration and exploitation of resources located near the limits of a State's national jurisdiction should be carried out in consultation with the coastal State concerned and, where possible, through the agency of that State.

The two ideas in paragraph 13 were acceptable in substance, but unconnected. It might be appropriate to make paragraph 13 (b) part of paragraph 11 or 12, and to state the principle concerned in a positive manner, namely, "Coastal States may take measures to prevent, mitigate...". Paragraph 13 (a) could form a separate article. The Committee might also wish to consider inclusion in the treaty of additional provisions requiring, for example, (1) that all activities in the marine environment be conducted with reasonable regard to exploration of the international sea-bed and the exploitation of its resources; (2) that exploration of the international sea-bed and exploitation of its resources should not result in any unjustifiable interference with other activities in the marine environment; and, perhaps that all activities with respect to the international sea-bed be conducted with adequate safeguards for protection of human life and safety of the marine environment.

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The present form of paragraph 14 was acceptable as a statement of broad principle but would require substantial elaboration. A supplementary provision might, for example, require that a State should take measures to secure compliance with the treaty by its nationals or others under its control, make violations punishable under its laws, maintain order on manned installations for which it was responsible and be responsible for damage resulting from sea-bed activities. Further supplementary provisions might deal with the responsibility of States operating joint projects and of international organizations.

While paragraph 15 was also acceptable as a general statement of principle, it could be interpreted as a directive requiring inclusion in the treaty of specific dispute settlement procedures. If that was so, the basic principle for settlement of disputes could be reduced to a requirement that all disputes relating to the interpretation or application of the treaty be settled in accordance with specified provisions thereof.

In conclusion, he pointed out that there were still considerable differences of opinion on such questions as whether the machinery should itself be empowered to engage in exploration and exploitation of the international sea-bed. He wondered whether, if agreement could not be reached on a particular question of substance, alternative proposals or sets of articles should be prepared, and whether, if agreement could still not be reached, alternative texts could be submitted to the Conference. Such a procedure would be most unusual, and those questions should be answered in good time if the Conference were indeed to be held in 1973.

Mr. ZEGERS (Chile) expressed the view that the status of the international régime governing the sea-bed and the ocean floor beyond the limits of national jurisdiction should be that of a universal treaty based on the Declaration of Principles. It was particularly important that the provisions of the Declaration, adopted unanimously by the General Assembly after complex negotiations, could be regarded as principles of international law, in the sense given to them as a source of law in Article 38 of the Statute of the International Court of Justice. The treaty itself must be universal, and open to ratification by all States without discrimination of any kind. Moreover, a large number of ratifications should be required for its entry into force. It must apply both to the area beyond

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the limits of national jurisdiction and to its resources, and must express the concept that both the area and its resources were part of the common heritage of mankind. Finally, it must include provision for an international machinery forming part of the régime, and having jurisdiction over the area and its resources.

The scope of the régime, according to the Declaration, would be the area beyond the limits of national jurisdiction and its resources, which his delegation took to include both mineral and living resources. His delegation would have no objection to the approach outlined by the delegation of Malta, which involved taking as broad as possible an approach and extending the scope of the régime to include "ocean space" (A/AC.138/53). Both the régime and the machinery should have jurisdiction over the area and its resources. That did not imply sovereignty, but jurisdiction was necessary since according to the Declaration the régime should govern the exploration and exploitation of the resources of the area and other related activities. In his delegation's view, "related activities" did not include military activities or the rights of navigation and overflight, but did cover pollution, scientific research and the marketing of resources, as well as other activities which the régime itself would undertake.

First among the basic provisions of the régime was that the area and its resources were the common heritage of mankind. In other words, they were subject to joint ownership; all States should participate in the administration of the area and the control of activities conducted in it, and should share in the benefits derived therefrom. Corollaries to that principle were the principles, embodied in the Declaration, that the area should not be subject to appropriation, that no rights should be claimed, exercised or acquired with regard to the area or its resources which were incompatible with the international régime and that all activities regarding the exploration and exploitation of the resources of the area should be governed by that régime.

General Assembly resolution 2574 (XXIV) declared that pending the establishment of the international régime, 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 the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, and that no claim to any part of that area or its resources should be recognized. Admittedly, that extremely important declaration had not been supported

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by all Member States. Nevertheless, the Declaration of Principles itself reflected both implicitly and explicitly, the same ideas. It declared that the area should not be subject to appropriation by any means by States or persons, natural or juridical, and that no State should claim or exercise sovereignty or sovereign rights over any part thereof, that no State or person should claim, exercise or acquire rights with respect to the area or its resources incompatible with the international régime to be established, that all activities regarding the exploration and exploitation of the resources of the area should be governed by the international régime, that the exploration of the area and the exploitation of its resources should be carried out for the benefit of mankind as a whole and that every State should have the responsibility to ensure that activities in the area, including those relating to its resources, were carried out in conformity with the international régime. Although not binding, the Declaration of Principles should, as he had pointed out, be regarded as forming part of international law under Article 38 of the Statute of the International Court of Justice.

Nevertheless, there was considerable evidence that exploitation of the area was in fact taking place. The United States representative, Mr. McKelvey, had recently informed a sub-committee of the United States Senate that there were 19 organizations and five nations engaged in the exploitation of minerals in the area beyond the limits of national jurisdiction. Maps had been made available to that sub-committee showing the distribution of manganese nodules in the oceans of the world. Moreover, a number of consortia were active in the area, and went so far as to publicize their activities. They included Deep Sea Ventures, which had invested $18 million in a process for the deep-sea extraction of manganese nodules, and owned a processing plant in Georgia, United States. Other companies engaged in similar activities included the Hughes Tool Company (whose activities were as mysterious as the owner, Howard Hughes) Kennecott and Alcoa.

Another consortium active in the Pacific Ocean, including 25 companies representing a number of developed western European countries, intended in July and August 1972 to conduct large-scale experiments in the use of a Japanese developed technique known as the "continuous line bucket" for extracting manganese

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nodules. The development costs for the process had been approximately $1.5 million, and the material extracted could be sold at $28 a ton. The 25 companies in the consortium were also working on the development of techniques for extracting other minerals from the nodules.

The general availability of information on such activities had led to the submission to the United States Congress of a bill, co-sponsored by Senator Jackson, Chairman of the Senate Committee on Interior and Insular Affairs and a presidential candidate, which would authorize the Secretary of the Interior to issue licences granting exclusive rights for exploitation of the international sea-bed to any person under United States jurisdiction and to "reciprocating States". The bill apparently envisaged a situation in which States would grant each other exclusive rights to the international area which was the common heritage of mankind. Obviously, the submission of such a bill did not reflect the view of the United States Government, which would, his delegation was sure, respect the Declaration of Principles and abide by the treaty when it came into force, as no doubt would the Governments of the other countries in which the various companies he had referred to were located.

Other organizations also engaged in activities relating to the sea-bed. There was, for instance, a European oceanic association, whose membership included companies such as Fiat, Philips, the Société Générale de Belgique and Enskilda Tanken. According to a report in The New York Times of 24 April 1971, the socialist countries, too, had an association with headquarters in Riga, but that gave less grounds for concern since it dealt solely with exploration.

In view of the situation he had described, it seemed essential that the Sub-Committee should, as the representative of Canada had mentioned, consider making provision for international machinery to cover an intermediate period. The Secretariat should be requested to investigate as extensively as possible the activities of the various consortia and companies involved in the exploitation of the resources of the sea-bed beyond the limits of national jurisdiction, and the delegations of Japan and the United States should be invited to provide further information on the "continuous line bucket" process, Deep Sea Ventures and its activities, the statement by Senator McKelvey and the Jackson bill.

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Mr. ARIAS-SCHREIBER (Peru) endorsed the comments of the representative of Chile with regard to the planned activities of companies in a number of countries in relation to the area beyond the limits of national jurisdiction. An assurance should be requested from the countries concerned that they would refrain from exploiting resources which were part of the common heritage of mankind. Such exploitation was contrary to the letter and the spirit of General Assembly resolutions 2574 D (XXIV) and 2749 (XXV), and made a mockery of the rights and obligations of other countries. If such an assurance was not forthcoming, the United Nations would have to take steps to ensure respect for those resolutions and for the rights of all Member States to their common heritage.

Mr. BEESLEY (Canada) asked if at some stage the Secretariat could provide a progress report on information received from Member States, in response to the Secretary-General's letter, concerning their legislation relating to the sea.

The meeting rose at 12.10 p.m.

SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

Held on Monday, 13 March 1972, at 3.15 p.m.

Chairman: Mr. ENGO Cameroon

STATUS, SCOPE AND BASIC PROVISIONS OF THE REGIME, BASED ON THE DECLARATION OF PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 2749 (XXV) (continued)

Mr. PARDO (Malta) said that the nature of the Sub-Committee's discussions on the first item on its programme would necessarily determine not only the nature of the régime it was hoped to establish but also, in broad outline, the scope, functions and powers of the future international machinery, the second item on the programme of work.

It was generally agreed that the basic provisions of the régime should be based on the principles contained in the Declaration adopted by the General Assembly at its twenty-fifth session (General Assembly resolution 2749 (XXV)). For the most part, those principles could, with minor drafting changes, be translated into draft treaty articles. In a few cases, however, substantial reconsideration or reformulation of the substantive paragraphs of the Declaration of Principles might be required. The second sentence of principle 8, for example, appeared unsuitable for incorporation in a draft treaty. On the other hand, it might be as well to consider whether it might not be appropriate to include, in a draft treaty article on peaceful uses, the prohibitions against nuclear and thermonuclear weapon test explosions and against the emplacement of nuclear weapons contained in General Assembly resolutions 1910 (XVIII) and 2660 (XXV).

Principle 10, as drafted, was merely an expression of pious intention and was frankly inadequate. If no better formulation could be agreed upon, his delegation would favour the omission of that principle, except its last sentence, from the section of the future treaty dealing with basic provisions.

The formulation of principle 11 was also unsatisfactory and it was to be hoped that that principle would be replaced by more precise treaty provisions.

Principle 13 referred to two concepts which were not obviously connected with one another. Indeed, it might be more appropriate for the idea developed in principle 13 (a) to be considered by Sub-Committee II.

It appeared that principle 14 could form the substance of three draft treaty articles, one dealing specifically with the responsibilities of States, the second with the responsibilities of intergovernmental organizations and the third with the responsibilities of the international machinery itself. Each of those treaty articles would probably require some elaboration of principle 14 as drafted.

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Principle 1 was of particular importance for, as the Canadian delegation had stated in document A/AC.138/59, it was the principle from which all others flowed and which determined the objectives and functions of the international sea-bed régime and machinery. Consequently, it was essential that that principle be included in any future treaty. His delegation had assumed that the "common heritage of mankind" concept had been accepted by all States represented on the Sea-Bed Committee. It had been with pained surprise, therefore, that at a previous meeting it had heard the representative of a socialist country questioning the meaning of the concept. The major inequities between States in the contemporary world could not be relieved without far-reaching changes in the existing international order. The sea-bed and the oceans beyond national jurisdiction belonged to no one; their resources were not national, but world, resources. Hitherto, areas of the marine environment beyond national jurisdiction had been considered open to the use, and the abuse, of all; their resources had been regarded as spoils and the benefits of exploitation had been appropriated for private or national purposes by those possessing the required strength, skills and technology. Principle 1 clearly suggested that in future at least the sea-bed beyond national jurisdiction was to be considered as common property to be held in trust by the world community for use in the interests of humanity as a whole and that the resources of the common property were to be shared equitably by all for the common benefit of all. His delegation was aware of the difficulties in the practical implementation of the concept of the common heritage of mankind in an international treaty of a universal character and was anxious to reach those accommodations which were inevitable in the present stage of world development. On the principle of common heritage itself, however, it could not compromise for it was the foundation of the Committee's work and the key to the future.

The first question that arose in connexion with the scope of the régime was whether the principles adopted by the General Assembly were exhaustive in the sense that the Sub-Committee was precluded from considering provisions additional to the principles in resolution 2749 (XXV) when drafting articles concerning the basic provisions of the régime. The answer to that question seemed clear. There was nothing in resolution 2749 (XXV), in subsequent General Assembly resolutions or in the Sub-Committee's programme of work to suggest that the drafting of articles relating to the scope and basic provisions of the régime must

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be restricted to matters dealt with in the Declaration of Principles. Indeed, several additional articles of a general nature could be incorporated in the section of the treaty dealing with basic provisions. Among such general articles there could be one dealing with the protection of human life in the marine environment, while another could indicate that exploration and exploitation of natural resources must not result in substantial or unjustifiable interference with other activities in the marine environment. The Sub-Committee could also consider whether it might not be advisable to draft an article forbidding the exploration and exploitation of gas and hydrocarbons in areas where substantial interference could be caused to the sea lanes essential to international navigation or where scientific findings indicated that exploitation might result in extensive pollution. Perhaps there should also be provisions stating in general language that the introduction of harmful substances or of energy into the marine environment beyond national jurisdiction in quantities that could be expected to have deleterious effects on human health or on the living resources of the sea were to be subject to control and regulation by the international machinery. General articles should also be drafted elaborating upon article 25, paragraph 1, of the 1958 Geneva Convention on the High Seas, particularly in view of the growing quantities of radio-active waste being generated.

In view of developments since the adoption of the Declaration of Principles, the question arose whether the scope of the future régime should be confined to the sea-bed beyond national jurisdiction or whether it should be extended to the superjacent waters and their resources. That suggestion might exceed the instructions given to the Sub-Committee in paragraph 6 of General Assembly resolution 2750 C (XXV), but there seemed to be no reason why the Sub-Committee should not, through the main Committee, recommend to the General Assembly some modification of its terms of reference if it considered that such a step would facilitate both its own work and the work of the Sea-bed Committee as a whole. If any agreement was to be reached at the 1973 Conference of the Law of the Sea it would seem necessary to enlarge the scope of the régime to include ocean space as a whole and its resources beyond national jurisdiction. Many developments in

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the marine environment clearly suggested that if a régime was created for the international sea-bed alone, it was likely to be already obsolescent by the time it was established. There were also serious and practical considerations why the Sub-Committee should consider the need to enlarge the scope of the régime to include ocean space beyond national jurisdiction. Firstly, there would be no hope whatsoever of controlling the progressive extension of coastal State jurisdiction in ocean space unless an equitable international régime generally acceptable to the international community was established for the ocean space beyond national jurisdiction. Secondly, the extension of coastal State jurisdiction for one purpose - control of ocean pollution, for instance - necessarily entailed its extension for other purposes - navigation, for instance in view of the interdependence of many of the uses of the seas. Thirdly, it was an illusion to pretend that a future international régime could have no effect on the legal status of the superjacent waters or on the exploitation of resources other than minerals: access to the sea-bed was normally through the superjacent waters; constructions on the sea-bed in shoal areas would be a danger to navigation; faulty construction of sea-bed oil storage tanks or indiscriminate dumping of harmful substances in the area beyond national jurisdiction could result in the contamination of many thousands of square miles of sea. Such matters must be regulated but they could only be regulated in the context of a generally accepted international régime. Fourthly, in the absence of a régime for ocean space as a whole beyond national jurisdiction, efforts to establish a régime for the sea-bed would either fail or there would be several régimes including, for instance, an amended régime for the high seas, an amended régime for fisheries, and so on. Such a procedure was bound to cause confusion. Fifthly, it was more likely that agreement would be reached on the numerous, complex and delicate matters falling within the mandate of the Sea-Bed Committee as a whole, as distinct from the Sub-Committee, if a comprehensive approach to an international régime was adopted and if negotiations could take place within the framework of the total interests of the international community and the coastal State in the marine environment. In view of the difficulties to which it would give rise, his delegation did not insist that an immediate decision

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should be taken on the question whether the future international régime should apply to the sea-bed and its resources beyond national jurisdiction or to ocean space and its resources beyond national jurisdiction. It only insisted that the issue be kept open. Thus, when the Sub-Committee reached the stage of drafting treaty articles based on General Assembly resolution 2749 (XXV) it could leave blank, or place between brackets, the area of application of the articles drafted, on the understanding that the issue would be decided before or when the Conference on the Law of the Sea was convened.

On the whole, his delegation was satisfied with the manner in which portions of Malta's draft treaty had been selected for inclusion in the comparative table of draft treaties prepared by the Secretariat (A/AC.138/L.10). Nevertheless, it was regrettable that no reference had been made in the provisions relating to the protection of the marine environment (A/AC.138/L.10, pp. 46 and 47) to article 2 of the Malta draft convention which was basic to an understanding of those provisions of chapter XV of the draft convention which had been included in the comparative table. Further, in the note on the Malta draft treaty (Ibid., pp. 7 and 8), mention was made of only one of the basic concepts on which the draft treaty was founded. His delegation would not request that a corrigendum be issued, but it wished to draw attention to the two concepts on which the Malta draft treaty was founded. The first was that laissez-faire freedom beyond national jurisdiction was obsolescent and the second that the unfettered sovereignty of the coastal State within national jurisdiction must, in the oceans, suffer some limitations in the general interest. In other words, the Malta draft treaty attempted to strike a balance between national and international interests in ocean space in order to expand the beneficial use of ocean space by all.

Mr. ARIAS SCHREIBER (Peru) said that the Sub-Committee's task was to clarify and develop the implications of the basic principles established by General Assembly resolution 2749 (XXV), determine the extent to which those principles had been reflected in the twelve proposals so far submitted and try to reconcile the provisions of those proposals. In so far as the first phase of the task was concerned, his delegatinn considered that it would be useful to concentrate on the criteria suggested and questions raised by the Canadian

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delegation (A/AC.138/59). In order to determine the status and scope of the international régime, the Sub-Committee should take as its points of departure the elements implicit in the "common heritage of mankind" concept and the explicit terms of the Declaration of Principles adopted by the General Assembly in resolution 2749 (XXV).

Firstly, according to the Declaration, there was no doubt that the common heritage concept applied to both the area itself and to the resources of the area. The international authority established to administer the common heritage should, therefore, supervise the area itself and ensure that any activities carried out in it did not impair the heritage of which it was the trustee. To confine the international authority's jurisdiction to exploration and exploitation of resources would be to run counter to principle 1 which in defining the common heritage made express mention of the area. It was also obvious that all resources - mineral, energy and living - formed part of the common heritage; the Declaration of Principles did not distinguish between them and there was no reason why specific resources should be excluded from the common heritage merely to satisfy the claims of States or bodies which wished to exploit them for their own advantage.

The second point to be clarified concerned the legal relationship between the rights of mankind as a whole and the powers of the international authority. In that connexion, adoption of the common heritage concept definitely precluded the possibility of the area and its resources being regarded as res nullius; it had been decided that they belonged to mankind as a whole. Consequently, humanity was the only owner of the area and its resources, and the recognition or exercise of rights of appropriation by any State, individual or body corporate had been forbidden. It followed that the relationship between the titular subject of the right, namely mankind, and the object, namely the area and its resources, presented the characteristics of exclusive ownership, although there was no need to assimilate it to the concept of sovereignty. That, in turn, implied that the international authority to be established would have to have power to exercise - on behalf of mankind and as its agent - exclusive jurisdiction over the common heritage.

The third consequence of the common heritage concept comprised three facets, namely, collective administration of mankind's heritage, collective participation in activities in the area and collective enjoyment of the resulting benefits. In

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so far as collective administration was concerned, provision had been made in the Declaration of Principles for the establishment of appropriate international machinery to give effect to the provisions of the régime. The participation of all States in the activities to be carried out in the area had also been recognized in the Declaration as a corollary of the common heritage. In so far as the benefits were concerned, the Declaration had established two criteria: the first concerned the equitable sharing of benefits and the second the particular attention to be paid to the interests and needs of the developing countries, whether land-locked or coastal. When the time came to prepare the draft treaty it would not be sufficient merely to repeat those concepts; they would have be amplified in the light of proposals submitted concerning the régime.

The fourth consequence of the common heritage concept was that the treaty must be universal in nature. The first reason for that was that the exclusion of any State from the preparation of the treaty, or failure by any State to accede to it, would impede respect for and implementation of the treaty. Secondly, the communal nature of the object over which all States were recognized to possess rights would be invalidated if its content were in any way reduced. It would be unrealistic and dangerous to attempt to impose norms affecting the sovereignty of States against the will of those States, and it would be wrong and useless to pass legislation on a common heritage of mankind if some sections of mankind were excluded from the treaty either because they opposed it or because they had not been permitted to participate in its preparation and adoption. It was for that reason that the Declaration of Principles had provided for the conclusion of "an international treaty of a universal character"; there should be no repetition of the situation which had arisen following adoption of the Geneva Conventions of 1958, which had been applicable to only a minority of States.

Turning to the basic principles of the Declaration of Principles, he said that principles 2 and 3 had been combined into a single text in the 13-Power working paper (A/AC.138/49), thus avoiding repetition of similar concepts. Similarly, the use in the 13-Power paper of the words "any rights" rather than of the words "rights incompatible" would obviate difficulties of interpretation.

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As to principle 4, the statement that activities regarding the exploration and exploitation of the resources of the area and other related activities were to be governed by the international régime to be established did not mean that exploration and exploitation would be the only activities falling under the jurisdiction of the international authority, since the common heritage concept applied to the area as a whole. There was no reason to fear that complete and comprehensive jurisdiction would enable the international authority to deny the legitimacy of internationally accepted activities other than exploration and exploitation, such as the laying of cables and pipes. The powers of the authority in that field would be limited to preventing possible harm, from any source whatever, to the common heritage.

In so far as principle 5 was concerned, the formulation proposed in articles 3, 4 and 69 of the Maltese draft seemed appropriate for it stipulated the conditions in which land-locked States would be allowed access to the international area. Of course, the idea that the area should be open to all States must be taken in conjunction with the idea in principle 4 that activities regarding the exploration and exploitation of the area were to be governed by the international régime to be established. It should be noted, in that connexion, that it was not sufficient merely to proclaim that all States could participate in activities in the area on an equal footing. It was important that measures should be adopted which would make it possible for all States to play an effective role in the peaceful use of the area, as had been provided for in the 13-Power draft. It followed that principle 5 would have to be amplified when the pertinent treaty articles were being drafted.

With respect to principle 6, his delegation agreed with the Canadian delegation that the treaty should be based on the new idea of the common heritage, not on an application of the régime of the high seas to the international sea-bed area. Furthermore, the formulation of the principle should be more explicit, with a reference to activities other than exploration and exploitation, which were not covered by principles of existing international law.

There was a consensus, with respect to principle 7, that the benefits resulting from exploitation of the resources should be shared equitably between States, whether coastal or land-locked, taking into particular consideration the interests and needs of the developing countries. It would be necessary to define more precisely the notion of resulting benefits and the criteria governing their distribution.

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As to principle 8, it was well known that Peru was opposed to the emplacement of nuclear weapons and other weapons of mass destruction on the sea-bed and to the testing of such weapons in ocean space. The draft treaty should contain a generic clause under which the area would be reserved for peaceful purposes and all military activities would be excluded from it as being incompatible with the aims of the international régime and a danger to the preservation of the common heritage.

Since principles 9 to 11 were to be examined separately, he would not comment on them.

As to principle 12, his delegation shared the Canadian delegation's views concerning the positive formulation to be given to the legitimate rights and interests of coastal States. It was necessary to affirm the right of coastal States to take steps to reduce or eliminate the dangers of pollution threatening their coasts and the interests of their populations.

On principle 13, too, his delegation agreed with the Canadian delegation that the provisions of the régime should not affect the legal status of the superjacent waters or the air space above those waters. On the other hand, activities undertaken in those places should not impede the exploration and exploitation of the resources of the international sea-bed area.

The formulation of principles 14 and 15 as contained in the Declaration satisfied his delegation; the Canadian delegation's comments thereon should, however, be taken into account when the treaty articles were being drafted.

Mr. PODTSEROB (Union of Soviet Socialist Republics) said that the task before the Sub-Committee was to discuss the basic provisions of the future régime to govern the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. At the second session of the Sea-Bed Committee, his delegation had submitted provisional draft articles of a treaty on the use of the sea-bed for peaceful purposes (A/AC.138/43; A/8421, Annex I), which reflected the main principles on which the régime should be based.

First of all, the draft, like those of a number of other countries, indicated that the sea-bed should be open to use exclusively for peaceful purposes by all States (article 1). The principle of peaceful use was of primary importance to the effective and rational exploitation of the resources of the sea-bed in the interests of all, particularly the developing countries. It was equally important

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at the broader international level; obviously, to prevent the arms race spreading to the sea-bed and the ocean floor would be in the interest of peace throughout the world, of reduced international tension and of increased co-operation among States. His delegation's position that the sea-bed should be a sphere of peaceful activity was clear and consistent. The Soviet draft not only referred to the use of the sea-bed for peaceful purposes, but also stated in article 6: "The use of the sea-bed and the subsoil thereof for military purposes shall be prohibited." The draft articles further stated (article 12 (4)) that installations erected for the industrial exploration or exploitation of the resources of the sea-bed and the subsoil thereof should not be used for military purposes of any kind, and that in particular they should not be used for the emplacement, storage or testing of any military equipment or weapons.

The Soviet Union had taken the initiative in proposing to prohibit the use of the sea-bed and its subsoil for military purposes as far back as 1968, when it had submitted to the Disarmament Committee a draft treaty to that effect. The Soviet Union has also initiated work on the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof (General Assembly resolution 2660 (XXV)), which had been a first step towards excluding the seas and the oceans from the arms race. Unfortunately, some States, including members of the Sea-Bed Committee, had not yet become parties to that Treaty; some, indeed, were firmly opposed to it.

In referring to the fact that the draft treaty on the use of the sea-bed for peaceful purposes should prohibit the use of the sea-bed and the subsoil for military purposes, his delegation did not intend to draw the preparatory committee for the conference on the law of the sea into discussion of specific questions falling within the competence of the Disarmament Committee. However, it believed that a treaty defining the basis for the peaceful use of the sea-bed and its subsoil should include a provision of principle declaring the impermissibility of using the sea-bed and the ocean floor, and the subsoil thereof, for military purposes. Realization of that principle would be an important step towards general and complete disarmament under strict international control. His delegation's position on that matter was entirely clear.

Another important basis for the international régime was the provision contained in the Soviet's draft that "In regard to the sea-bed and the subsoil

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thereof, States shall act in accordance with the principles and rules of international law, including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, and also in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples, in the interests of maintaining international peace and security and in the interests of peaceful co-existence of States with different social systems and the promotion of international co-operation and mutual understanding" (article 7). His delegation noted with satisfaction that there was a broad measure of agreement in the Committee with regard to reference to the first two of those international instruments. It felt it equally important that, where the sea-bed and its subsoil were concerned, States should also act in accordance with the third of them. The question was one of considerable political and practical significance to the operation of the treaty arrangements. If the international machinery had to deal with questions affecting areas of the sea-bed adjacent to the coast of Angola, Mozambique or Namibia, it would be unacceptable for consultations to take place with the Portuguese or South African authorities which, in defiance of the Declaration on the Granting of Independence to Colonial Countries and Peoples, maintained those countries in a state of colonial dependence. In order to make it perfectly clear from the outset that the colonial Powers could not count on being consulted with regard to areas of the sea-bed adjacent to their colonial Territories, the treaty should state unambiguously that the Declaration would be applicable in matters relating to the régime. That meant that the international machinery should have no dealings with the colonial Powers in relation to the countries which they held under the yoke of colonialism. The régime for the sea-bed should allow not even the slightest loop-hole for colonialist scheming.

Another provision of its draft articles to which his delegation wished to draw attention was that set forth in articles 4 and 25. The first of those articles stated that "the use of the sea-bed and the subsoil thereof for the purpose of exploring and exploiting its resources shall not conflict with the principles of freedom of navigation, fishing, research and other activities on the high seas", while the second provided that neither the treaty nor any rights granted or

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exercised pursuant thereto affected the legal status of the superjacent waters of the high seas, or the legal status of the air space above those waters. The essence of those articles was that the establishment of a régime for the sea-bed should not lead to any changes in the régime governing the superjacent waters or the waters of the high seas. That position was in complete agreement with a provision already recognized in international law; the 1958 Convention on the Continental Shelf stated that "The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters".

The fact that his delegation had referred in detail to three principles which in its view were of primary importance to the sea-bed régime in no way meant that it attached any less importance to such principles as non-appropriation of the sea-bed and its subsoil by States, respect for the safety of life at sea, co-operation to prevent pollution and contamination of the marine environment as a result of activity on the sea-bed, or responsibility for damage caused as a result of such activity. All those principles were reflected in the Soviet draft articles and his delegation would comment on them when the Sub-Committee undertook an article-by-article consideration of the various drafts.

In conclusion, his delegation noted that there was a very considerable measure of agreement with regard to the basic provisions of the régime. Agreement on specific wordings would require considerable further work, in which his delegation was prepared to take part.

Mr. LEGNANI (Uruguay) said that to transform the principles in General Assembly resolution 2749 (XXV) into specific provisions regulating the sea-bed and its subsoil would be difficult, partly because of the very nature of the task and more specifically because of the different positions which had to be reconciled.

Among the principles which his delegation believed should be reproduced, with minimum change, in the basic provisions of the régime was the one establishing that the international sea-bed and ocean floor and their subsoil, as well as their resources, were the common heritage of mankind. The 13-Power working paper

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(A/AC.138/49) reproduced that principle and recognized its necessary consequences: that no State should exercise sovereignty over the international area, that exploration and exploitation should not promote any one particular interest, that all States had a right to participate in the administration of the international sea-bed and that all of them, including land-locked countries, should share in the benefits to be derived from exploration and exploitation of the area. All those principles should be reflected in the treaty. The provision excluding particular rights and interests would not extend to rights exercised in accordance with the international régime provided for in the treaty.

It should also be clearly stated that the natural resources of the international sea-bed should be exploited for the benefit of the whole of mankind. In his delegation's view, such resources should include both the minerals of the soil and subsoil, in particular oil and hydrocarbons, and all marine species, animal or vegetable, living in a constant physical and biological relationship with the sea-bed, such as benthonic species, which might include sponges and corals. Natural resources might be defined by the formula used in the Geneva Convention on the Continental Shelf, which read "... natural resources... consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil".

Closely connected to the exploitation of the natural resources of the international area and the protection of the legitimate rights and interests of coastal States would be prohibition of the exploitation of natural resources within national jurisdiction from the international zone, by means of pipelines or other installations operating at a distance.

In his delegation's view, it was of fundamental importance to include in the basic provisions of the régime a statement that the sea-bed should be used exclusively for peaceful purposes and that the emplacement of nuclear weapons or other weapons of mass destruction in the seas and oceans, as a whole, should be prohibited. The delegation of Peru had recently made a proposal to that effect. His own delegation had always supported any proposal, however modest, relating to disarmament and had voted for the Treaty on the Prohibition of the Emplacement

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of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, on the understanding that efforts to broaden its scope and effectiveness must be redoubled. In that context, Member States should agree not to provide new fields for the spread of arms. For that purpose, Latin America had by the Treaty of Tlatelolco placed a restriction on the spread of nuclear weapons, and for the same reason the Indian Ocean had been declared a zone of peace. The prohibition of nuclear weapons and all weapons of mass destruction throughout the seas and oceans would raise a legal barrier to the possible surreptitious spread of weapons into the international area, avoid the serious risk of contamination by nuclear weapons and fully meet the need to maintain peace and international security referred to in the Declaration of Principles.

The basic provisions should also include a special reference to the participation of regional organizations in the exploration and exploitation of the sea-bed and the ocean floor. The areas making up the international area, as well as those forming the area under national jurisdiction, were many and varied; they were given unity only by the fact of whether they were regarded as within or beyond national jurisdiction. The diversity of the area of the sea-bed beyond national jurisdiction was matched by the political, sociological, economic, biological and historical peculiarities of the adjacent areas under national jurisdiction and of coastal zones. The international régime should not disregard the regional and subregional diversity of the modern world. Regional interests could no more be met by States taken individually than could international questions; both required international co-operation on a world-wide and regional scale. The various regions had their own identity, their own interests and their own problems, and they established collective bodies to encourage international co-operation within their areas, while promoting close co-operation from other regional organizations and with a central international organ. The declarations of Santiago in 1952 and Montevideo and Lima in 1970, the agreements on the North Sea and the Adriatic and the recent conference at Bogotá showed the interest of the various regions in issues relating to the sea which affected them. International co-operation would benefit from regional activity by greater

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efficiency in preventing pollution of the seas. The questions affecting land-locked countries could be solved more effectively and the dissemination of knowledge and technology relating to the exploration and exploitation of the sea-bed, as well as to pollution control, could be adapted to the special characteristics of each region.

The international régime should not be a strait-jacket which ignored or tried to suppress differences. It must adapt itself to, and draw strength from, the diversity of situations it was called upon to regulate. Accordingly, his delegation believed that the basic provisions of the régime should state that "the exploration and exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction shall be carried out, in accordance with the provisions of the present Treaty, by the international agency to be established, in close co-operation with all States and with the competent regional or subregional agencies which are already in existence or may in future be established". Such a provision would cover the essential factors basic to the exploration and exploitation of the sea-bed and the ocean floor, and would ensure that the common heritage of mankind yielded benefits to all peoples of the world. Nevertheless, the principle of egalitarian justice should be borne in mind and more assistance should be given to those who had least - in other words to the developing countries, whose interests and needs merited special attention.

Mr. BENCHEIKH (Algeria), while reserving his delegation's position with regard to the zone of national jurisdiction within which the economic and security interests of each State must be taken into account, said that he had no objection to the Chairman's suggestion that a drafting group could be set up to discuss the scope of the international régime. In its task of elaborating principles to be incorporated in an international treaty, the group should be guided by the Declaration of Principles adopted by the General Assembly. In his opinion, operative paragraphs 1 and 2 of the Declaration could be reproduced unchanged in the preamble of the treaty, which should be open for participation by all States without discrimination of any kind. Paragraph 3 of the Declaration, which represented an extension of the first two principles, was also unobjectionable. As to paragraph 4, he took the view that the resources to which the régime would apply should include both mineral and living resources. It appeared to be generally accepted that the

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area should be used exclusively for peaceful purposes; accordingly, paragraph 5 was likewise acceptable to his delegation. As his delegation's general views with regard to paragraphs 7, 8 and 9 had been expressed in the plenary Committee, there was no need for further elaboration at that time.

His delegation viewed with considerable concern the unilateral approach adopted by several countries engaging in activities in the area beyond their territorial seas. The representative of Chile, in his statement at the last meeting of the Sub-Committee, had provided several examples of such activities, to which the Sea-Bed Committee should not remain indifferent. The Committee must take all necessary steps to safeguard the area pending the establishment of an international régime. Countries involved in such activities were violating the basic principles of non-appropriation and non-exploitation which they had endorsed; there had even been violations of territorial seas, which clearly infringed on the sovereignty of States over their natural resources. External pressure of a political or economic nature had been brought to bear in favour of the activities in question; that was a violation of the principle of self-determination of peoples and non-intervention. His delegation felt strongly that the Committee could not move forward in its work if it did not ensure that States observed the principles to which they had subscribed.

Mr. GONLUBOL (Turkey) expressed the view that the prospective treaty establishing an international régime and machinery to regulate activities in the area should enjoy universal acceptance, as envisaged in paragraph 9 of the Declaration of Principles. An international treaty of a universal character could be achieved only if all the countries represented in the Committee, both developing and developed, worked for agreement in a spirit of international co-operation and willingness to make reciprocal concessions to accommodate divergent views and interests.

The scope of the régime was defined in paragraph 1 of the Declaration of Principles. A controversial issue, however, was that of the interpretation of the term "resources of the area". For its part, his delegation favoured the definition in article 2, paragraph 4, of the Geneva Convention on the Continental Shelf, which was reproduced in the United Kingdom working paper (A/AC.138/46).

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The term "natural resources", as defined in the Geneva Convention, could equally apply to the sea-bed area beyond national jurisdiction and was more comprehensive than the term "biological resources" used in the United States draft treaty. However, unlike the United Kingdom, his delegation would understand the term to include minerals in the superjacent waters.

On the question of defining the limits of the area, his delegation was encouraged by the progress made in Sub-Committee I. Early agreement on that question would be an important contribution to the work of the other Sub-Committees.

His delegation shared the concern expressed by the representative of Chile at the last meeting with regard to current activities aimed at exploiting the resources of the area. General Assembly resolution 2574 D (XXIV), to which the representative of Chile had referred, explicitly enjoined States and persons to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor beyond the limits of national jurisdiction, pending the establishment of an international régime. The most effective way of ensuring observance of that resolution would be to establish the international régime and appropriate machinery as quickly as possible. The question was, of course, further complicated by the fact that at present no consensus or understanding existed regarding the limits of the area.

Despite the vagueness of some of its provisions, the Declaration of Principles was a balanced document which admirably paved the way for a treaty on the international régime and machinery. However, as the valuable comparative table prepared by the Secretariat clearly showed, various interpretations existed with regard to the principles contained in the Declaration, and it would doubtless be necessary to modify or add to those principles in a number of cases.

His delegation wished to stress the importance of the principle enunciated in paragraph 8 of the Declaration, which reserved the area exclusively for peaceful purposes. While that principle was basic and must be included in the treaty, it should be borne in mind that special bodies had been established by the United Nations to deal with that question and were peforming valuable work. A Conference on the Law of the Sea was hardly the appropriate place to take up that topic in detail.

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As to the title of the treaty, his delegation would prefer a simple, non-controversial wording such as "United Nations Convention on the International Sea-Bed", i.e. something along the lines of the title proposed by the United States delegation.

Although the concept of sovereignty had a very precise meaning in international law, having been defined with reference to the law of the sea in article 1 of the 1958 Convention on the Territorial Sea and the Contiguous Zone and in article 2, paragraph 1, of the 1958 Convention on the Continental Shelf, the term "national jurisdiction", which appeared in many of the drafts being considered by the Sea-Bed Committee, was less clearly defined in existing international law. The latter term was open to several interpretations and should be defined in such a way as to differentiate it clearly from the concept of sovereign rights. A separate section on definitions in the treaty might serve to clarify that and other abiguities which might arise.

Finally, his delegation believed that it would be useful to have a preamble to the treaty setting forth its basic principles and purposes. A number of the draft proposals before the Committee contained useful preambular paragraphs.

Mr. VOICU (Romania) said that, since delegations had been given ample opportunity to present their views on the subject under discussion and to state their positions with respect to the treaty which would establish an international régime, the time had come for the Sub-Committee to move on to specific discussions of the status, scope and basic provisions of the international régime. Truly it would not be easy to work out an "international treaty of a universal character, generally agreed upon" for submission to the 1973 Conference on the Law of the Sea, but in view of the paramount importance of international co-operation in the development of ocean space, the task must be accomplished and the treaty must be drafted in the clearest possible language.

His delegation deemed it essential that the preamble of the prospective treaty should state the basic principles of international law concerning the sea. Co-operation in the peaceful use of the sea-bed and ocean floor could proceed only in the context of strict observance of the principles of sovereignty and national independence, equal rights, non-interference in domestic affairs,

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renunciation of the threat or use of force and reciprocity of advantages. In that regard, the Sub-Committee in its task of elaborating the treaty should follow the precedent set by the Declaration of Principles and include a specific provision to the effect that States should act in the area in accordance with the applicable principles and rules of international law, including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, in the interests of maintaining international peace and security and promoting international co-operation and mutual understanding. Other principles which should be incorporated in the treaty were: the use of the area exclusively for peaceful purposes, the exploration of the area and the exploitation of its resources for the benefit of mankind as a whole, the recognition that the area and its resources were the common heritage of mankind and non-appropriation. The principle of non-discrimination enunciated in paragraph 5 of the Declaration was of paramount importance for the international régime and must be accorded a prominent place in the treaty. The development of the régime must proceed on a democratic basis. Any departure from that principle would serve only to widen the gap between the developed and the developing countries. History provided ample proof that a legal régime could endure only if it reflected the political and economic realities existing at the time of its establishment and enjoyed the general support of all States concerned.

Special provision would have to be made for the sovereign rights of coastal States in respect of the continental shelf and the natural resources located within the area of national jurisdiction. On the other hand, care must be taken to ensure respect for the freedom of the high seas.

Paragraph 7 of the Declaration, which provided that particular consideration should be given to the interests and needs of the developing countries in the exploration of the area and the exploitation of its resources, was of the greatest importance for the international régime. The treaty must incorporate provisions to ensure that developing countries would receive their fair share of the benefits derived from the rational and orderly exploitation of the area.

His delegation attaches special importance to paragraph 8 of the Declaration, which concerned reservation of the area exclusively for peaceful purposes. Military activities must unquestionably be prohibited throughout the area. The Treaty

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on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof was a step in the right direction; nevertheless a specific provision should be included in the prospective treaty obligating States to continue their efforts in that field.

Finally, the provisions of paragraph 9 of the Declaration, which stressed the universal character of the treaty, should be reflected in the draft instrument. The treaty concerned the international community as a whole and must accordingly be open for participation by all States.

Mr. AL-QAYSI (Iraq) said that the status, scope and basic provisions of the régime should be based on the Declaration of Principles. The status of the régime, for example, should clearly be of a universal character, as was required by numerous provisions in the Declaration. As to whether the régime should be described in terms of sovereignty or jurisdiction, his delegation at that stage favoured exclusive jurisdiction rather than full-fledged sovereignty. Some delegations had recommended describing the régime in terms of the general principles of law recognized by civilized nations, in the sense of Article 38, paragraph 1 (c), of the Statute of the International Court of Justice. There was, however, a technical distinction between such principles of internal law and the principles of the régime, which would constitute international law of universal validity.

The scope of the régime was defined in paragraph 1 of the Declaration. However, it was not clear from the Declaration whether the resources of the area would include the living resources of the high seas. Paragraph 13 (a) of the Declaration, which reserved the legal status of the superjacent waters, might by inference be taken to mean that the resources referred to in paragraph 4 were mineral resources. The Committee, in deciding on the question of limits, would have to take an unambiguous position on that issue.

His delegation would envisage the following basic provisions of the régime; the concept of the common heritage of mankind and its corollaries; the principle of non-discrimination; peaceful uses and the interests of maintaining international peace and mutual understanding; the concept that benefits should accrue to mankind as a whole, taking into particular consideration the interests and needs of developing countries; the question of appropriate machinery; safe development and

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rational management of the area and the question of equitable sharing; rights of coastal States; responsibility for damage; and the question of the peaceful settlement of disputes.

In conclusion, he voiced serious concern over the far-reaching consequences of the current activities aimed at exploiting the sea-bed. It was imperative for the Committee to exercise more vigilance than ever to ensure that its efforts would not be completely undermined by those activities.

Mr. STAVROPOULOS (Legal Counsel) recalled that at the last meeting the representative of Canada had asked when the Secretariat expected to publish the replies received to the Secretary-General's note of 11 May 1971, requesting States to provide the texts of legislation adopted, and treaties concluded, since 1968, relating to the law of the sea. Ultimately, the material provided by Governments would be consolidated and printed in a volume in the Legislative Series, as had been done earlier in the current year when a 900-page volume containing the texts of pertinent legislation adopted and treaties concluded between 1957 and 1968 had been issued (United Nations Legislative Series, reference number ST/LEG/SER.B/15). In the meantime, however, the various replies received would be issued in mimeographed form for the information of members of the Committee. The Secretariat had originally hoped to issue the material in time for the present session. Unfortunately that had not been possible, first, because much more material had been forwarded than had been anticipated, and, secondly, because Governments had tended to submit their replies rather late, after the date specified in the Secretariat note. Some 35 States had submitted replies to date, and the collection of texts amounted to appropriately 400 pages. That material had been compiled and would be issued, in mimeographed form, in time for the summer session of the Committee. The document would probably be available at the end of May or early in June.

The meeting rose at 5.40 p.m.

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SUMMARY RECORD OF THE THIRTY-SEVENTH MEETING

Held on Tuesday, 14 March 1972, at 10.45 a.m.

Chairman: Mr. ENGO Cameroon

STATUS, SCOPE AND BASIC PROVISIONS OF THE REGIME, BASED ON THE DECLARATION OF PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 2749 (XXV) (continued)

Mr. KOSTOV (Bulgaria) said that the Declaration of Principles constituted a solid working basis for the elaboration of specific proposals concerning the nature and functions of the international régime and the arrangements for its implementation. The Committee should, however, concentrate on the drafts submitted to it, since they reflected the various States' concepts of the treaty establishing the international régime. The comparative table prepared by the Secretariat was extremely useful in that connexion.

Referring to General Assembly resolution 2749 (XXV), he stressed that the international régime should be based on "an international treaty of a universal character, generally agreed upon". It should not be a mere restatement of the Principles of the Declaration, which was clearly intended only to define the outlines of the specific rules of international law in the field. Moreover, the Sub-Committee was required to work out the basic provisions of the international régime, and hence certain questions could, at a later stage, be made the subject of more detailed rules based on the general treaty concerning the régime. Some principles of the Declaration could be embodied in the draft treaty, for example, the principles of paragraphs 2, 6, 7, 10 and 13, but others would have to be made clearer and more spcific. That was particularly true for the first principle of the Declaration, which referred to the "common heritage of mankind"; the Declaration did not define that concept, and his delegation believed that it should be interpreted in the light of other principles, particularly those stated in paragraphs 2, 3 and 5.

Paragraph 9 provided for the rational management of the area, the equitable sharing by States of the expected benefits and the establishment of "appropriate international machinery". If there was to be fruitful international co-operation and if the legitimate needs of all States, although often diametrically opposed, were to be met, the international régime must be solidly based on a general agreement concerning the problem of the limits of the area. In that connexion, it should be noted that although both Sub-Committees had the right to consider the question of such limits, the main Committee would in fact take no decision on the matter until it had received the recommendations of Sub-Committee II on the

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(Mr. Kostov, Bulgaria)

precise definition of the area. Thus, in order to complete the elaboration of the international régime, Sub-Committee I had to depend on the work of Sub-Committee II.

Paragraph 4 of the Declaration raised another problem. It provided that "all activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international régime to be established". There were, however, various interpretations of the concept of "resources". His delegation saw no grounds for the view that it applied both to minerals and to the flora and fauna of the marine environment; in that regard it agreed with the representative of Iraq that paragraph 4 should be interpreted in the light of paragraph 13. Furthermore, the "other related activities" referred to in paragraph 4 should be spelled out, taking into account paragraph 11, which related to the prevention of pollution and other hazards and the protection and conservation of the natural resources of the sea-bed.

On those questions, it would be necessary to work out norms which would complement the existing rules of international law so as to develop a solid legal base to govern all activities affecting the sea-bed. As an aid to the Sub-Committee in its task, a small but representative working group might be established to formulate draft texts, reporting to the Sub-Committee periodically on the progress of its work.

Mr. KOPAL (Czechoslovakia) recalled that Czechoslovakia had participated in the elaboration of the 1958 Geneva Conventions; as a land-locked country, it had upheld the right of free access to the sea. The Conventions had codified international law and had introduced new legal concepts such as that of the continental shelf. Some gaps still remained, however; for example, territorial waters had not been defined, and the delimitation of the continental shelf was ambiguous. The approach need not be fundamentally different from the one underlying the Geneva Conventions, but the legal régime developed for the sea-bed must take account of scientific and technical progress. It was necessary to formulate principles and establish institutions which would enable all States, without exception, to use the wealth of the oceans for peaceful purposes. The régime to be established should be consistent, inter alia, with the principle of freedom of

(Mr. Kopal, Czechoslovakia)

the high seas, the sovereignty of coastal States over their territorial waters and their right to explore the continental shelf and its natural resources.

The Declaration of Principles (General Assembly resolution 2749 (XXV)) stated that the sea-bed was "the common heritage of mankind". The principles which would enable all States to participate on an equal footing in the exploration and exploitation of the sea-bed should, however, be stated more precisely. In the view of his delegation, the first seven paragraphs of the Declaration could form the basis of the future convention on the sea-bed. The peaceful nature of the new régime was particularly important; paragraph 8 provided that the area would be reserved exclusively for peaceful purposes, and that principle should be the subject of special agreements which were beyond the scope of the Sub-Committee's terms of reference.

From paragraph 10 onwards, the Declaration dealt with other questions. In particular, it provided guidelines to ensure international co-operation and guarantees relating to the rights of coastal States and the legal status of the waters and air space above the area. Those principles obviously would have to be elaborated further.

It would be helpful to establish a working group to redraft the principles to be included in a treaty on the legal régime applicable to the area and on the international machinery. The composition of the working group should reflect the complexity of the contemporary international community.

Mr. SMIRNOV (Byelorussian Soviet Socialist Republic) observed that one of the Committee's main tasks was to work out draft articles for a treaty on the international régime applicable to the area and its resources, including the international machinery. The present discussion would enable members of the Committee to state their positions of principle concerning the future treaty and to work out an acceptable decision based on the existing drafts. His delegation wished to indicate some principles which should be included in the treaty. It believed that the principle of the use of the sea-bed and ocean floor for peaceful purposes was essential and should form the very basis of the treaty. Byelorussia had been one of the first signatories of the Treaty on the Prohibition of the

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(Mr. Smirnov, Byelorussian SSR)

Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof. That Treaty had been only a first step towards safeguarding the sea-bed and the ocean floor from the arms race; for that reason, any international agreement laying the basis for the peaceful uses of the ocean floor should contain provisions prohibiting its use for military purposes and should envisage the conclusion of other international agreements which would guarantee the application of that principle.

Furthermore, the treaty establishing the international régime should set forth the principle of universality and equal participation by all States. International co-operation and understanding depended on its implementation, and it would help to solve such major world problems as the conquest of space, the protection of the environment and the exploration of the sea-bed. In that connexion, he was gratified to note that almost all the draft treaties submitted provided for a régime of a universal character which would allow all States, without discrimination, to use the sea-bed for peaceful purposes.

The interests and needs of the landlocked countries must, of course, be taken into account; document A/AC.138/55 dealt with that question and with the limits and status of the international area, representation and the powers of the international authority.

It should not be forgotten that at the present time technology did not allow for a profitable exploitation of the mineral resources of the deep ocean floor. In the circumstances, the question of the limits of the international zone was of great importance. It would have to be resolved if shelf-locked countries and developing countries were to participate equitably in the utilization of maritime resources. In that connexion, he cited the working paper of the shelf-locked countries, in which account was taken of the interests of all States, whether developed or not and whether coastal or landlocked.

The Soviet draft (A/AC.138/43), contained in the Committee's report (A/8421), was based on principles of contemporary international law as set forth, in particular, in the United Nations Charter, the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil thereof, and in the Geneva Conventions of 1958.

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(Mr. Smirnov, Byelorussian SSR)

That draft contained essential provisions concerning the exploration and exploitation of resources and the guaranteeing of freedom of navigation, fishing, scientific research and other forms of activity on the high seas and designed to preserve the maritime environment from any pollution and to prevent such activities jeopardizing its ecological balance. It further provided for the establishment of an international agency, stipulated that the sea-bed and the subsoil thereof were open to all States, whether coastal or landlocked, and it took account of the interests and needs of the developing countries. For those reasons, that project might serve as a basis for the elaboration of a treaty on the peaceful uses of the sea-bed such as would ensure the equitable exploitation of its resources for the benefit of mankind.

In his opinion, it was time to embark on the formulation of treaty articles, on the basis of the existing projects and having due regard for the specific proposals which had been made.

Mr. JAYAKUMAR (Singapore) said that the various principles in the Declaration contained in General Assembly resolution 2749 (XXV) could serve as a basis for draft treaty articles. In his opinion, the first, second, third, fourth, fifth and seventh principles were particularly important for the definition of the status and scope of the international régime. A small working group should be appointed without delay, with representation of the various interested groups and with the task of preparing draft articles in accordance with those principles.

Several delegations, including his own, had on numerous occasions urged the need for serious consideration of the question of the limits of the international sea-bed areas. The agreement reached by the plenary Committee at its 66th meeting had been that it was for that Committee to take the final decision on the subject of those limits. However, it had been stipulated that each sub-committee should have the right to consider that question in so far as it related to the topics assigned to it and to draw conclusions from its consideration. His delegation regretted that the Sub-Committee had so far not really exercised its right to explore that question, because it was clearly relevant to the item on its work programme concerning the status, scope and basic provisions of the international régime. The draft treaty articles should therefore contain provisions relating to the demarcation of the zone to which such a régime would apply. Otherwise,

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(Mr. Jayakumar, Singapore)

the exact meaning and scope of the very concept of "common heritage", which was the corner-stone of the Declaration of Principles, would never be entirely clear. According to the seventh principle, the exploration of the area and the exploitation of its resources would be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or landlocked, and taking into particular consideration the interest and needs of the developing countries. It was absolutely impossible to begin to consider the means of applying that principle without knowing what were the limits of that common heritage. It was predictable that such a situation might give rise to endless disputes between coastal States and the international machinery, on the one hand, and between coastal States and other States on the other. Furthermore, so long as that question remained unsettled, it was impossible to define specifically the powers and functions of an international machinery, because there would be nothing to prevent States from claiming powers over very extensive areas. His delegation therefore fully endorsed on that point the statement made on 10 March in the plenary Committee by the representative of Zambia. Lastly, the proposals concerning an intermediate zone made by several delegations, including his own, could not be realistically studied until the question of the limits of the international zone proper had been settled, His delegation would certainly not support the principle of an intermediate zone if the zones subject to national jurisdiction were very extensive.

It was impossible for landlocked States and shelf-locked States to claim unilaterally an extensive portion of the sea-bed and ocean floor. Accordingly, those States, including Singapore, urgently hoped that the area subject to the international régime would be as extensive as possible. That area should also be amenable to immediate exploitation. The concept of a common heritage would be meaningless if the resources of that area could not be exploited before the end of the coming decade.

Some of the working papers and draft articles submitted by delegations contained no proposals on the question of the limits of the area. Others, on the other hand, made more or less specific suggestions. According to the United States draft articles, the international area would include the whole of the sea-bed and subsoil of the high seas beyond the 200 metres' isobath. Beyond that limit, the United States had proposed the creation of an area under

(Mr. Jayakumar, Singapore)

international trusteeship, which would also be a part of the international sea-bed area and would extend up to a line beyond the base of the continental slope where the downward inclination of the surface of the sea-bed declined to an unspecified gradient. That draft nevertheless indicated that excessively large areas should not be included in the international trusteeship area. According to the Tanzanian draft articles, the criterion adopted would take account of depth and distance, but no specific proposal was made concerning the size of those dimensions. According to the working paper submitted by Poland, either the uniform criterion of the 200 metres' isobath or a dual criteria, namely the 200 metres' isobath and an unspecified distance, would be employed. Nevertheless, that working paper stressed that the territorial extent of the international area must be precisely defined before an international machinery was established and that reasonable criteria should be adopted. The Canadian working paper proposed no limits but stated that the ultimate decision on the limits of the international area would have a direct bearing on the possibility of extending the international régime to the biological resources of the sea-bed.

The draft articles submitted by Japan and by the Soviet Union were incomplete in that regard, but it was stated in the Japanese draft that the international sea-bed régime should apply to an area large enough so that the establishment of the régime would not be devoid of any economic significance.

The Maltese delegation had submitted a draft treaty on ocean space, whereby the national jurisdiction of States would extend to a belt of ocean space adjacent to the coast and having a breadth of 200 nautical miles.

Lastly, a working paper had been submitted by his delegation jointly with those of Afghanistan, Austria, Belgium, Hungary, Nepal and the Netherlands. It proposed that the international area should include all of the sea-bed and its subsoil outside the territorial sea (the maximum breadth of which would be 12 nautical miles from the baseline) and beyond the submarine areas adjacent to the coasts of States. For the purposes of that provision, the submarine areas would be regarded as those with a depth of no more than 200 metres or those underlying a belt of sea 40 nautical miles in breadth, and each State would indicate which of the two methods of delimitation it opted for. A further zone 40 nautical zone in breadth within the international area would constitute a coastal State priority zone.

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(Mr. Jayakumur, Singapore)

His delegation hoped that after discussing the status, scope and basic provisions of the international régime, the working group which would draft articles on the topic would also draft either one article or several alternative articles on the question of the limits of the international area.

In his view, the international régime should be applicable not only to the mineral resources of the area but also to its biological resources, and in particular to living organisms belonging to the sedentary species referred to in article 2, paragraph 4, of the 1958 Convention on the Continental Shelf. The question might seem academic at present, since it was not known whether such resources existed; however, the United Nations should avoid having to convene another conference in the 1980s to adopt a protocol concerning those resources if scientific advances showed that they were abundant and exploitable.

Mr. FARHANG (Afghanistan) said that from the paragraph 1 of the Declaration contained in General Assembly resolution 2749 (XXV), stating that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, were the common heritage of mankind, it followed that there must be no discrimination against any State by reason of its geographical situation, its size or its level of economic, technical and scientific development. It also followed that it was virtually impossible to establish a comprehensive and adequate régime until agreement was reached concerning the limits of the international area.

Paragraphs 2 and 3 of the Declaration complemented each other and implied that unilateral claims to sovereignty or sovereign rights were inadmissible. Recognition of any kind of right to any State would have the effect of creating conflicting régimes concerning the limits of the area under national jurisdiction and the rights of sovereignty, denying land-locked States the right to participate in the precise definition of the international area and giving those countries which would benefit from the unilateral extension of the limits of national jurisdiction an insuperable advantage over land-locked countries, shelf-locked countries, countries with limited coasts and countries facing narrow seas.

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(Mr. Farhang, Afghanistan)

Consequently, the question of a precise definition of the international area and the question of the rights of coastal and other States should be settled through collective negotiations and by multilateral agreements. That had been the reason for convening past conferences on the law of the sea and the coming 1973 conference. As matters now stood, all activities relating to the exploration and exploitation of the area's resources should be discontinued, and no right over any part of the area or its resources should be acquired by anyone.

Paragraphs 4 and 7 should be considered in combination. They implied that all activities in the international area, including those related to the exploration and exploitation of its resources, should be performed by or through an international authority and in accordance with the provisions of the régime, that the advantages deriving from those activities should accrue entirely to the international authority, that no country or group of countries would have the right to undertake operations in the area, that the régime should include adequate provisions ensuring the equitable (not equal) sharing of benefits and, lastly, that appropriate rules should be laid down to ensure participation by all countries, irrespective of their geographical situation or their technical and scientific capabilities, in activities concerning the exploration and exploitation of the area. Accordingly, the present state of "no agreement" with regard to those questions did not give any State the right of freely exploring and exploiting the area and its resources. All activities undertaken along such lines constituted a flagrant violation of the Declaration, especially paragraphs 4 and 7. Such activities should be discontinued at once. Similarly, any agreement between two or more States concerning the exploration and exploitation of the biological and mineral resources of the area and any implicit or explicit recognition of unilateral claims to the area would run counter to the provisions of the Declaration and therefore would have no legal validity.

From paragraph 5 it followed that the land-locked countries should have equitable rights and opportunities to use the area for peaceful purposes; to that end, their right of passage through the territorial waters of other States should be recognized, as well as their right of free access to the area and its resources. They must also have access to adequate coastal facilities and opportunities for processing and transporation from the area to their frontier and vice versa. There should be no discrimination against land-locked countries, especially the land-locked developing countries. Equality of treatment in cases of inequality of

(Mr. Farhang, Afghanistan)

capabilities was discrimination, and similarly, failure to take the level of economic development into account in the sharing of benefits was also discrimination.

Mr. HARRY (Australia) said that in establishing the proposed régime, emphasis should be placed on the question of resources, that is to say, provision should be made for a machinery that would adequately regulate their exploration and exploitation. However, other activities, such as the laying of submarine cables and the construction of pipelines, could be carried on in the area, by virtue of the principle of freedom of the high seas, which had been confirmed in the 1958 Geneva Convention on the High Seas and thus did not derive from the current negotiations. It had been suggested that there was a problem of priorities. In his delegation's view, it would not be difficult to maintain a balance between the exploration and exploitation of sea-bed resources, on the one hand, and the traditional uses of the area and the superjacent waters and air space, on the other. According to the Geneva Convention, the various freedoms "shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas". In that connexion, articles 7 and 8 of the United States proposal provided an acceptable solution.

The relationship between paragraphs 7 and 9 of the Declaration should be taken into account in the drafting of the articles. Thus, the second sentence of paragraph 9 clarified the provision in paragraph 7 that the exploitation of the area would be carried out "for the benefit of mankind as a whole". Care must be taken to ensure that the resources of the area would be properly developed and managed, especially in the light of the interests and needs of the developing countries. The Canadian working paper illustrated the type of problems that would have to be considered in the drafting of articles to implement that principle.

The special interests of coastal States were recognized in paragraphs 12 and 13 (b). In addition to the rights which coastal States already possessed under international customary law and treaties relating to damage caused by the activities of other States and their nationals, it might be necessary to confer other rights on coastal States, such as the right to "take measures to prevent, mitigate or eliminate grave and imminent danger", as provided in the Canadian working paper.

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(Mr. Harry, Australia)

The concept of State responsibility embodied in paragraph 14 was also basic and should be spelled out in greater detail in the working group and subsequently in the drafting group. For the present he confined himself to the comment that if States were to accept wide responsibility for activities of their nationals, it might be necessary to provide that licences should be granted either only to States or only to organizations approved by them.

Mr. MIGLIUOLO (Italy) said that his delegation was prepared to give full support to the implementation of the relevant General Assembly resolutions, particularly resolution 2749 (XXV), but he felt that the Sub-Committee's terms of reference should not be made too broad; its task was already quite demanding and it should not have to deal with the problems of the superjacent waters or with specific provisions derived from the principle of the exclusive use of the sea-bed for peaceful purposes. The Sub-Committee should concentrate on translating into legal terms the principles set forth in resolution 2749 (XXV). His delegation had voted in favour of that resolution despite certain reservations prompted by the ambiguities and contradictions it contained; it would strive to implement the principle that the sea-bed beyond the limits of national jurisdiction was the common heritage of mankind. That would necessitate the drafting of articles providing that that area should be used for the benefit of all. In other words, all States should participate as equal, to an equitable distribution of the benefits, particular consideration being given to the interests and needs of the developing countries, and that principle should not be affected by any unilateral action. Moreover, the second preambular paragraph in the Declaration implied that the limits of the area could be established only by international agreement, not by unilateral declarations. In his delegation's view, the Sub-Committee should remember that the régime must in no case infringe on the freedom of the high seas and that a very delicate problem - that of the limit between the areas subject to the sovereignty of States and those to which the régime would apply - still remained unsolved and would determine the attitude of a number of delegations. His delegation was prepared to discuss all the proposals made in that regard but would prefer that the international area, rather than the area under the jurisdiction of coastal States, should be extended. Moreover, it was convinced that each coastal State should have the exclusive right of economic exploitation over an adequate area of the sea-bed, the limits of which could be

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(Mr. Migliuolo, Italy)

determined by taking account of the distance, beside the criteria of the depth, and that that area might extend even considerably beyond the 200-metre isobath. Certain claims of several coastal States could be met by establishing an intermediate zone which they would administer under international control.

Mr. McKELVEY (United States of America) recalled that, at a previous meeting the representative of Chile had referred to a statement he himself had made, first before the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and later before a sub-committee of the United States Senate, the text of which would be made available to interested delegations. Both that statement and the new facts reported by the representative of Chile showed that nodule recovery technology was being actively studied by many companies in several countries and that commercial production of nodules would be possible before 1980. For example, the Deep Sea Ventures Company had announced that it had put into operation in Virginia a small pilot plant which was recovering metals from nodules on an experimental basis. The Hughes Tool Company and the Kennecott Copper Corporation were also studying procedures for the deep-sea exploitation of minerals. In addition, 24 companies from various countries intended to finance in the summer of 1972 a programme to test the continuous line bucket dredging system, which had been invented in Japan and was designed to recover Pacific sea-floor nodules from depths ranging to 5,000 metres. That group had been established only for the duration of the experiments and was not a commercial enterprise. Moreover, six Japanese and European companies were studying manganese-oxide nodule technology. The Lamont-Doherty Geological Observatory had just published maps showing the distribution of nodules in the oceans. The sea-floor exploration already undertaken had also given a clearer picture of the physical character of the sea bottom, which would have to be taken into account in the design of the necessary exploitation equipment. The procedures for recovering metal from nodules also promised to become economically profitable in the near future, and on the basis of the progress made there was reason to hope that minerals on the sea-bed could be exploited before 1980. Significant new resources would then become available to meet mankind's growing needs and produce revenues for the international community. That showed the great importance of establishing an international régime which would ensure the orderly and rational development of those resources.

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Mr. ZEGERS (Chile) said that he hoped to be able to study in more detail the statement of the United States representative, which contained some very interesting information. In any case, it confirmed the broad outline of the situation described by the Chilean delegation with regard to the exploration and beginning of exploitation of the international area, the formation of consortia and the submission to the United States Congress of a bill which would authorize licensing in that area, as well as the fact that the United States delegation did not necessarily endorse that bill. He was sure that, as had previously been the case in the Committee, the United States delegation would continue to provide equally useful supplementary information.

The meeting rose at 12.25 p.m.

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SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

Held on Tuesday, 14 March 1972, at 3.15 p.m.

Chairman:	Mr. FEKETE	Hungary
later,	Mr. ENGO	Cameroon

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STATUS, SCOPE AND BASIC PROVISIONS OF THE REGIME, BASED ON THE DECLARATION OF PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 2749 (XXV) (continued)

Mr. ZAVOROTKO (Ukrainian Soviet Socialist Republic) said that the elaboration of the international treaty concerning the sea-bed would require considerable effort on the part of all delegations and willingness to work in a spirit of mutual understanding and constructive co-operation. The Sub-Committee's task would be lightened to some extent by the draft treaties and working papers submitted by various delegations. There was a considerable measure of agreement between the proposed texts with regard to specific provisions, such as those concerning the status and scope of the future régime. In that connexion, the Sub-Committee was fortunate to have the useful comparative table prepared by the Secretariat (A/AC.138/L.10).

As his delegation had already stated its position on the question of the basic provisions and scope of the régime during the general debate last year, he would confine his observations to the most essential aspects of the matters under discussion. In working out the basic provisions of the régime, it was important to bear in mind the fundamental purpose of the treaty, namely, to ensure that sea-bed resources would be used for the benefit of mankind as a whole. To that end, it would be necessary to include among the basic provisions of the régime such principles as universality, non-appropriation, and use of the sea-bed exclusively for peaceful purposes.

It was essential to stress the importance of the principle of universality. It should not prove difficult to find an acceptable formulation inasmuch as several substantially similar texts were available; in particular the Sub-Committee could be guided by the provisions set forth in the preamble and paragraph 5 of the Declaration of Principles and the corresponding provisions of the texts submitted by the Soviet Union, Poland, the United Republic of Tanzania and several other States.

On the question of scope, a distinction should be made between the substantive and the spatial scope of the régime. The substantive scope could largely be dealt with in the section of the treaty which would define the powers and functions of the international machinery. On the other hand, the spatial scope of the régime, i.e. the precise definition of the limits of the international sea-bed area, was

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(Mr. Zavorotko, Ukrainian SSR)

a highly complex and controversial subject. However, some aspects were sufficiently clear, in particular the stipulation in the Declaration of Principles that all activities regarding the exploration and exploitation of the resources of the area should not affect the legal status of the waters superjacent to the area or that of the air space above those waters. Accordingly, it would be necessary to include some provision in the treaty to the effect that any exploration and exploitation of the resources of the sea-bed and ocean floor, and the subsoil thereof, should not interfere with shipping, fishing, scientific research or other activities on the high seas.

A number of the texts submitted to the Committee contained provisions concerning the spatial scope of the régime which should be carefully studied. The subjects covered included the question of enclosed and semi-enclosed seas, which was of great political importance, and the precise definition of the limits of the part of the area off the coast of countries still under colonial domination. His delegation intended to take up those questions in greater detail at a subsequent stage when the actual work on drafting articles of the treaty was under way.

Mr. Engo (Cameroon) took the Chair.

Mr. KHANACHET (Kuwait) said that his delegation viewed the Declaration of Principles as a strict mandate which the Sea-Bed Committee should faithfully discharge. In their task of translating the provisions of the Declaration into draft treaty articles, the members of the Committee should not forget how difficult it had been to reach agreement on the principles; the developing countries had considered those principles as the minimum they could accept in a spirit of compromise. His delegation for one would scrutinize very closely any attempt to amend the principles or to treat them as mere guidelines.

It was true that the principles were not sufficiently detailed to cover every single aspect of the régime. Omissions would have to be rectified and ambiguities clarified; nevertheless, the Committee must work strictly within the framework of the Declaration of Principles. It had been said, for example, that the term

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(Mr. Khanachet, Kuwait)

"material resources" included both mineral and living resources. In that connexion, it was pertinent to recall that the item had originally been introduced in the General Assembly because of the shortcomings of the Geneva Convention on the Continental Shelf. Accordingly, one might conclude that only mineral resources had been envisaged. However, his delegation would not object to extending the interpretation of the word "area" in the Declaration to cover living resources as well, since that would ensure their rational exploitation for the benefit of all countries and not, as at present, of a few advanced countries. To take another example, it had been pointed out that the Declaration did not clearly define the concept of the common heritage of mankind. That was not a sufficient reason, however, to abandon the concept, which was and should continue to be the key-stone of the edifice to be built by the Committee.

His delegation envisaged the régime as an integral whole and the international machinery as an indivisible part of it. The treaty establishing the régime should be open to all States, whether or not they were Members of the United Nations. Moreover, the treaty should prohibit reservations incompatible with its objectives and purposes. The sphere of application of the régime, in his view, should not be limited to the parties ratifying the treaty. The sea-bed régime should be an entity possessing objective international personality. Before it could acquire that legal status, however, the treaty must be generally agreed upon as provided for in paragraph 9 of the Declaration.

One of the major obstacles impeding agreement on the régime was the insistence of some States that they should be given preferential treatment in the régime on the ground that they were major maritime Powers or advanced industrial countries. The developing countries refused to accept those claims and saw no valid reason why special rights and privileges should be enjoyed for any reason by certain Member States.

The developing countries also had grave misgivings about the creation of a trusteeship zone in which coastal States would be entitled to exercise additional rights and privileges. The area lying beyond the limits of national jurisdiction should be as large as possible and should not be diminished by a trusteeship

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(Mr. Khanachet, Kuwait)

zone which would give preference to one group of States at the expense of the international community. Furthermore, the creation of such a zone would be contrary to the concept of the common heritage of mankind.

A major problem yet to be solved was that of defining the limits of the area beyond national jurisdiction. The time had come to tackle that problem with courage, realism and in a manner that would do justice to the concept of common heritage. A solution could be found only if delegations were prepared to make mutual concessions and to subordinate narrow national interests to those of the international community. If sacrifices were to be made, however, his delegation felt that the major burden should be borne by those leading maritime Powers which had formulated the law in the past to promote not only their national interests but also their covetous designs for power and domination. The régime to be established must embrace the widest possible international area and the international machinery must have extensive and comprehensive powers.

Care must be taken to prevent States or persons, natural or juridical, from claiming or exercising rights with respect to the area which were incompatible with the moratorium resolution adopted by the General Assembly and with the Declaration of Principles. The representative of Chile had drawn attention to specific examples of unacceptable activities and further information had been provided by the United States representative at the preceding meeting of the Sub-Committee. Many, if not all, of the developing countries were seriously concerned about the course events were taking. They would appreciate receiving formal assurances from all States connected with such activities that no commercial exploitation of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction would be undertaken before the establishment of the international régime.

His delegation attached particular importance to the reference in paragraph 6 of the Declaration to the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States. It was essential to reserve the sea-bed exclusively for peaceful purposes. Disarmament, in particular, must not be treated as the private concern of the big Powers. The régime should

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(Mr. Khanachet, Kuwait)

make it clear that the big Powers must refrain from using the area for military purposes or as a laboratory for experimentation to develop nuclear or other weapons of mass destruction.

Paragraph 15 of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor provided that the international treaty establishing the régime must contain specific provisions for the settlement of disputes. The available legal institutions for the settlement of disputes were, in his opinion, not equipped to deal with the type of dispute that would arise from sea-bed exploitation. The proper forum for settling such disputes must be established within the international machinery.

Mr. OGISO (Japan) said that the Sub-Committee was embarking on the task of further elaborating the principles contained in General Assembly resolution 2749 (XXV) and translating them into more specific language for treaty rules. The exercise might give rise to difficulties, particularly since some delegations, including that of Japan, had reservations about certain aspects of the principles. That fact should not, however, deter the Sub-Committee from proceeding as speedly as possible with its task of working out a satisfactory international régime. The working paper "Outline of a Convention on the International Sea-Bed Régime and Machinery" (A/AC.138/63) submitted by his delegation did not represent the definitive views of the Government of Japan; his delegation maintained a flexible and open-minded attitude and was willing to accommodate reasonable suggestion for improving its proposals. At the present meeting, he would confine his comments to Chapter I - General Provisions - of his delegation's paper.

Japan's proposals were based on the Declaration of Principles (resolution 2749 (XXV)). They made no explicit reference to the "common heritage of mankind" because the phrase was not legally precise and was subject to various interpretations. If delegations wished to include that phrase verbatim in the future treaty establishing the international sea-bed régime, it should appear in the preamble rather than in a specific article. Moreover, if the "common heritage of mankind" concept was to be included in an operative article there would have to be a precise and detailed definition of the areas and resources deemed to constitute such a common heritage.

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(Mr. Ogiso, Japan)

His delegation had limited the scope of application of the international régime to sea-bed mineral resources only because, in its view, the basic characteristics of living, biological resources were such as to make it imperative to treat them differently from inanimate, mineral resources to which the experience and precedents of mining law should apply. His delegation further considered that sea-bed resources did not include minerals dissolved in sea water, since the distinction between the régime of the sea-bed and that of superjacent waters should be clearly maintained.

The paper did not contain a specific proposal on delimitation of the international sea-bed area simply because his delegation wished to abide by the consensus which seemed to have emerged in the Sub-Committee that definition of the area should be left for some later stage. His delegation believed, however, that the area to which the régime was to apply should be clearly defined and regretted that the Declaration of Principles did not contain a paragraph stipulating that the limits of the international sea-bed must be defined by international agreement. Its position was that the definition should be worked out in a way that would not deprive the sea-bed area beyond national jurisdiction of significant economic importance. In other words, the international sea-bed area should have possible hydrocarbon and hard mineral deposits. The whole structure of his delegation's proposal was based on the assumption that the international community, which included several land-locked and shelf-locked countries, many of them developing countries, should be allowed to reap substantial benefits from the revenue to be derived from the exploitation of the mineral resources of the sea-bed area beyond national jurisdiction.

The legal status of the water column superjacent to the international sea-bed area and that of the air space above those waters should not be affected by the international sea-bed régime to be established. His delegation attached great importance to the provisions of paragraph 13 (a) of the Declaration of Principles and had reaffirmed the legal status of the superjacent waters as high seas. For instance, scientific research in the high seas was of fundamental importance, and Japan firmly believed that there was a need to guarantee

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(Mr. Ogiso, Japan)

liberty to engage in scientific research for peaceful purposes in as wide a marine environment as possible. Freedom of navigation and fishing and the right to lay submarine cables and pipelines were also guaranteed under the existing régime of the high seas. Those freedoms and rights should be respected and protected as fully as possible; the paper therefore contained a paragraph stipulating that development activities of the sea-bed resources in the International Sea-Bed Area must not result in unjustifiable interference with other such activities in the marine environment.

In so far as the responsibility of States was concerned, his delegation had, on the basis of paragraph 14 of the Declaration of Principles, included in its working paper a provision to the effect that contracting parties should take appropriate measures, to be established by national legislation, to ensure that the development of sea-bed resources was conducted in accordance with the provisions of the régime. The question of liability raised in paragraph 14 should be further elaborated, and his delegation would defer comment on it until the Sub-Committee was discussing the question of the international machinery.

In conclusion, he referred to the question put by the Chilean representative at the 35th meeting (A/AC.138/SC.I/SR.35) concerning the Japanese "continuous line bucket" technique. It consisted of a continuous wire cable suspended from two winches at either end of a ship. The buckets, essentially scoops, were attached at intervals on the wire cable. They were lowered vertically from the ship to the sea-bed; then, turning horizontally, each bucket in turn took its scoop from the sea-bed. The buckets were then raised vertically and emptied into the ship. The entire process operated as a continuous chain. According to reports, the device was still at the experimental stage.

Mr. BEESLEY (Canada) recalled that in his statement to the Sub-Committee at its 33rd meeting (A/AC.138/SC.I/SR.33) he had confined his comments to the status and scope of the proposed régime and had not developed the suggestions, including those on transitional arrangements, made in the working paper his delegation had submitted on the international sea-bed régime and machinery (A/AC.138/59). Since the 33rd meeting, however, several delegations had drawn attention to a problem which was a source of concern to his delegation as well, namely, the possibility of private companies conducting activities on the sea-bed beyond the area of national jurisdiction. Canada had been raising that question in the United Nations and in the Sea-Bed Committee for the past two years because

(Mr. Beesley, Canada)

it was concerned about the vacuum in the law in regard to that question. National legislations did not purport to regulate activities beyond national jurisdiction and thus far there were no provisions in international law to regulate them. There was, of course, the United Nations moratorium, but it did not attempt to define the outer limits of national jurisdiction. He wished, therefore, to draw attention to the views of his delegation as set forth in document A/AC.138/59, and particularly to the second paragraph under the section entitled "Transitional Arrangements". He realized that the operations described by the previous speaker were experimental in nature, and it was not known whether the experiments would be conducted within or beyond national jurisdiction, but it did seem timely to draw attention to them as an indication of the urgency of the Sub-Committee's task and of the need to formulate rules to regulate or even prevent actual exploration operations for the time being. The Sub-Committee should consider the question as a matter of urgency and, if it could not accept the Canadian proposal concerning transitional arrangements, devise another solution for the problem.

The CHAIRMAN said that not all delegations' comments and proposals were of the type he had appealed for at an earlier meeting. Delegations had mentioned the possibility of forming a drafting group. In his view, the work of such a group, which might be limited to a few delegations, would be facilitated if it could draw on delegations' comments not only on the Declaration of Principles but also on proposals based on those principles. It would also be useful if the various geographical groups could begin to consider such questions as the size of the drafting group and its membership.

The meeting rose at 4.15 p.m.

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SUMMARY RECORD OF THE THIRTY-NINTH MEETING

Held on Wednesday, 15 March 1972, at 3.30 p.m.

Chairman:	Mr. ENGO	Cameroon
later,	Mr. FEKETE	Hungary
later,	Mr. THOMPSON-FLORES	Brazil

STATUS, SCOPE AND BASIC PROVISIONS OF THE REGIME, BASED ON THE DECLARATION OF PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 2749 (XXV) (continued)

Mr. KOMATINA (Yugoslavia) said that, after many years of dedicated work, the Sea-Bed Committee was about to tackle its most challenging task, the preparation of draft treaty articles embodying the international régime - including an international machinery - for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. The Declaration of Principles in General Assembly resolution 2749 (XXV) provided the vital basis for the formulation of an agreement on the régime and machinery.

The most important principle was that the sea-bed and ocean floor and the subsoil thereof and the resources of the area constituted the common heritage of mankind. His delegation considered that all the resources of the area were part of that heritage. It also felt strongly that the sea-bed should not be subject to appropriation by any means by States or persons, natural or juridical, and that no State should claim or exercise sovereignty or sovereign rights over any part thereof; the area should be open to use exclusively for peaceful purposes by all States, and activities regarding the exploration and exploitation of the resources of the area must be governed by the international régime to be established.

Exclusive jurisdiction over the area and administration of its resources should be exercised on behalf of mankind by an international body which should not, under any circumstances, become a bureau registering permits and licences. It should have broad prerogatives and should conduct its activities only on behalf of the international community. The benefits obtained from exploitation of the resources must be distributed equitably among all States, irrespective of their geographical location, bearing in mind the special interests and needs of developing countries. It was also essential that States should act in the area in accordance with the applicable principles and rules of international law, particularly the Charter of the United Nations and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States. The international treaty should be of a universal character, generally agreed upon .

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(Mr. Komatina, Yugoslavia)

The various proposals before the Sub-Committee would greatly facilitate its work. His delegation found particularly interesting the views contained in the drafts submitted by the United Republic of Tanzania (A/AC.138/33) and certain Latin American countries (A/AC.138/49), which were responsive in particular to the needs of the developing countries. His own delegation might submit substantive proposals at a later stage. It welcomed the fact that three of the working papers envisaged structures which developed the "common heritage of mankind" concept in three very important aspects: (a) ownership, management and administration of the area by all; (b) non-appropriation of the area; and (c) equitable distribution of benefits to all, taking into account the special needs and interests of developing countries. The working paper submitted by Australia and Jamaica (A/AC.138/SC.I/L.8) was another constructive contribution to the Sub-Committee's work.

Once discussion of the item under consideration had been concluded, a working group open to all members should be established to proceed immediately with the preparation of draft treaty articles embodying the international régime. Any departure from the Declaration of Principles, which represented a delicate balance achieved after considerable effort, would render impossible the codification of the régime and machinery governing the exploitation of the sea-bed.

Mr. ESPINOSA (Colombia) emphasized the importance of creating a climate of general agreement to facilitate the Sub-Committee's task, which would entail altering a substantial body of existing international law and elaborating new concepts to replace outmoded ones. Members should not be discouraged by the wide divergence of views, which could be attributed to the complexity of the subject.

Progress admittedly had been slow. However, detailed scrutiny of the principles set out in General Assembly resolution 2749 (XXV) had been and still was worth while, for the various drafts submitted at the preceding session revealed that there were no insurmountable differences regarding the majority of the basic principles. Furthermore, vague passages and major areas of disagreement had been identified. The principles must be viewed not as an end in themselves, but as the basis of the treaty or treaties to be drafted. Some of the principles could be incorporated directly in treaty form; others could serve as guidelines, and still others required improvement.

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(Mr. Espinosa, Colombia)

Disagreement centred primarily on the nature, scope, functions and powers of the international régime and machinery. Some delegations favoured the establishment of a weak registry office which would enable the powerful to continue exercising their power unrestrained, while others supported the establishment of a body empowered to manage the resources of the area for the benefit of all mankind. He drew attention to a recent report submitted to the Committee on Interior and Insular Affairs of the United States Senate which described the draft sponsored by a number of Latin American countries (A/AC.138/49) as a dangerous attempt to create an international monopoly. The report, which was based on false premises, adopted a condescending approach which was hardly conducive to the understanding and solution of existing problems. The administrative power entrusted to the machinery in the Latin American draft reflected one of the alternatives suggested by the Secretary-General of the United Nations in 1970. The sponsors had not invented the idea or copied it from the United States. Essentially, it followed from the obligation of the international community to control what belonged to it, in order that the few who possessed the means and capital should not continue to exploit the sea-bed to the exclusion of others. The provision was by no means a plot by a greedy regional group. Moreover, delegations from other continents had recognized the necessity, or at least the desirability, of enabling the proposed international body to undertake exploration and exploitation itself in the future.

The delegations of Australia, Canada, Ceylon, India and a number of African countries, including the United Republic of Tanzania, also believed in essence that the machinery to be established eventually should be in a position to conduct exploration and exploitation operations itself. The Latin American draft envisaged an authority which would do just that, and in addition would avail itself of the services of other parties by a system of contracts or by the establishment of joint ventures. He could foresee arrangements whereby foreign firms would make payments for licences to conduct exploration and exploitation activities on the continental shelf as part of a joint venture in which the international community would share in both the benefits and the risks, in accordance with contract provisions.

His delegation wished to avoid the emergence of a new bureaucratic monster and was convinced that the machinery established to conduct exploration and exploitation activities in the ocean on behalf of the international community should grow slowly,

(Mr. Espinosa, Colombia)

as requirements dictated. His delegation therefore would have no difficulty accepting the Polish proposal whereby, during the first stage, the machinery would have few subsidiary bodies and a small secretariat; the second phase would begin once commercial exploitation had advanced and the financial prospects had proved promising (A/AC.138/44). The fact that Poland did not envisage direct exploitation under international control did not prevent the two delegations from having similar views regarding the stages for the machinery's development.

One area in which a conciliation of views did not yet seem near concerned the composition and powers of the organs of the machinery to be established. The right to equality was sacred to the developing countries; however, the United States and Soviet drafts (A/AC.138/43 and A/AC.138/SC.II/L.4 and Corr.1) envisaged voting procedures which inevitably would perpetuate the rule of the most powerful. The USSR was in effect insisting on a veto power, which the developing countries were not prepared to see extended beyond the Security Council.

If the Conference on the Law of the Sea was to be held in 1973, or at some future date, divergent views inevitably would have to be reconciled. Certain Latin American countries, concerned at the enormous gap between views regarding the territorial sea, and in particular, its breadth, had assiduously been seeking possible solutions, with some measure of success. The delegations of Mexico, Venezuela and Colombia had expounded essentially similar theories at the preceding session. At the recent preparatory meeting for the Conference of Caribbean States on the Problems of the Sea, Colombia had introduced the concept of the "patrimonial sea" which, by its essentially economic character, guaranteed coastal States rights in the adjacent seas and at the same time protected freedom of communication. The concept could be extended beyond its regional context as a solution to a long-standing and bitter controversy. He pointed to the urgent need for other efforts to be made in a spirit of understanding to define the nature, scope, functions and powers of the international régime and machinery.

There was also disagreement as to whether the "common heritage of mankind" also included the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction. In his view, the Declaration of Principles confirmed that there was absolutely no question that the mineral and living resources of that area belonged to all mankind. Consideration would also have to be given to the status of the living resources in the waters superjacent to the sea-bed and

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(Mr. Espinosa, Colombia)

ocean floor beyond the limits of national jurisdiction. Those who advocated the concept of the "patrimonial sea" had discussed that point as it related to the renewable and non-renewable resources of the waters lying above areas of the sea-bed under national jurisdiction. International law was not static, and the Sub-Committee had not only to proclaim that fact, but to promote the development of that law.

He recalled that a number of earlier efforts to establish some sort of international control over the resources of the high seas and the continental shelf had failed; however, those efforts were still worth pursuing. Speaking at a workshop which had followed the preparatory meeting for the Caribbean Conference the representative of Mexico had predicted that international supervision of the resources of the sea-bed and ocean floor beyond national jurisdiction would be a reality within 30 years and that, if such supervision proved successful, it could be extended to cover the resources of the superjacent waters.

His delegation also recognized the urgency of establishing the demarcation line between a nation's territorial sea, continental shelf and patrimonial sea, on the one hand, and the international area of the sea-bed and ocean floor and all their resources, on the other. However, more time was needed to ascertain exactly what constituted the national zone before definitive limits could be established. To that end, it was particularly imperative to reach agreement on the nature, scope, powers and functions of the international régime and machinery. Agreement on that subject was a prerequisite for agreement on other matters and for the success of the Committee's work and the Conference on the Law of the Sea.

Regional agreements were of benefit to the rest of the world, at a time when the planet was shrinking as a result of rapid communications and the population explosion. Nevertheless, it was also essential to develop a broader, world-wide approach through frank dialogue among representatives of all parts of the world.

Mr. Fekete (Hungary), (Vice-Chairman), took the Chair.

Mr. RAZAKANAIVO (Madagascar) said his delegation wished to make clear its views on the interpretation of certain principles in the Declaration and on the scope of the international régime and to stress certain basic provisions which it wished to see included in the régime.

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(Mr. Razakanaivo, Madagascar)

The first principle, which defined the area under consideration as "the common heritage of mankind", provided the basis for the proposed régime and could be incorporated in a treaty article. Its real significance, however, would depend on its application.

As for the scope of the régime, there remained the different question whether the régime would be binding upon all States, including States not parties to the treaty, or would apply only to States parties. In that connexion, he emphasized the need for mankind to achieve a régime which was universal in character and the need for States parties to protect the common heritage of mankind and the régime. In his delegation's view, a universal régime would be one with principles, purposes and provisions acceptable to and accepted by the large majority of States; thus, the régime should enter into force only after it had been accepted by a large majority of States. States parties would incur obligations arising out of the rights they acquired under the régime, including the obligation to protect the régime and the common heritage of mankind, particularly with respect to States which were not parties to the treaty. His delegation considered that the régime should not be binding upon States which were not parties, but that the treaty should contain a provision defining as illegal any activities carried out on the sea-bed and ocean floor which were not in accordance with the régime.

The first principle defined clearly the elements of the common heritage of mankind, namely the sea-bed and ocean floor, the subsoil thereof and the resources of the area. If the concept of a common heritage was not to be devoid of all content, it was essential to define the area and specify its limits. The principle did not refer solely to mineral resources, for it drew no distinction between mineral and biological resources. That broad concept should be incorporated in the régime, without restrictions or limitations, for it was understood from the start that only genuinely exploitable resources would be regulated. Thus, the application of the régime could be extended to other resources as the need arose.

The second principle, which derived from the first, could be incorporated in the treaty if further clarifications were added. The principle could not be interpreted as depriving a sovereign State of the exercise of jurisdiction over its nationals engaged in activities in the area. The State should also be able to

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(Mr. Razakanaivo, Madagascar)

continue to exercise jurisdiction over installations on the sea-bed. The incorporation of such clarifications into the treaty would undoubtedly lead to a definition of the status of such installations and their personnel.

The third principle, while drafted in negative form, permitted States or natural or juridical persons to claim, exercise or acquire rights with respect to the area or its resources subject to the restriction that such rights must not be incompatible with the régime or with the principles of the Declaration. Thus, the régime and its international machinery must make provision for rights of States with respect to the area and its resources. It would, however, be necessary to stipulate that such rights could be acquired only in accordance with the régime and its machinery. In addition, reference should be made to the Declaration in the preamble to the treaty.

Problems arose concerning the scope and interpretation of the words "other related activities" in the fourth principle. His delegation considered that the expression should be interpreted broadly, so as to cover both activities related to primary activities involving the exploration and exploitation of the resources of the area, such as the installation of oil pipelines on the sea-bed, and all other activities carried out in the area, including those which were not related to the exploration and exploitation of its resources, such as the laying of submarine cables. The first category of activities would automatically be subject to the régime as a whole. It would be necessary to define the specific ways in which the régime would be applied to the second category of activities. In that connexion, the régime could, for example, contain provisions which would prevent mutually incompatible activities from being conducted in the area, preserve the marine environment and harmonize its different uses.

His delegation would refer only to certain aspects of the seventh principle, which provided important guidelines. Under the principle, States had equal rights with respect to the exploration of the area and the exploitation of its resources. Those rights must be effectively recognized even if the means and the capacity for their exercise were lacking, as was often the case in developing countries. In his delegation's opinion, the principle meant that exploration and exploitation of the resources of the area should be permitted only to the extent that they benefited

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(Mr. Razakanaivo, Madagascar)

mankind as a whole. In particular, they must not result in an inordinate increase in the economic disparity between the developed countries and the developing countries. Therefore, the régime should contain provisions promoting international co-operation in activities relating to the exploration and exploitation of the resources of the area. Developing countries and their nationals must not be barred a priori from such activities when they were not in a position to participate on an individual basis. The régime should also contain provisions designed to strengthen the capacity of developing countries to participate in such activities.

Mr. SARAIVA GUERREIRO (Brazil) said the work of the Sub-Committee would be greatly facilitated if the debates could lead to a generally accepted understanding, if not a precise definition, of the status, scope and basis provisions of the régime based on the Declaration of Principles. The difficulties should not be insurmountable.

The importance of the status of the régime should not be overlooked. In that connexion, the Sub-Committee should adopt a realistic approach, setting aside sterile considerations. An effective international régime for the area beyond the limits of national jurisdiction must be embodied in an international agreement acceptable to and, in practice, respected by a significant number of States. Universal validity could not be achieved by pressure or coercion, but must result from general acceptance of the agreeement establishing the régime.

In his delegation's opinion, there was no valid reason to define restrictively the scope of a régime that was to apply to the common heritage of mankind. It was inadvisable to draw hair-splitting distinctions, which might lead to interminable discussions. The régime should cover not merely the living and non-living resources of the area but also, if it was to be consistent with the concept of a common heritage, the whole of the area itself and all activities directly or indirectly related to its utilization. However, there still remained the question whether the régime should cover only the sea-bed and ocean floor and the subsoil thereof or whether it was preferable to adopt an approach along the lines proposed by the delegation of Malta, whereby the régime would apply to the whole of "international ocean space". That was not a question to be decided immediately by

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(Mr. Saraiva Guerreiro, Brazil)

by the Sub-Committee, but it would be advisable to bear in mind certain aspects of the comprehensive and functional Maltese approach to the law of the sea, which would discard old textbook concepts in favour of real trends in the law of the sea as reflected in national legislation. That approach was founded on the basic distinction between the area under national sovereignty, comprising both the waters and the sea-bed up to 200 miles from the coast, and an area under international jurisdiction beyond that. Not only was that distinction conceptually valid, but it could also provide the Committee with a useful methodological tool.

Turning to the question raised by the representative of Chile at the 35th meeting of the Sub-Committee, he recalled that his delegation had repeatedly stated in the Committee that it could not accept the legality of exploitation activities carried out in the area of the sea-bed beyond national jurisdiction. He noted that the General Assembly, in resolution 2574 D (XXIV), had indeed declared that, pending the establishment of an international régime for the sea-bed, States and persons, physical or juridical, were bound to refrain from all activities of exploitation of the resources of the area beyond the limits of national jurisdiction. As the representative of Chile had pointed out, any such activities carried out before the appropriate régime was established would violate the terms of the Declaration of Principles. Citing paragraph 14 of the Declaration, he noted that every State had the responsibility to ensure that activities in the area were carried out in conformity with the international régime to be established. Therefore, States whose nationals engaged in such activities before the conclusion of the régime must ensure that the Declaration they had voted into existence was faithfully observed. Since such activities were incompatible with United Nations resolutions, it was the duty of the Committee and the forthcoming United Nations Conference on the Law of the Sea to contradict any claims arising from such activities which would confront the international community with a fait accompli.

The basic provisions of the régime should reflect all aspects of the concept of the common heritage of mankind, as deduced from the Declaration of Principles. In formulating the basic provisions, the Sub-Committee should seek not only to adapt

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and complement the text of the Declaration, which had commanded near-unanimous approval, but also to provide the régime with coherence and unity by pervading its norms and regulations with the spirit of the Declaration. The Declaration must, of course, serve as the basis for the elaboration of the régime, but it should be borne in mind that it was only a general expression of the consensus arrived at during a preliminary stage of the international negotiations on the matter. It was therefore a starting-point in the task of defining clearly the specific ways in which the international area and its resources were to be mananged, administered or controlled for the benefit of mankind as a whole and of the developing countries in particular. Thus, the régime must not only give indisputable juridicial validity to the fundamental principles of the Declaration, but must also establish the legal and functional structure for the effective implementation of those principles.

Obviously, the establishment of an international machinery or authority must constitute one of the basic provisions of the régime. That machinery or authority must be empowered to exercise exclusive jurisdiction over the area and its resources on behalf of the international community. The approach adopted in the working paper on the régime submitted by certain members of the Latin American group (A/AC.138/49) could provide an adequate basis for the Sub-Committee's work in that regard. The paper envisaged, inter alia, a system of exploration and exploitation of the area in which joint ventures would play an important part. The concept of joint ventures was a highly flexible one, which could be developed or refined in the course of the Sub-Committee's deliberations.

The régime must contain clear provisions concerning the equitable distribution to States of the financial and other benefits to be derived from the exploration and exploitation of the area. In order to avoid confusion, the régime should at least set forth general but unequivocal guidelines indicating in what manner and to what extent the developing countries were to receive preferential treatment in the distribution of those benefits. The régime should also contain appropriate stipulations to protect legitimate economic interests of developing countries that might be adversely affected by the production and marketing of raw materials extracted from the area. In that connexion, an effective system of regulation and control would have to be established. In addition, there should be special

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provisions facilitating and promoting access to the exploration and exploitation of the area by corporations or governmental entities genuinely representative of developing countries. Provisions of general applicability should also be envisaged to reserve important sectors of the area for future exploration and exploitation by national entities and corporations or by the international machinery itself.

One aspect of the régime which was important to his delegation was the question of measures to develop the technological capabilities of developing countries. If those countries were to participate actively and directly in the international régime, specific provisions would be required concerning the transfer of ocean technology to developing countries.

Mr. DEBERGH (Belgium) said that the Declaration of Principles represented a solemn undertaking on the part of Member States to negotiate a treaty or treaties establishing an international régime. To read more into the Declaration would be a mistake. Certainly it would be wrong to regard the Declaration as enunciating general principles of international law in the sense of Article 38 of the Statute of the International Court of Justice.

He was pleased to note that the draft treaties and working papers submitted to the Committee had a great deal in common and were all essentially based on the principles contained in the Declaration. Nevertheless, many specific problems would have to be solved before those principles could be embodied in draft treaty articles.

While he could accept a legal status for the concept of the "common heritage of mankind", he felt that the principles in paragraphs 2 and 3 of the Declaration were of much greater importance and substance. It was encouraging, in that regard, that the texts submitted to the Committee were in substantial agreement on the value of those principles. He would be reluctant to subscribe to the thesis that the entire régime automatically flowed from the concept of common heritage: the régime, in his view, would be what the contracting parties wished to make of it, regardless of their views concerning the concept of common heritage. When it was legally established that the area of the sea-bed beyond the limits of national jurisdiction was not subject to appropriation or to claims of sovereignty, it would then be necessary to make arrangements regarding international machinery to regulate

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(Mr. Derbergh, Belgium)

the development of the area and its resources. In that regard, however, it should be borne in mind that a treaty was not binding on States which had not acceded to it. Unless the problem of limits could be solved to everyone's satisfaction, the treaty would not receive universal support. In that connexion, it should be noted that the Geneva Convention on the Continental Shelf did not limit the right of coastal States to extend their area of exploitation and exploration on the continental shelf. The concept of a narrow continental shelf, in his opinion, was the only concept that could justify the existence of an international machinery with extensive powers.

Paragraph 4 of the Declaration was ambiguous in two regards. First, it did not define precisely what resources were to be subject to exploration and exploitation, in particular, whether biological resources were to fall within the scope of the régime. An important question in that connexion was whether there were in fact living resources in the area beyond national jurisdiction of sufficient economic value to merit regulation of their exploitation. In his view, no such resources would be found unless relatively narrow limits were set to national jurisdiction, in which case it would probably be worth-while to put the living resources of the international area under the régime. Secondly, paragraph 4 referred to "related activities" without specifying the nature of the relationship. In his delegation's view, the word "related" should be interpreted with reference to the context of its use, namely, within the context of exploration and exploitation of resources. For example, scientific research and the laying of submarine cables and pipelines would be subject to the régime if related to the exploitation of the area's resources; otherwise, such activities would be regulated by customary international law.

Paragraph 5 of the Declaration raised the question of non-discrimination, which was of importance to land-locked countries but also to coastal States which had a short coastline or were shelf-locked. All had a common interest in seeing that the future treaty covered the largest possible area so that they would derive greater advantages from its exploitation.

Paragraph 9 contained in embryo the basic outlines of the future treaty with respect to the régime and the international machinery to be established, among whose essential elements would be the institutional framework, the sharing of

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(Mr. Derbergh, Belgium)

responsibility, the functions of the international machinery and the equitable sharing of benefits. At the present stage it might be premature to delegate the further study of paragraph 9 to a working group; it would be better for the working group first to concentrate on elaborating the general principles contained in the other paragraphs of the Declaration. Paragraph 9 might then be dealt with by a separate working group at a later stage.

Paragraphs 12 and 13 touched on the question of the rights of coastal States with regard to the régime. In some cases it would be desirable to envisage participation by coastal States in the activities carried out in areas adjacent to those over which they exercised sovereign rights. It would be necessary to consult with such States when a deposit of a particular resource to be exploited extended across the boundary between the international area and the national area. However, if the concept of a broad continental shelf was favoured, such problems would presumably not arise and there would be no need for the international authority to consult with the coastal State.

It was regrettable that more thought had not been given to the phrasing of paragraph 13 (a). It was not sufficient to state that nothing should affect the legal status of the waters superjacent to the area: no one could deny that the exploration and exploitation of the sea-bed would in fact affect other uses of the area including the use of the high seas. The future treaty must explicitly provide for harmonizing the various uses of the area.

In conclusion, he wished to make a few observations concerning the allegation made by the representative of Chile that exploitation of extra-territorial sea-bed resources was already in progress. First, to his knowledge there had been no attempt by nationals of any State to exploit minerals on the continental shelf of another State. Secondly, technology was unquestionably moving forward, but it should be encouraged to do so and not hampered. Experimental activities must be allowed and, to the extent that it lay within their power, Governments should communicate to each other the results of discoveries and inventions resulting from such activities. Thirdly, the experimental activities being conducted on the high seas did not appear to have commercial objectives. In the case of activities carried out in the area beyond national jurisdiction, there was of course no obligation on the part of Governments to communicate data derived from their research activities.

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Mr. BAVAND (Iran) said that it was generally agreed that the status of the international régime should be that of a universal treaty based on the Declaration of Principles. The Declaration could not of course claim the binding force of a treaty internationally negotiated and accepted; however, it did possess considerable prestige and could be used as a model in the elaboration of such a treaty. In particular, the Declaration contained a number of fundamental principles which should be reflected in the future treaty.

One pivotal provision in the Declaration, which shed considerable light on the interpretation of the remaining provisions, was that of the common heritage of mankind. That principle was a radical departure from traditional international law, which was essentially concerned with the regulation of relations between States, in that for the first time the international community had proclaimed as a basic principle of international law the common interest of mankind in the preservation of the marine environment and in the rational and equitable development of its resources beyond the limits of national jurisdiction.

The concept of common heritage was further elaborated in the two corollary principles of non-appropriation and non-acquisition of sovereign rights. Those principles implied that the international community per se had residual sovereign rights over the area and its resources. The nature and character of the régime were defined in operative paragraphs 1, 2, 3, 5, 7 and 9 of the Declaration, all of which should be faithfully reflected in the final treaty.

With respect to paragraph 1 of the Declaration, it should be pointed out that the geographical implications of the concept of common heritage required further clarification. It should also be noted that the reference to both the area and its resources in the same paragraph implied that all uses of the sea-bed beyond the limits of national jurisdiction should be regulated by the international régime. That fact, plus the reference in paragraph 4 to the regulation by the régime of unspecified "other related activities" indicated that the international community was clearly interested not only in the exploitation of resources and the preservation of marine ecology but also in further measures of demilitarization and international co-operation in scientific research.

Operative paragraphs 4 and 9 provided details on the nature and objectives of the régime. With regard to the nature of the régime, there were two ambiguous

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(Mr. Bavand, Iran)

points. First, it was not clear whether the reference to exploration and exploitation of the resources of the area included both living and non-living resources. In his delegation's opinion, both types of resources should be included. Secondly, the "other related activities" referred to in paragraph 4 needed to be clarified in relation to the functions and powers of the international machinery. The objectives of the régime were set out in paragraph 9; however, his delegation was of the view that a further objective should be added in the body of the treaty, namely, a provision concerning the healthy development of the world economy and the balanced growth of international trade and the minimization of adverse economic effects.

With regard to the rights and interests of coastal States referred to in paragraphs 12 and 13 (b) of the Declaration, his delegation believed that the obligation to consult with coastal States should apply to any activity that might infringe on the rights and interests of such States and not only to activities relating to the exploration of the area beyond national jurisdiction and the exploitation of its resources.

On the question of preventing pollution and other hazards to the marine environment, as referred to in paragraphs 11 and 13 (b) of the Declaration, his delegation felt that it was important not to limit the treaty provisions solely to pollution resulting from activities carried out in the area of the sea-bed beyond national jurisdiction. He hoped that a broader approach would be taken to the problem of pollution in the treaty and at the 1973 Conference on the Law of the Sea.

Mr. Thompson-Flores (Brazil), Vice-Chairman, took the Chair.

Mr. JAGOTA (India) said that there was near unanimous agreement in the Sub-Committee and in informed circles throughout the world that the Declaration of Principles in General Assembly resolution 2749 (XXV) constituted the foundation of a new legal order for the oceans. The approach followed in evolving the Declaration had been extremely important. It had consisted in drawing up a list of basic, ideal principles and then examining them from nationalistic viewpoints in order to ensure that a viable and stable legal order filled the legal void in regard to the sea-bed without any section of the world community feeling legitimately aggrieved.

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(Mr. Jagota, India)

In order to prepare fair and reasonable propositions for the 1973 Conference of the Law of the Sea, the Sub-Committee might consider adopting a similar approach in its efforts to build up the framework of an international treaty. An idealistic approach would also be necessary if the régime for the sea-bed was to assume the character of peremptory norms of international law. The sea-bed was the common heritage of mankind and its resources could bring about the rapid economic development of many sections of humanity, particularly those living in developing countries. Although some corporations and combines had exhibited unholy haste in rushing to those resources, the States of which those corporations and combines were nationals had acted in a restrained manner. If States maintained that attitude it would be a happy augury for the development of an appropriate legal framework for the exploitation of the new wealth before events were overtaken by technology. General Assembly resolution 2574 D (XXIV) and paragraphs 3, 4, 7 and 14 of the Declaration of Principles had laid down clear directives against any activity in relation to sea-bed resources incompatible with the fundamental principles of the Declaration and the international régime to be established. Despite those directives, such activity was continuing, as the Chilean representative had made clear in his statement at the 35th meeting (A/AC.138/SC.I/SR.35). The matter was a cause for concern and it was to be hoped that the Committee and the States concerned would take adequate measures, pending establishment of the régime, to prevent the situation from worsening. In the meantime, his delegation agreed with the Chilean representative that the Secretary-General should be requested to assemble information regarding activity on the sea-bed beyond national jurisdiction in order to enable the Sub-Committee to take appropriate action in the matter.

In its work in building up the international régime, the Sub-Committee should take paragraph 9 of the Declaration of Principles as its starting-point. It was widely recognized that the substance of the basic principles embodied in the Declaration could not be altered or amended. Some drafting changes might, of course, be necessary in order to give the principles the form of treaty articles. It might, for instance, be necessary to rearrange certain principles, such as

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(Mr. Jagota, India)

those in paragraphs 12 and 13, bearing in mind the concrete suggestions made by the Canadian and other delegations. It might also be necessary to ensure that the régime tilted in favour of the common benefit of mankind and protected, in particular, the interests of the developing countries. The interests of coastal and land-locked States and of other States needing protection would have to be carefully balanced. Some elements of the fundamental principles might need to be elaborated. The second principle, for instance, should be supplemented by a statement that any appropriation of the area or any claims or exercise of sovereignty or sovereign rights over any part of it would not be recognized. While drawing up the régime and protecting the reasonable interests of coastal States, it might be necessary to preserve the principle of the unity of resources located around the outer limits of national jurisdiction by giving licences for their exploitation to the coastal State concerned or by dealing with the question in agreement with that State. The principles relating to marine pollution might also have to be elaborated. Bearing in mind the procedural agreement already approved regarding the question of the limits of national jurisdiction, the Sub-Committee should prepare draft proposals on that question for insertion, even if only on a provisional basis, in the international régime.

The Sub-Committee should proceed to consider intensively and, if possible, to draft the first two substantive parts of the draft convention on the sea-bed. The first part might deal with the question of the definition of the area, the limits of national jurisdiction, and the notification, verification, registration and publication of such limits by the Authority to be established; it might also include principles regarding determination of such limits - lateral limits as well as limits between opposite coasts - and other related matters. The second part should deal with the basic principles for the régime, based on the Declaration and subject to such variation and amendments as might be considered appropriate. Since the Sub-Committee was basing its work on the Declaration of Principles, and therefore not starting from scratch, it might be able to prepare the first draft on that item in the time remaining for the current session. His delegation therefore endorsed the Chairman's proposal that a working group should be established to start the work immediately.

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(Mr. Jagota, India)

If the future sea-bed convention was to establish a stable legal order for the oceans, in particular for the sea-bed and its resources, having the status of jus cogens, it was absolutely necessary that all States should have an opportunity to participate in the construction of that order and that the convention should be open to all States. It was also necessary that the substance of the convention should be generally acceptable to all segments of the world community and that it should set out the basic law, not merely regulate inter-State relations.

Mr. Engo (Cameroon) resumed the Chair.

Mr. GOWLAND (Argentina) said that the basic provisions for the international régime to apply to the area concerned and its resources were contained in the Declaration of Principles. Those provisions should be reproduced in the general part of the treaty establishing the broad outlines of the régime. At the drafting stage, it would be necessary to improve the wording used with a view to avoiding ambiguities and ensuring precision.

In the opinion of his delegation, the first principle of the Declaration should become the basic article of the future treaty. Several delegations had also argued in favour of such an approach and it had been surprising, therefore, at the previous meeting (A/AC.138/SC.I/SR.38), to hear a delegation suggesting that the principle should be included only in the preambular part of the treaty. The common heritage principle was extremely important and had become one of the pillars of the new law of the sea which was being prepared. It symbolized the developing countries' hopes to share in the benefits to be obtained from exploration of the area and exploitation of its natural resources; such benefits would help to close the gap between them and the industrialized countries. The régime would apply to the area and its resources, both mineral and living, whether discovered in the sea-bed, the ocean floor or the subsoil thereof. It had been stated at previous sessions that it was still uncertain whether the area contained major living resources for exploitation. His delegation believed that the Sub-Committee should proceed from the assumption that it did, but in any case the régime applicable to the area would not affect the legal status of the resources of the superjacent waters.

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(Mr. Gowland, Argentina)

The common heritage principle should be supplemented by the inclusion in the treaty of the second and third principles, to the effect that the area would not be subject to appropriation by any State or persons, that no State should claim or exercise sovereignty or sovereign rights over any part of the area and that no State or person should claim, exercise or acquire rights with respect to the area or its resources incompatible with the régime to be established.

The fourth principle should be included, for in substance it was consistent with the other principles, particularly the twelfth which spoke of "activities in the area, including those relating to its resources". The treaty article containing that provision could be supplemented by the eleventh principle, thus firmly establishing the right of States to take appropriate measures to prevent contamination of the marine environment, including the coastline, and to protect the natural resources of the area.

The régime should be sufficiently flexible to permit establishment of machinery which would acquire greater competence as technological advances permitted greater exploration and exploitation of the area.

Consideration should be given to the best means of incorporating the eighth principle in the treaty; activities conducted under the régime would be peaceful and that fact should be affirmed. Care should be taken, however, to avoid unnecessary interference in disarmament matters.

It was important that the substance of the tenth principle should be included in and developed in the treaty. That could be done by clear provisions concerning the form in which scientific research would be permitted, the best way of promoting such research and genuine international co-operation for the common good.

It would be appropriate to give more precision to the substance of the ninth principle when incoroprating it into the treaty. The words "inter alia" should be omitted because they could give rise to difficulties of interpretation as had been the case with some provisions of the law of the sea. The universality referred to in the ninth principle should be achieved by means of a régime which would take due account of the interests and rights of all States. Only in that way would the régime win the general support which would permit its effective application. That was a question to which particular attention should be paid.

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(Mr. Gowland, Argentina)

It was important that the provisions of the twelfth principle, which recognized the special rights and interests of coastal States, should be incorporated in the treaty. They should be supplemented by a special chapter providing for a system of consultation with the coastal State concerned whereby its interests and rights, as mentioned in paragraph 13 (b), would be safeguarded.

Paragraph 13 (a), which related to the inviolability of the legal status of the waters superjacent to the area or of the air space above those waters and enshrined the principle of freedom of navigation and overflight, should also be reflected. The principle obviously did not disregard the close link between exploitation of the sea-bed and possible contamination of the human environment to which, indeed, all the draft régimes submitted by various delegations had referred.

In the opinion of his delegation, the substance of the fifteenth principle, relating to procedures for settling disputes, should also be included in the treaty. In that connexion, it would seem appropriate to grant jurisdiction to the International Court of Justice and thus avoid the expense of establishing a new structure.

In conclusion, he thanked the Secretariat for the useful comparative table of draft treaties, working papers and draft articles it had prepared (A/AC.138/L.10).

ORGANIZATION OF WORK

The CHAIRMAN said that the Sub-Committee had completed the general debate on the first item on its programme of work. At a later meeting he would attempt to sum up the general trend of the debate. Various delegations had suggested that a working group should be set up to consider the next stage of the Sub-Committee's work in so far as the first item was concerned. No delegation had opposed the suggestion. Nevertheless, various questions relating to the mandate, size and composition of the group remained to be decided. Negotiations were proceeding on those questions and he would defer making any suggestions concerning them until a later meeting.

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(The Chairman)

It would seem advisable to proceed at the next meeting to the second item on the programme of work suggested by the delegations of Australia and Jamaica in paragraph 3 of their working paper (A/AC.138/SC.I/L.8). At the next meeting, therefore, he would invite delegations to speak on that item as a whole. He anticipated that delegations would wish to make longer statements on that item than on the first item and had accordingly allocated 10 meetings to it; the list of speakers on the item would be closed at the end of the third meeting devoted to it. The Sub-Committee's officers had suggested, informally, that a working group should be established to deal with the second item on the programme. If members endorsed the suggestion, questions concerning the mandate, composition and size of the group would be the subject of negotiations. It was important that the Sub-Committee should advance in its work and not allow procedural difficulties to impede its progress.

The meeting rose at 5.50 p.m.

SUMMARY RECORD OF THE FORTIETH MEETING

Held on Monday, 20 March 1972, at 3.40 p.m.

Chairman: Mr. ENGO Cameroon

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STATUS, SCOPE AND BASIC PROVISIONS OF THE REGIME, BASED ON THE DECLARATION OF PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 2749 (XXV) (continued)

The CHAIRMAN said that a private screening of an interesting programme entitled "The Restless Earth", shown recently on television, could be arranged for members of the Sub-Committee. Interested members would also have an opportunity to visit one of the leading laboratories of oceanographic research in the United States, the Lamont-Doherty Geological Observatory of Columbia University.

Turning to point 1 on the Sub-Committee's programme of work (Status, scope and basic provisions of the régime, based on the Declaration of Principles), he said that he would summarize the Sub-Committee's debate, which had enabled delegations to express their preferences and preoccupations.

With regard to the status of the régime, the word "status" connoted the legal nature of the régime. In that connexion, it should be noted that principle 9 of the Declaration provided that the régime "shall be established by an international treaty of a universal character, generally agreed upon". The view seemed to prevail that the treaty should be open to participation by all States.

The discussion on the scope of the régime had revealed some divergences of view. Three questions had emerged: what area, what resources and what activities were to be covered by the régime?

The first question gave rise to two problems: that of defining the area of the sea-bed that lay beyond national jurisdiction, and that of deciding whether the régime should apply only to the sea-bed or to all ocean space. The important question of the freedom of the high seas was related to that of the area to be covered by the régime and they must be solved together. It should be noted that principle 13 (a) provided that nothing in the Declaration should affect the legal status of the waters superjacent to the area. Exercise of the rights of States in the high seas should be harmonized with activities carried out under the régime.

The second question, concerning resources, was clearly linked to the previous problem of deciding whether the régime should apply to the sea-bed or to all of ocean space. There had been some discussion as to whether the régime should cover both living and non-living resources; the Declaration made no distinction between them. However, no agreement had been reached on that point, or on the question of minerals in suspension in the seawater.

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(The Chairman)

Principle 4 of the Declaration of Principles stated that all activities regarding the exploration and exploitation of the resources of the area and other related activities should be governed by the régime. The Working Group would have to give specific attention to that point when examining the question of the peaceful uses of the area. Reference had also been made to the question of preservation of the marine environment, including pollution emanating from sea-bed activities, and to the question of scientific research. Some had expressed the view that the régime should have authority in regard to measures of arms control and disarmament; others had opposed that view.

With regard to the basic provisions of the régime, delegations had generally accepted that it would be necessary to identify basic concepts that were acceptable to the international community and which could be transformed into treaty articles. The role of the Declaration of Principles had been emphasized. However, some delegations had cautioned that it should not simply be repeated in treaty form. While some of the principles could be used as they stood, others should be considered rather as guidelines. The Working Group would also have to deal with that question.

He went on to sum up the opinions expressed by delegations and their main trends.

Principle 1 was the corner-stone for the régime. There seemed to have been unanimous agreement on the concept of common heritage and it only remained for the detailed provisions flowing from that principle to be worked out.

Principles 2 and 3 could, it appeared, be used as a basis for drafting articles, either verbatim in the view of some delegations, or after clarifying the legal concepts employed, in the view of others.

Principle 4 had given rise to questions concerning the terms "activities", "resources" and "other related activities", on which substantive consideration might be necessary in an effort to resolve existing divergence of views

Principle 5 might be difficult to implement, in the view of some States, because of the differences in levels of economic development.

Principle 6 seemed to constitute the basis for a treaty article.

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(The Chairman)

Principle 7 had not presented any problem either, although some speakers had said that the term "benefit for mankind" might require some amplification.

Principle 8 had not been considered entirely appropriate for inclusion in a treaty on the grounds of its terminology. However, most speakers had thought that it should include a specific reference to the reservation of the area exclusively for peaceful purposes.

The first sentence of principle 9 had not seemed appropriate for inclusion in a treaty, although many delegations had felt that the question it raised was important. The second sentence raised numerous problems of definition and elaboration relating to the scope of the régime and the position of land-locked countries. No consensus had been reached and more detailed consideration was needed.

In discussions on principle 10 great importance had been attached to the subject of scientific research. There had been a divergence of views on the adequacy of the formulation of the principle. The Working Group would have to give it serious consideration.

There had been general agreement that the subject-matter of principle 11 was appropriate for regulation, and that rules should be drawn up for that purpose.

Principle 12 had not been discussed in detail and the Working Group would have to consider it in greater depth and produce some realistic provisions.

Some had expressed the view that the ideas contained in parts (a) and (b) of principle 13 should appear in separate articles. There had also been a proposal that the régime should apply to the whole of ocean space.

There appeared to be common ground with regard to principle 14, but the concepts of responsibility and liability for damage would require further consideration, according to some speakers.

The text of principle 15 was suitable for a statement of objectives, but in reducing it to a treaty article, procedures for settlement of disputes would also need to be examined. There had been a proposal that the International Court of Justice should be used in that regard, to avoid creating a new judicial institution.

Those were the main points of agreement and disagreement on the issues raised with regard to elaborating treaty articles from the Declaration of Principles. Other questions of a broader nature, such as the need to bridge the gap between

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(The Chairman)

the developed and the developing countries and, in that context, the transfer of technology, had also been raised and should be considered.

Turning to the Sub-Committee's programme of work, he made the following suggestions:

A Working Group should be set up to draft, in the first instance, a working paper showing areas of agreement and disagreement on the various issues. Thereafter it should engage in negotiations to settle basic disagreements and produce a set of agreed ideas.

The Working Group should submit an interim report to the Sub-Committee on the initial results of its negotiations - say at the first meeting of the Sub-Committee at Geneva - and a fuller report at the conclusion of its negotiations, not more than 10 days later.

If the Sub-Committee felt that preparations were sufficiently advanced, it could decide, after a short debate, to proceed to the drafting stage. The aim would then be to produce draft treaty articles, which, if adopted by the Sub-Committee, would be submitted to the main Committee.

At the present stage, the Working Group would be fully open to enable all proposals to be heard and all representatives to take part in their examination. However, the number of speakers from each delegation should be limited in the interests of speed. The Working Group might wish to adopt its own rules on the question.

Moreover, he urged that all concerned should be mindful of the desirability of consulting delegations representing different shades of opinion. The Working Group would need the co-operation of all delegations.

Working Group meetings would be held without summary records.

He suggested that the number of participants in the Working Group should be 31; they would be designated by him on the basis of equitable geographical distribution and after the usual consultations with regional groups. Consultatuions had already been initiated, and a list for all regional groups but one was in his possession; he would announce the final composition of the Working Group at a later date. The chairmanship of the Working Group could perhaps be assigned to one of the three Vice-Chairmen of the Sub-Committee, or it could be decided by the Chairman of the Sub-Committee after consulting the members of the Working Group.

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(The Chairman)

If he heard no objection, he would take it that the Sub-Committee agreed in principle to his suggestions.

Mr. ROMANOV (Union of Soviet Socialist Republics) stated that his delegation, while it accepted the suggested figure of 31 members for the Working Group, reserved its position regarding the number of members who would represent each regional group in the Working Group.

Mr. TUNCEL (Turkey) said he was surprised that the Working Group's proposed mandate included negotiations on points of disagreement. It had been his understanding that the Group was merely to summarize the debates in a document which would then be submitted to the Sub-Committee, which would by that time have established a drafting group. So far, the practice in the Sub-Committee had been one of general debate with the participation of all delegations, as opposed to work in the context of small groups. Moreover, he had not expected that the Working Group would establish its own rules of procedure.

Under the circumstances, it would be desirable for all delegations to have a written text of the Chairman's suggestions so that they could study them at leisure before stating their definitive views. The text should therefore be circulated as an official document.

Mr. MIGLIUOLO (Italy) said he desired further details on the distribution of membership among the different regional groups; he, too, considered that the Chairman's suggestions required more thorough study. He therefore supported the Turkish representative's proposal.

The CHAIRMAN said that the English text of his statement could be circulated immediately without cost; however, its reproduction in all working languages would have financial implications.

He was surprised at the difficulties which his suggestions appeared to have produced: he had informed all the regional groups of their purport during private consultations and had therefore believed that he could expect them to be accepted by all.

Mr. TRAORE (Ivory Coast), supported by Mrs. SANE (France), requested that the Chairman's statement be circulated in all working languages.

It was so decided.

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The CHAIRMAN stressed that the suggestions in his statement merely summarized those he had believed he had made known to all delegations. The proposed Working Group would be open to all delegations that wished to address it. Its conclusions would be submitted to the Sub-Committee for approval. He asked members to endorse his suggestions in principle to assist the Sub-Committee's work, without prejudice to any conclusions they might reach after studying the written document. He urged the various groups to agree on the chairman of the Working Group and inform him accordingly within 24 hours, if possible.

Mr. ZEGERS (Chile), Mr. JAGOTA (India), Mr. SHITTA-BEY (Nigeria) and Mr. BONNICK (Jamaica) supported the action suggested by the Chairman.

The Chairman's suggestion was adopted.

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY

The CHAIRMAN suggested that representatives should comment on the six points under consideration as a whole and decide whether working groups should be established to consider them in greater depth.

Mr. VALLARTA (Mexico) emphasized that the debates in the General Assembly and those which had preceded them had shown that the concept of common heritage of mankind was equivalent to that of common property or ownership. It was a relatively recent concept, but was the logical result of the development of international law. It corresponded to the concept of res communis. Until the present, its application to the sea-bed beyond the limits of national jurisdiction had been avoided since the high seas were linked, in the minds of jurists, with the question of fisheries, which had traditionally been res nullius. It would have been tempting to declare, by analogy, that the resources of the sea-bed belonged to no one, although, according to Article 38 of the Statute of the International Court of Justice, analogy did not apply in international law. Principle 1 of the Declaration (General Assembly resolution 2749 (XXV)) was just as well founded as the concept of res communis or common property. Its originality lay not in the concept it expressed, but in the fact that mankind sought for the first time to take up its rights and obligations in accordance with international law.

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(Mr. Vallarta, Mexico)

For that reason, his delegation would support the United States, Tanzanian, 13-Power and Maltese proposals when the time came to draft the articles concerning the concept on which the future treaty would rest; like the Canadian delegation, it would, if necessary, accept other formulations expressing the same idea. It considered that the attitude of certain delegations which viewed the "common heritage of mankind" as a vague new concept was an unfortunate one. Paradoxically, many countries which had doubts regarding the legal consequences of that concept had incorporated the idea of State property into their constitutions and thus were perfectly aware of the legal implications of that type of property.

Principle 9 of the Declaration, which guaranteed all States an equitable share in the benefits derived from the sea-bed area, gave an idea of the scope of the international régime and the treaty provisions which would establish it. The 13-Power proposal, which his country supported, was based on the following reasoning: the international community, as the owner of the area and its resources, had the right to share directly in their development until it acquired the technical and financial means to exploit them by and for itself. There was nothing to justify a system of operating permits which would assign to the legitimate owner the role of a mere spectator. The international community had the right to claim the status of a partner in all exploitation activities in the area. An "International Sea-Bed Enterprise" would thus constitute a means of obtaining an equitable share in the benefits.

The Chilean delegation had denounced in advance the activities of certain enterprises which were preparing to exploit the area of the sea-bed beyond the limits of national jurisdiction; in that connexion, it had recalled General Assembly resolution 2574 D, according to which States and persons, physical or juridical, were bound to refrain from all activities of exploitation of the resources of the area pending the establishment of an international régime. Moreover, principle 3 of the declaration prohibited the acquisition of rights with respect to the area which were incompatible with the international régime to be established and the principles of the Declaration. In addition, according to principle 14, every State had the responsibility to ensure that activities in the area, whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, were carried out in conformity with the

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(Mr. Vallarta, Mexico)

international régime to be established. That had been an expression of international will which should be respected in good faith.

Mr. WARIOBA (United Republic of Tanzania) said that the question of the powers, functions and structure of the international machinery was an important one and that the Sub-Committee must reach a decision on the draft conventions and working documents before it. Above all, the Sub-Committee must decide whether the international machinery should have comprehensive powers or not. His delegation had already had occasion to state its views on the matter in document A/AC.138/33. One of the most controversial questions was whether the machinery should be empowered to explore and exploit the international area of the sea-bed. For its part, his delegation would prefer an affirmative answer to that question. That would follow logically from the concept of the common heritage of mankind. An opposing argument had been invoked to the effect that the Declaration of Principles adopted by the General Assembly in 1970 did not imply exploitation by the machinery, and it had been maintained that if the framers of the Declaration had intended to provide the machinery with that power they would have expressed it clearly. That argument could, however, be turned round, for nowhere in the Declaration was it stated that the international authority should not have the power to exploit. Nevertheless, his delegation did not consider that exploitation should be reserved exclusively for the international authority.

Some representatives felt that the international machinery would lead to the emergence of a cumbersome bureaucracy and would require extensive capital investment. In fact, neither the developing nor the land-locked countries had the technological facilities necessary to undertake profitable exploitation of the resources of the sea-bed and ocean floor, and the true purpose of that argument was to reserve exploitation for the most powerful developed countries.

It had also been claimed that exploitation of the area by the international machinery might generate a conflict of interests, and that the machinery could use its powers of control, management and regulation to the detriment of certain States. That was again an argument designed to protect the interests of the developed countries alone. In fact, an international authority such as his country envisaged in its draft statute (A/AC.138/33) would be subject to the provisions of the treaty and to detailed rules of conduct. There would be a body

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(Mr. Warioba, Tanzania)

responsible for settlement of disputes, and all States would be represented in the various organs of the international machinery.

With regard to the structure of the machinery, and the composition and procedures of its organs, his delegation would prefer a small number of principal organs: an assembly, a council and a secretariat. Other subsidiary or semi-autonomous organs could be established, but it could be left to the principal organs to work out detailed provisions to that end. The subsidiary organs could include a distribution agency and a stabilization board.

He saw no need at the present stage for detailed definition of the rules and practices relating to activities for exploration and exploitation of the resources of the international area. The treaty should be flexible, without compromising the fundamental principles. Such flexibility was essential in view of the fast pace of technological and scientific progress; that was clear from the definition of the continental shelf given at the 1958 Geneva Conference on the Law of the Sea.

The Council, which was the executive organ of the authority, should be given strong and comprehensive powers. It might have 18 members, and would have to work constructively and expeditiously in the interests of the world community. He had felt it necessary, therefore, to reject the notion of permanent members and all forms of procedures which provided for a veto; otherwise, the result would be inaction and domination by a few countries. Nor did his delegation favour formal provisions on unanimity or consensus. The terms of office of Council members could, however, be continually renewed, provided that such a decision was based on the contribution made to the authority's work, and not on the notion of power.

His delegation had suggested the establishment of a distribution body under the authority of the assembly to ensure equitable sharing of benefits. Income would be made available to the States members to be used as they wished. Distribution could be made in inverse proportion to members' contributions to the annual budget of the United Nations. Other benefits could be gained from the area, particularly in respect of training in the techniques of exploration and exploitation of the sea-bed. The developing countries could share such benefits through the training facilities established by the authority or by participating in the activities.

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(Mr. Warioba, Tanzania)

In order not to upset raw material markets and, in particular, markets for products which currently came from developing countries, his delegation had proposed the establishment of a stabilization board. The authority should have extensive powers in the control, management and regulation of activities in the area and of the marketing and use of the raw materials.

Finally, the problems of the land-locked countries would be more easily solved if those countries were strongly represented within the international authority and had a say in policy-making and management of the resources of the international area. They could pool their resources and work in collaboration with the international authority. However, the problems of land-locked countries could not be solved at the global level alone. In order to reach the international area, those countries would necessarily have to pass through an area of national jurisdiction. The matter could thus be more conveniently settled within a regional framework.

The meeting rose at 5.40 p.m.

SUMMARY RECORD OF THE FORTY-FIRST MEETING

Held on Tuesday, 21 March 1972, at 3.20 p.m.

Chairman: Mr. ENGO Cameroon

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (continued)

Mr. RIPHAGEN (Netherlands) said that the purpose of the working paper submitted by his delegation (A/AC.138/SC.I/L.9) was to analyse the concept of an intermediate zone of the sea-bed area, which appeared in different forms in various proposals submitted by different delegations. The essence of that concept was the combination of the rights and powers of the coastal State and those of the international community. Such a combination recurred in many proposals relating to matters other than the exploitation of the sea-bed. For example, the Canadian proposal on fisheries provided that the coastal State had the right to manage the living resources of the sea adjacent to its coast, but stipulated at the same time that the management of an internationally exploited fishery must be combined with a responsibility to the international community. The United States proposal (A/8421, annex IV), while providing that fisheries should be regulated by appropriate international organizations, gave a sort of subsidiary power of regulation to the coastal State. The same approach was reflected also in the Canadian proposal on marine pollution (A/CONF.48/IWGMP.II/5). In those three cases, the envisaged powers of the coastal State would be subject to international rules and standards and to review by an international tribunal, which was tantamount to combining national and international jurisdiction.

That concept of combining the rights and powers of the coastal State with those of an organized international community was reflected also in the Maltese draft treaty (A/AC.138/53), and, as the Maltese representative had said, "the unfettered sovereignty of the coastal State within national jurisdiction must, in the oceans, suffer some limitations in the general interest". With regard to the exploitation of the resources of the sea-bed, the idea of combining the rights and powers of the coastal State and those of the international community was reflected in the concept of an intermediate zone. The proposals varied widely, with regard both to the extent of that zone and to its régime. The seven-Power proposal (A/AC.138/55) defined a "coastal State priority zone", but accorded the coastal State only the power to give or withhold its consent to exploration and exploitation of that zone. The United States proposals referred to a much larger international trusteeship zone, where the rights and powers of the coastal State would be much more comprehensive.

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(Mr. Riphagen, Netherlands)

Those proposals had one thing in common which merited careful consideration, namely, the possibility of accommodating at the same time the interests of the coastal State and those of the international community. While there was still a wide divergence of views on the question of the dividing line between the area under national jurisdiction and the international zone, it appeared that the solution of the problem would be facilitated by envisaging a combination of the two types of jurisdiction. If a model régime for an intermediate zone could be worked out without prejudging the issue of whether or not such a zone should be established, there would be a greater possibility of arriving at a compromise solution on the issue of limits. The fundamental question was how to balance the management of the common heritage of mankind and the safeguarding of the legitimate interests of individual coastal States.

His delegation therefore proposed that a working group should be set up to study the concept of an intermediate zone and its régime, without prejudice to the issue of whether or not such a zone should be established and, if so, where it would be located.

Mr. STEVENSON (United States of America) said that he wished to set forth briefly his delegation's views on certain major issues.

With regard to the organs of the international machinery, the United States had proposed that there should be three: an assembly composed of representatives of all parties to the treaty, a council and a tribunal. The Council would be composed of 18 elected members and six representatives of the most industrially advanced States, and its decisions would be based upon a majority of each group. There would also be three specialized commissions.

Certain decisions, such as those concerning the budget and the allocation of resources, would be subject to approval by the Assembly. The Tribunal would ensure the peaceful and compulsory settlement of disputes. General questions of international law would be referred to the International Court of Justice.

With regard to rules and practices relating to activities for the exploration, exploitation and management of resources and to the preservation of the marine environment and scientific research, the United States had proposed, in its draft convention (A/AC.138/25), the creation of an intermediate zone and an international

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(Mr. Stevenson, United States)

zone. In the former, certain international standards derived from the Principles, would be mandatory and subject to the authority of the Tribunal. In addition, minimum standards promulgated by the Council would apply there; their purpose would be, for example, to limit pollution arising from sea-bed activities and to prevent acts which might interfere with navigation. The Council would also establish procedures for sharing the revenue derived from that zone. The proposals submitted earlier concerning the management of resources by an international authority might prove unnecessary. With regard to the international zone proper, the proposed treaty should set general parameters for exploration and exploitation that were specific enough to ensure ratification of the treaty but flexible enough to allow for the adaptation of the international system to developing technology. Those parameters would serve as a guide for a rules and recommended practices commission, having due regard to comments from States. The rules would be submitted to the Council for approval and would enter into force unless objections were made by at least one third of the contracting parties. The rules would ensure the protection of human life and the marine environment. An operations commission would be responsible for issuing and administering exploration and exploitation licences which would be issued to private or public entities, on the understanding that States would supervise the activities of licensees. The purpose would be to maximize the benefits to the international community and to encourage the necessary investment. Scientific research and the capabilities of developing countries in that field would be promoted through article 62 of the draft convention (A/AC.138/25), which assigned to the Secretariat the task of collecting, publishing and disseminating information which would contribute to mankind's knowledge of the sea-bed and its resources. Furthermore, under article 41, the Council would be authorized to provide technical assistance taking into account the special needs of developing countries.

That was also one aspect of the equitable sharing of benefits. With regard to the collection of revenues, the parties to the convention would make their payments to the Authority, a method which was similar to that applied on land. An equitable system must also make provision for the sharing of revenues from important areas of the continental margin; those revenues would be collected by the coastal State, and a portion would be paid to the International Authority. Such a system would make it

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(Mr. Stevenson, United States)

possible to utilize existing regional and international organizations and to avoid heavy administrative costs. The procedure for voting on that question might be different from that proposed in the draft convention.

With regard to equitable sharing of benefits, coastal States, in view of the existence of an intermediate zone, would determine matters relating to participation in the exploitation of the resources off their coast; secondly, the funds at the disposal of the International Authority would help to promote technological development; and, thirdly, licences might be issued to groups of States that decided to pool their capabilities. The United States was not opposed to payments to the Authority taking the form of a percentage of profits rather than being a fixed sum.

At the economic level, in view of the projections for the world demand for minerals, it seemed unlikely that the exploitation of sea-bed resources would have any significant adverse impact on land exploitation. An international system of production or price controls would be difficult to achieve and would, moreover, have to cover land production also; it was, in any case, unnecessary. Processing and marketing problems were highly complex and went beyond the Committee's terms of reference.

With regard to the particular needs and problems of land-locked countries, it should be noted that most of those countries were developing. The best solution would be to provide for them a system of benefit-sharing in areas of the continental margin seaward of the 200 metres' isobath. In addition, those countries would, of course, benefit from the technical assistance referred to earlier.

With regard to reporting between the International Authority and the components of the United Nations system, the United States draft (A/AC.138/25) provided for machinery for co-ordination between the proposed Council and those bodies.

Mr. SIMPSON (United Kingdom) said that he proposed to offer some comments on the question of the functions and powers of the projected international machinery and on the question of the composition and functioning of its Council.

The Sub-Committee could, of course, consider several aspects of the future treaty for the international sea-bed area concurrently. However, his delegation felt that it was more practical and more logical to give priority to item 2 of the Sub-Committee's programme of work (functions and powers of the future international

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(Mr. Simpson, United Kingdom)

machinery). The aim was to draft an international convention, the principal effect of which would be the establishment of a new international organization. The question was what that organization was to do. If the Sub-Committee could explore that question thoroughly and arrive at an understanding on the basis of which treaty articles might be drafted, it would then be better equipped to make progress on a series of other questions. It would be able to consider how the organization should be structured and controlled, to have a clearer idea of the kind of disputes that might arise and of the provisions that should be made for settling them, to determine how the organization should distribute the revenues from its activities, to consider the implications it might have for international law and to formulate the general provisions and principles of the future treaty.

The central concern of the machinery would be the exploration and exploitation of the resources of the area. It had been suggested that the international authority should itself be, or should direct, an operating enterprise which would have the sole right to engage in the exploration and exploitation of resources within the area. However, that approach was not without difficulties, of which the most obvious was the question of funds. An enterprise engaging directly in the exploitation of the minerals of the area, including hydrocarbons, would have to invest thousands of millions of dollars. Even if the international authority conducted its operations largely through joint ventures with established enterprises, it would still need to raise substantial capital, far exceeding the United Nations budget. It would not be realistic to suppose that either the international capital market or the States parties to the convention would be willing or able to subscribe sums of that magnitude to the future authority. Even if they did so, the servicing of that capital would constitute a prior charge on future revenues, thus complicating and postponing their distribution among States parties.

It was probably for that reason that a number of delegations contemplated a compromise whereby the authority would have dormant powers, to be activated only when it was in possession of sufficient revenue, from operations licensed earlier, to invest in direct exploration and exploitation in the second phase. However, that proposal was open to serious objections. The first was one which should

(Mr. Simpson, United Kingdom)

concern most those countries which looked forward to receiving a useful share of the revenues, which were to be distributed equitably, bearing in mind the particular needs and interests of developing countries. If the international authority was to set aside thousands of millions of dollars from the revenues it acquired from licensee States in order to amass the capital for direct investment, the States parties could not expect a worth-while distribution of benefits for years to come. Another disadvantage of the proposal was that it would complicate the negotiations within the Committee and at the forthcoming Conference on the Law of the Sea.

However, the proposal also had a positive side. It was based on the excellent principle that exploration and exploitation should be conducted in an equitable manner, without giving advantage either to any one group of States or to those enterprises which possessed the indispensable capital and techniques. However, the same objectives could be met by proposals that were simpler and easier to negotiate. The system of issuing licences to States which the United Kingdom advocated in the working papers it had placed before the Committee would ensure equitable conditions for all future States parties and it would remove the financial difficulties. The authority, once its own administrative costs had been met, would be able to allocate its revenues for the purposes prescribed by the international community and for distribution among States parties in accordance with the terms of the future treaty. Another difficulty, that relating to the juridical personality of an international authority engaging in direct exploitation, would also be removed.

The central element of the United Kingdom proposal (A/AC.138/46), with regard to ensuring equality among States, was the proposal for quotas. The essential objective was to establish by the treaty a system whereby every State party would be entitled to an equitable proportion of the exclusive licences offered by the authority and no State, however powerful or industrially advanced, could exceed its ceiling or encroach upon the quota allocated to other States.

The basic element in the calculation of quotas would be population. Countries would be grouped according to their population into half a dozen categories; shares calculated on that basis would, however, be weighted in favour of countries with low gross national product (GNP) per capita, and in favour of

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(Mr. Simpson, United Kingdom)

land-locked countries. It would be necessary to use an artificial share unit for the calculation, since the number of licences available over the years would not be known in advance. As an illustration, the basic share of a country of 10 million people in the number of licences to be offered in any given year might be 100 units. If that country had a low GNP per capita, its share might be augmented by a certain percentage of its basic quota, and by a further percentage if it was, in addition, a land-locked country.

However, while the quota allocated to various countries would vary as a function of population, such variations should be less than proportional and be weighted in favour of smaller countries. When all the shares had been calculated in that manner, they would be expressed as a percentage of the quantity of licences to be made available for a given period. In view of the possibility of changes in population and GNP per capita, provision should be made for changing the quotas from time to time.

For that purpose, the future treaty should instruct the international authority to open up areas of the sea-bed for licensing only at specified intervals, and to review the quotas at a given time before the issue of licences.

It had been objected that many States would not be able to take advantage of such a system. There were three reasons why that objection was unfounded. In the first place, the system would be in operation for a very long time. A country which for the moment was unwilling to take up a licence and organize the exploitation of sections of the sea-bed would in the future find its situation different.

Secondly, a large number of developing countries, while lacking capital, techniques and equipment, had nevertheless been able to exploit their mineral resources successfully, both on land and on the continental shelf. Under the system proposed by his delegation, States would remain free to negotiate whatever arrangements they pleased for the exploitation of the area for which they obtained licences. The developing countries might advantageously arrange to share in the exploitation of the international area. They would be able to exploit their sections by issuing sub-licences; thus they would share directly in the administration and exploitation of the area and would have direct access to

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(Mr. Simpson, United Kingdom)

technical knowledge in a way which would not be open to them under a system of joint ventures, where exploitation would be governed under terms negotiated between the international authority and the major national enterprises of the advanced countries.

Thirdly, States would be free to combine with others and apply jointly for their share of licences, which they could then administer under arrangements agreed among themselves within a general framework prescribed by the treaty.

If the Sub-Committee contemplated the adoption of such a system, it would be much easier to agree on the composition and the powers of the future international authority. His Government believed it would be sufficient to establish a council which, while in part composed of countries selected on the basis of special geographical or other criteria, would be basically organized in accordance with the principle of equitable geographical distribution. Unanimity would not be required for the adoption of its decisions.

Mr. LEGAULT (Canada) said that the representative of the Netherlands had very skilfully woven together certain elements of various proposals into a single fabric bearing the name "intermediate zone". As some of the proposals in question had been advanced by Canada, it seemed appropriate to clarify certain points. The concept whereby the coastal State would be the custodian of the interests of the international community should not be confused with the concept of an intermediate zone or of a zone subject to mixed national and international jurisdiction. In essence, the concept of custodianship implied that the coastal State should exercise its delegated or sovereign powers in accordance with internationally agreed rules and that its exercise of those powers should be subject to appropriate dispute settlement procedures. In other words, the coastal State, in exercising its sovereign or delegated powers, should protect the interests of the international community in such matters as the right of innocent passage through the territorial sea or the preservation of the marine environment. That did not imply that all or part of the territorial sea or the continental shelf would be transformed into some sort of intermediate zone or zone of mixed jurisdiction. His delegation reserved the right to return to the question, as well as to the proposal that a working group should be established to explore the concept of an intermediate zone and its régime.

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Mr. VALLARTA (Mexico) said that the concept of an intermediate zone was contrary to the provisions of the Convention on the Continental Shelf and to current international law. There was scant hope that a coastal State would agree to give up part of its continental shelf. The industrially advanced countries might wish the intermediate zone to be removed from national jurisdiction and placed under an international system which had their interests more at heart.

The sponsors of the Latin American draft contemplated a system whereby the international authority would be able to exploit the zone, with the assistance of private or governmental undertakings. The representative of the United Kingdom had cast doubt on that possibility, stating that thousands of millions of dollars would be required for such an undertaking. In fact, those who had proposed that system of exploitation felt that the international authority's contribution would take the form of making available resources from the common heritage of mankind, which in themselves were worth thousands of millions of dollars. When, subsequently, the international authority had accumulated the necessary capital and experience, it could undertake exploitation itself.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE FORTY-SECOND MEETING

Held on Wednesday, 22 March 1972, at 3.25 p.m.

Chairman: Mr. ENGO Cameroon

ORGANIZATION OF WORK (continued)

The CHAIRMAN announced that the text of the proposals which he had submitted at the Sub-Committee's 40th meeting had been circulated in document A/AC.138/SC.I/L.10. If there were no objections, he would take it that the Sub-Committee agreed in principle to those proposals.

It was so decided.

Replying to a question by Mr. KACHURENKO (Ukrainian Soviet Socialist Republic), the CHAIRMAN said that he had not yet finished his consultations regarding the representation of the various geographical groupings within the Working Group and was therefore not in a position to announce its precise composition.

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (continued)

Mr. BLOMSTEDT (Finland) said that the definition of the scope, functions and powers of the international authority obviously depended on how large the sea-bed area was to be, on the extent of the powers and functions to be vested in the authority and on the manner in which representation of the member States was to be decided.

Finland was in favour of an extensive international sea-bed area governed by an effective machinery. His comments were based on the assumption that those two objectives would be achieved.

There seemed to be wide agreement that the machinery should consist of an assembly, a council and a secretariat under a secretary-general.

The assembly should play an important role; it should decide not only on the guidelines to be followed by the other organs of the authority but also all matters of vital interest to that authority. It followed that it should have the right to approve the annual budget and to elect the members of the council and the secretary-general. Each State should have one vote and all decisions on matters of substance should be made by qualified majority.

The council should be the directing and managing body of the authority and should take decisions on questions such as the granting of licences. To ensure its efficiency, the maximum number of member States should preferably not exceed 30.

(Mr. Blomstedt, Finland)

Representation in the council should be decided not only with due regard to the equitable geographical distribution of the available seats but also to the interests of the developing countries, of the industrialized countries and the land-locked, shelf-locked and coastal States.

The least controversial question was obviously that of the functioning of the secretariat. The most important point was that it should be given all necessary resources for efficient functioning, particularly in view of the fact that it would engage in profit making activities.

The term of office of the secretary-general should be the same as that of the Secretary-General of the United Nations.

As to the rules and practices relating to the exploration and exploitation of the area and to the preservation of the marine environment and scientific research, including technical assistance for the developing countries, his delegation felt that those questions could not profitably be discussed in detail before the delimitation of the area and of the powers and functions of the authority had been decided. As the area had been defined as the common heritage of mankind, all States should profit equitably from its exploration and exploitation, taking into account the special needs and interests of the developing countries, whether coastal or land-locked. In that connexion, the Secretary-General's report in document A/AC.138/38 would serve as a good basis for further discussion.

His delegation's position with regard to the settlement of disputes was that all legal disputes arising out of the operations of the sea-bed authority should be settled by the International Court of Justice.

His delegation attached the utmost importance to the particular needs and problems of the land- and shelf-locked countries. It considered, therefore, that those countries should be adequately represented in all organs of the authority.

The international sea-bed authority should in principle be a part of the United Nations system having the status, privileges and immunities of the United Nations Organization, subject to the limitations arising from the nature of its functions and powers. That relationship should in no case prejudge the independent position of the authority in the implementation of its mandate.

Mr. HARRY (Australia) said that progress to date in the development of a régime and associated machinery had not kept pace with progress in technology.

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(Mr. Harry, Australia)

In March 1970, the Australian delegation had referred to the fact that very little was then known about the resources of the ocean floor. During the current session, several representatives had referred to the advance in knowledge and technology concerning mineral resources on the deep ocean floor. In particular, Mr. McKelvey of the United States delegation had spoken of the interesting work being done in the study of nodule recovery technology. In view of the results of that research, it was already possible to predict that commercial production of nodules would be practicable by the end of the current decade. Consequently, to ensure that the common heritage was explored and exploited for the benefit of all mankind, articles must be drafted establishing the machinery and formulating the regulatory powers to govern the exploitation of the resources of the sea-bed. The Declaration of Principles and the previous year's debates in the Sub-Committee indicated that there was much common ground as to the machinery necessary to ensure the orderly development of the resources of the international area and the protection of the marine environment. Something approaching consensus existed as to the need for an international sea-bed authority consisting of four organs: an assembly, a council, a secretariat and a tribunal for the settlement of disputes. All delegations seemed agreed that the assembly should include all States parties to the treaty and that each State should have one vote. Proposals for the membership of the council varied between 18 and 35. The council's functions would be to ensure the rapid execution of the decisions of the assembly and to act within the policy laid down by the latter. All main interests should be represented, including those of the industrialized States, which would provide the initial capital and whose companies would be carrying out a large part of the operations, as well as those of the developing States, which would be entitled to an adequate voice in policy decisions, to make sure that effect was given to the assembly's decisions with regard to the distribution of benefits and to management policy. The authority would eventually need an organization to lay down safety measures, to make inspections, to handle the distribution of benefits, to take measures to guard against pollution, and possibly a staff concerned with marketing.

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(Mr. Harry, Australia)

He recognized the problems, from the points of view of initial cost and eventual complexity, of giving the authority the power to conduct operations itself. Nevertheless, if after an examination of all the relevant factors it was generally felt that that power should be available to the authority, his delegation would raise no objection, on the understanding that the power would be permissive rather than mandatory.

The machinery to be set up must be able to operate responsibly and command the support of the overwhelming majority of countries. In addition, the arrangements made must inspire confidence in the operators if they were to undertake the risks involved in exploiting the resources of the area. Any permit granted must be effective against challenge. Decisions made by the appropriate body in relation to title and operations must be made with a competence and authority appropriate to the advanced technology of the current age and the predictable future. To fulfil those requirements, the international authority would need adequate rights of inspection with a technical or scientific body to supervise operations.

The Australian delegation believed that States or groups of States should be the basic entities authorized by the international machinery to participate in the sea-bed operations. Scientific research, the results of which should be made freely available, should be permissible provided that any deep drilling was subject to the prior approval of the authority.

There were two possible types of licence: a general, non-exclusive, exploration licence and an exclusive exploitation and exploration licence. His delegation had already expressed support of the proposition that minerals could be divided into three categories: (1) hydro-carbons and associated substances recovered through drill holes; (2) manganese nodules and similar substances found on the sea-bed; and (3) all other minerals. Non-exclusive exploration licences might cover the search for all or any of those minerals but an exploitation licence would be in relation to a specific operation. At least in the initial stages, the machinery should provide positive incentives to operators who should retain the initiative in the selection of areas for exploration.

The size of the areas allotted would necessarily differ according to the nature of the mineral to be exploited. Under Australian legislation on offshore

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(Mr. Harry, Australia)

hydrocarbon exploration and exploitation, an exploration title was allowed over 10,000 square miles and exploitation licences were issued for areas of approximately 225 square miles. For minerals other than petroleum, the areas involved could be much less. However, the United States proposals envisaged larger areas in the case of manganese nodules.

His delegation considered that a working group might be entrusted with the task of assembling all the necessary information on the subject of national legislation, with a view to the drafting of articles that would make it possible to meet the objectives in view. His delegation would be pleased to participate in such work.

Mr. DEBERGH (Belgium) said that he would like to explain the situation of land-locked States and shelf-locked States in relation to the law of the sea in general and the régime of the sea-bed beyond the limits of national jurisdiction.

With regard to the law of the sea, although such countries - at least the former category - were placed at a disadvantage by their geographical situation, it nevertheless seemed unnecessary to request compensatory treatment for them, inasmuch as the principle of compensation would not a prioxi meet the needs which emerged in international relations.

In the case of land-locked countries, customary law, which had found expression in article 3 of the Convention on the High Seas, had been called upon to settle a problem of access to the sea and had done so by imposing on transit States special obligations which had been elaborated subsequently in the 1965 Convention on the Transit Trade of Land-Locked States. It should be noted that the latter Convention had so far been ratified by 22 countries, of which 14 were land-locked States and 4 other countries which would never need to accord trade transit rights to land-locked States. There might be some advantage in incorporating the principles of the 1965 Convention in the law of the sea. So long as a transit State was not a party to the 1965 Convention, it was bound only by article 3 of the Convention on the High Seas or by customary law, and it might justly be said that the right of access to the sea, in the case of land-locked States, was an imperfect right, since enjoyment of it depended on the conclusion of an agreement with the transit State. The obligation to negotiate was not, however, equivalent to an obligation to conclude an agreement. It would therefore be wise to provide assurances for land-locked States by laying down the specific obligations of the transit State in a multilateral treaty.

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(Mr. Debergh, Belgium)

The case of quasi-land-locked countries might also be settled at the same time. The Convention on the High Seas made no reference to them, although access to the sea was sometimes as difficult for them as for totally land-locked countries. An embryonic body of customary law existed concerning them and might be developed.

The question of the access of land-locked States to the sea-bed and the international zone should be settled in a specific manner, because it was not a question of access to the sea itself but of access to the common heritage in which those countries had a joint share. On that point also, land-locked States should be allowed some degree of freedom of choice that was not dependent solely on the obligation of the transit State to negotiate an agreement concerning access. Furthermore, while the possibility of a land-locked State's participation in the exploitation of the international sea-bed zone under bilateral or regional agreements must not be ruled out, it should not be made an obligation and those countries should not be barred from the possibility of embarking on purely national exploitation. It was mainly in that connexion that specific transit problems would arise.

The situation of shelf-locked States was obviously less grave, because, unless they belonged to the category of quasi-land-locked States, they had access to the sea. Their situation was easy to design and comprised two elements. Firstly, those countries could not invoke the advantage of an extensible limit of the continental shelf. Any outward extension of the sovereign rights of other States over their continental shelf would automatically reduce their joint share in the common heritage. Secondly, those countries depended for their access to the common heritage on the goodwill of other coastal States. Their access was via the continental shelf of those States, through the superjacent waters of the shelf and sometimes through the territorial waters or the territory of those States. Difficulties might thus arise in connexion with access and such matters as the laying of cables and pipelines. Solutions could be sought at the bilateral level, but it would be more appropriate to lay down the general principle at the multilateral level.

Mr. WARIOBA (United Republic of Tanzania) said that he would like to say a few words on the subject of the Netherlands working paper (A/AC.138/SC.I/L.9) concerning the possible establishment of a working group to explore the question of an intermediate zone. /...

(Mr. Wairoba, Tanzania)

The idea was actually not a new one; two years previously the United States delegation had submitted a similar proposal concerning a trusteeship zone. His delegation's position on that point, which had already been stated at the previous session, remained unchanged.

If the question of a possible intermediate zone was regarded as absolutely inseparable from the issue of limits, the proposed working group would be dealing with a problem which was, in fact, already being discussed from a different angle by the Sub-Committee; that was out of the question. Moreover, the advocates of that idea presented it as a compromise solution, whereas in reality it was intended to serve their interests, those of the majority being neglected.

Although the problem might be resolved by using the criterion of depth, which would be the 200 metre isobath, some countries would be placed at a disadvantage, namely, those having a narrow continental shelf or a sharply declining continental slope. Another solution would be to propose a distance of 40 nautical miles for all countries, but those in favour of the intermediate zone would certainly not accept such narrow limits.

His delegation had no objection to a general consideration of the question but was opposed to the establishment of a working group to explore a circumscribed problem which did not take into account the interests of the majority and which might, moreover, be eliminated automatically if a solution was found to the question of limits.

Mr. RIPHAGEN (Netherlands) expressed surprise that the Tanzanian representative believed that the idea he had proposed was supported by those countries which were in favour of a large zone under national jurisdiction; the Netherlands was one of the sponsors of the seven-Power proposal (A/AC.138/55), which provided for restriction of the zone under national jurisdiction. Accordingly, he feared that there was some misunderstanding.

Moreover, a study of the concept of an intermediate zone would in no way prejudge the ultimate decision as to its creation and even its extent. It was merely a proposal intended to promote a compromise on the question of limits.

Mr. OXMAN (United States of America) said that he wished to state his delegation's position on the subject of the creation of a trusteeship or

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(Mr. Oxman, United States)

intermediate zone. Under the terms of the draft convention which it had submitted (A/AC.138/25), that zone would be contained between the 12 nautical mile limit or the 200-metre isobath - taking whichever limit lay furthest seaward - and the outer boundary of the continental margin. It would thus cover the most disputed resources, which would be placed under a mixed régime. As the United States representative had pointed out at the 65th meeting of the plenary Committee (A/AC.138/SR.65), such limits, providing for an equitable division of management and benefits between the coastal State and the international community, appeared to be the most rational and equitable solution. The efficacy and applicability of the trusteeship concept did not, however, depend upon those particular limits. It was a flexible means of reaching equitable accommodation within several possible sets of limits, provided that they were not such as to place substantially all the resources in question within the area of exclusive coastal-State jurisdiction. The trusteeship concept should therefore in no way be linked up with any particular limits.

Mr. ARIAS SCHREIBER (Peru) said that since the number of countries that were against the concept of an intermediate zone was much larger than the number of those in favour, it would be a waste of time to establish a working group to explore the question and to consider already at that time the question of the limit of the zone under national jurisdiction. It would be far better to adopt criteria that would command the consent of the majority, for example that of the 200-mile limit.

The meeting rose at 4.35 p.m.

SUMMARY RECORD OF THE FORTY-THIRD MEETING

Held on Thursday, 23 March 1972, at 10.25 a.m.

Chairman:	Mr. FEKETE	Hungary
later,	Mr. ENGO	Cameroon
later,	Mr. RANGANATHAN	India

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STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (continued)

Mr. CROSBY (Canada) said, with respect to point (a) of item 2 of the Sub-Committee's programme of work adopted at the 33rd meeting, that there appeared to be a developing consensus that the proposed international machinery should comprise: a legislative body or plenary assembly of all States parties, to act as the supreme governing organ; a smaller executive body or council, to exercise authority delegated to it by the assembly; a recording or advisory body or secretariat; a dispute-settlement tribunal; and some type of resource management commission. There was disagreement, however, on the question whether the "one State - one vote" principle should apply throughout the structure or whether some other decision-making system should be devised. Canada's view was that proposals for weighted voting would appear to be incompatible with the fundamental principle of the sovereign equality of States and the concept of the common heritage of mankind. Similarly, no consensus had yet been reached on the question whether the machinery should have the legal and administrative capacity itself to exploit the resources of the sea-bed. Canada agreed that it was imperative to ensure full and genuine participation by the developing countries in the exploration and exploitation of sea-bed resources and that joint ventures with the international machinery could be one method of attaining that objective. Another point on which there was no general agreement was the question whether the machinery should consist of only a resource authority or whether the authority should be of broader scope and govern all uses of and activities on the sea-bed and even all uses of and activities in ocean space as a whole, beyond the limits of national jurisdiction. Attempts to so broaden the powers of the machinery might indefinitely delay the establishment of a régime for resource exploration and exploitation. What would seem essential was to provide for an efficient and equitable system and machinery for the exploration and exploitation of sea-bed resources.

With respect to point (b) of item 2, his delegation welcomed the increasing recognition that perhaps the single most important factor in promoting resource exploration and exploitation in the area of the sea-bed beyond national jurisdiction would be the adoption of a sea-bed resource management system

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(Mr. Crosby, Canada)

designed to encourage and maintain investment on a continuing and orderly basis. Without such a system there would be no exploitation of sea-bed resources and thus no benefits for humanity as a whole and the developing countries in particular. Such a system must provide the means of exercising effective control over the manner in which exploration and exploitation activities were carried out and adequately safeguard the ocean itself. The international machinery must, therefore, have sufficiently effective powers and procedures to supervise and control sea-bed exploration and exploitation activities with a view to the preservation and protection of the marine environment. As the Intergovernmental Working Group on Marine Pollution had agreed at its Ottawa session, measures to prevent and control marine pollution were essential and States should co-operate in the appropriate international forum (the Sea-Bed Committee and the machinery to be established) to ensure that activities related to the exploration and exploitation of the sea-bed and ocean floor beyond the limits of national jurisdiction would not result in pollution of the marine environment. The Intergovernmental Working Group had recognized that the coastal State had particular interests and responsibilities in that respect but had also emphasized that States should assume joint responsibility for the preservation of the marine environment beyond the limits of national jurisdiction. A practical approach to the discharge of that joint responsibility would be to draw on national experience in order to evolve international rules intended to prevent pollution resulting from exploration and exploitation of the sea-bed beyond the limits of national jurisdiction. Such rules could then be adopted as minimum uniform rules to be observed by coastal States with regard to the exploration and exploitation of their continental shelf areas. Thus, the coastal State had to take measures with respect to its continental shelf to ensure the protection of the environment of the sea-bed area beyond the limits of national jurisdiction, while the international machinery had to take measures with respect to the international area to ensure the protection of the environment of the continental shelf areas.

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(Mr. Crosby, Canada)

For his delegation's views on the clause of point (b) of item 2 relating to scientific research, including technical assistance to developing countries, delegations should refer to page 10 of document A/AC.138/59. He wished to stress, in that connexion, that there should be access to information in return for access to areas where scientific research was to be carried out, and that developing countries should have adequate numbers of trained personnel to understand and use the information thus acquired.

With respect to points (c) and (e), various questions concerning benefit-sharing and the situation of land-locked States were also discussed in document A/AC.138/59, under articles 5 and 7 of the Declaration of Principles and under the section entitled "Transitional Arrangements".

Turning to point (d), he said that his delegation fully understood the concern of various delegations that development of the resources of the international sea-bed area might upset traditional marketing patterns and create difficulties for States in which primary mineral production constituted an important element of the economy. Canada fully agreed that regulation of the international sea-bed area must preclude exploitation of the sea-bed resources to the detriment of States already producing such materials.

With regard to point (f) of item 2, there appeared to be relative agreement that the very nature of the task to be performed by the machinery required that it should be a wholly new institution rather than one developed out of existing organs and agencies of the United Nations family, for it would require a new approach not tied to traditions and practices intended for wholly different purposes.

There was an urgency attaching to the elaboration of an international sea-bed régime and machinery, for there were enterprises awaiting guidance concerning the rules that might be applicable to the licensing and conduct of their operations. They were also awaiting assurances that the areas they might select for prospecting would not be subject to encroachment by competing agencies. It would seem that the necessary technology would be available at such time as other factors might become favourable to the inception of commercial nodule mining operations. If the Committee delayed too long in providing enterprises with guidance as to operational

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(Mr. Crosby, Canada)

requirements and assurances as to licensing procedures, they might well proceed either without authorization or regulation by any national or international body or under some system of national authorization and regulation by the home Government or that of the nearest coastal State. Canada's preference in that regard was that such activities should proceed under an international régime and machinery. If such a régime and machinery could not be set up soon enough to keep pace with developments, some form of transitional régime and machinery should be established.

The Netherlands proposal in document A/AC.138/SC.I/L.9 had drawn on various proposals made by other delegations to develop a concept of an intermediate zone of the sea-bed. That intermediate zone was described as a zone wherein the coastal States' rights and powers were combined with the international authority's rights and powers; in other words, a zone where the national and international area overlapped. The proposal had direct and important implications with regard to the scope, function and powers of the international machinery. His delegation wished to distinguish clearly between the "intermediate zone" concept and the custodianship concept advanced by Canada. The two were not incompatible but they did represent quite distinct and separate approaches. The custodianship concept did not imply the creation of zones of mixed coastal and international jurisdiction; it could be applied in varying degrees to all the outstanding issues of the law of the sea. It implied that the coastal State should, in exercising its rights and powers with respect to the exploration and exploitation of the resources of the area within its jurisdiction, act as the custodian of community interests in such matters as freedom of communication and preservation of the marine environment and comply with appropriate international rules and standards intended to protect such interests. The coastal State's exclusive sovereign rights would not be subject to examination, renunciation or review by an international agency, but appropriate dispute-settlement procedures should apply in the event of conflicts involving community interests. His delegation had gone further in applying the concept of custodianship to the continental shelf and had proposed a voluntary international development tax on offshore mineral resources within the limits of national jurisdiction seaward from the outer limit of the coastal State's internal waters.

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(Mr. Crosby, Canada)

Since the coastal State enjoyed special rights and privileges with regard to the resources of the continental shelf, it could recognize some duty towards the international community as a whole, and particularly the developing countries, and share at least some of the benefits derived from those rights and privileges.

In conclusion, his delegation had reservations concerning the establishment at the current stage of a working group to explore the concept of an intermediate zone and its régime, as proposed by the Netherlands delegation. Such a step might not only be premature but might also erroneously suggest that some degree of consensus had been reached on the intermediate zone approach to the exclusion of any other. The interests of the international community lay in an accomodation of national interests. That accomodation would be much easier to achieve if States would bear in mind and build on the existing fund of shared interests, which was what his delegation had sought to do in putting forward the concept of custodianship.

Mr. Engo (Cameroon) took the Chair.

Mr. ZEGERS (Chile) said that the Maltese delegation's position that ocean space should be viewed as a unity deserved careful study and debate in the Sub-Committee.

The provisions in paragraph 9 of the Declaration of Principles in General Assembly resolution 2749 (XXV) made it clear that there was to be a single universal treaty establishing both the international régime and appropriate international machinery, and that both the régime and the machinery were to apply to the area and to its resources. That principle was of fundamental importance and could be given effect only if the international authority to be established was granted jurisdiction over both the area and its resources. Jurisdiction over the area signified that the authority should control the whole economic process - exploration, exploitation and marketing of resources and distribution of profits - and be given powers to exploit directly. Either the authority could delegate powers to exploit, or the procedure advocated in the Latin American working paper (A/AC.138/49) could be adopted. The Latin American

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(Mr. Zegers, Chile)

proposal did not provide for delegation of power to exploit but would allow the authority to enter into service contracts with enterprises or to establish companies to exploit resources. In that way, the authority would be able to maintain control over economic activities being conducted in the area. The sponsors of document A/AC.138/49 did not favour indiscriminate licensing, which would result in large consortia gaining control of the area. It would seem therefore that the international machinery should have power to: explore and exploit, control production and market resources, control research and pollution, distribute profits, preserve the marine environment and promote the development of the area by planning and ensuring the transfer of science and technology. The Latin American working paper proposed that the international machinery should be known as "the Authority", because it would exercise jurisdiction over the area and the activities conducted there. It should have an Assembly, a 35-member Council where there would be no power of veto, and a secretariat. There might also be two other separate legal entities: an enterprise to control exploration and exploitation in the area and a planning commission to plan future production, examine the regulation of production and deal with such matters as the transfer of technology to developing countries.

The General Assembly had dealt with the question of the economic implications relating to the exploitation of the resources of the area, including their processing and marketing, in its resolution 2750 A (XXV), in which the Secretariat was requested to prepare reports on the matter in co-operation with UNCTAD. Since the Secretariat had submitted its last report, there had been various developments in connexion with the exploration and exploitation of the area. At the 35th meeting (A/AC.138/SC.I/SR.35) he had drawn attention to the fact that three United States companies, a European consortium under the direction of Jacques Cousteau and a consortium using the Japanese "continuous line bucket" system were already engaged in the exploitation of minerals in the area beyond the limits of national jurisdiction. His statement had been confirmed by the representative of the United States at the 37th meeting (A/AC.138/SC.I/SR.37). The matter was a subject of concern, because the idea of granting licences on a basis of reciprocity violated the provisions of the United Nations moratorium

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(Mr. Zegers, Chile)

(General Assembly resolution 2574 D (XXIV)) and could be regarded as interference in an area which had been declared the common heritage of mankind. He reaffirmed his statement concerning the activities of a European oceanic association, whose membership included companies such as Fiat and Philips, of Deep Sea Ventures, of the Hughes Tool Company, and of Kennecott and Alcoa. There was also a company of the Federal Republic of Germany operating in the Red Sea and the Pacific Ocean. A French company, Société le Nickel, was also reported to be operating near Tahiti. Using the "continuous line bucket" system, a consortium had explored to a depth of 12,000 feet with 170 buckets in the area of Tahiti in 1970. In 1971, the same consortium had conducted experiments at a depth of 18,000 feet to extract approximately 18,000 tons of nodules in the Pacific to the north of Samoa. The experiments were designed to perfect the first part of the exploitation process. It was estimated by technical journals that the commercial production of nodules might begin in 1973 or a little later. At a previous meeting the representative of Belgium had said that only exploration, not exploitation, activities were being conducted in the area. It seemed obvious, however, that when the largest companies in the Western world were engaged in exploration, they would certainly not stop there but would move on to exploitation. If the information available to him was accurate, the activities being conducted constituted the initial stages of exploitation and could be regarded as a violation of the provisions of the Declaration of Principles and of General Assembly resolution 2574 D (XXIV).

In order to clarify the matter, therefore, his delegation proposed that the Secretariat should be requested to prepare a progress report containing a separate chapter on new economic and technological activities being conducted in the area and circulate it to members two months before the Sub-Committee's summer session. The preparation of the report and the assessment of the information it contained should be undertaken in conjunction with UNCTAD. In order that the Secretariat might have access to all the information it needed to compile the report, his delegation requested the Chairman to appeal to all Governments operating in the area to supply all relevant data to the Secretariat.

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The CHAIRMAN said that the point raised by the Chilean representative with regard to the report requested by General Assembly resolution 2750 A (XXV) was very important. The Secretariat was in the process of preparing a progress report for publication in time for the summer session of the Sea-Bed Committee. If the Committee's efforts were not to be based on miscalculations and inadequate or irrelevant criteria, it would be essential for States involved in economic activities in the international area to give maximum co-operation to the Secretariat by providing the fullest possible information by the end of April, at the latest.

He sincerely hoped that his comments would be construed strictly as a strong reminder to the international community of the necessity of applying inspired realism to the historic effort in which it was engaged.

Mr. Ranganathan (India), Vice-Chairman, took the Chair.

Mr. ROMANOV (Union of Soviet Socialist Republics) observed that a number of the draft treaties submitted to the Sea-Bed Committee, including the provisional draft articles on the use of the sea-bed for peaceful purposes put forward by his own delegation, contained provisions concerning the procedure for adopting decisions in the various organs of the international sea-bed resources agency. He was pleased to note that there was a certain measure of agreement that the organ in which all States members of the agency would be represented should take its decisions by a two-thirds majority. Some drafts, however, envisaged that decisions would be made by a simple majority.

There was also general agreement that an organ of limited membership should be established within the agency to exercise functions of an executive nature. There was as yet, however, no agreed position on how decisions in that organ should be made. The Soviet draft proposed that decisions of the "Executive Board" on questions of substance should be made by agreement. Several other drafts suggested that decisions in the organ concerned should be taken by a qualified majority. Several delegations had spoken against the idea of decisions by consensus, saying that they were opposed to a "right of veto". His delegation took the view that

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(Mr. Romanov, USSR)

application of the principle of consensus in the Executive Board was essential if the Board was to be an organ of co-operation among States and not a means by which some States could impose their will on others, forcing through resolutions at variance with the vital interests of other States.

In favour of the principle of consensus, it should be pointed out that the Sea-Bed Committee as well as its Sub-Committees had in practice quite rightly applied that principle in their work on an international treaty to govern the régime of the sea-bed. The principle of consensus would also be essential in the work of the executive organ charged with implementing the provisions of the treaty. If the principle was rejected, the legitimate interests of particular States or groups of States might be disregarded after the treaty was elaborated. That would, of course, place serious obstacles in the way of international co-operation in the exploration and exploitation of sea-bed resources. Moreover, such a rejection would be inconsistent with the Declaration of Principles adopted by the General Assembly, which stated that the international régime should be established by an international treaty of a universal character, acceptable to all. The implementation of the treaty, likewise, must be acceptable to all. Otherwise the very foundations of the international régime would be undermined, for the régime was not merely a treaty but also, and primarily, the implementation of that treaty. The best way of ensuring effective implementation of the treaty in a way that would be acceptable to all was to require the decisions of the executive organ to be made by consensus, i.e. by agreement, as the Soviet draft proposed. Any derogation from that principle in the direction of majority decisions would threaten the legitimate interests of States, obliging them to seek satisfaction outside the framework established by the treaty.

Many delegations had indicated that the treaty should refer to the international area as the common heritage of mankind. The common heritage would cease to be common if decisions pertaining to it could be taken by the executive organ, overriding the objections of particular States or groups of States. It

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appeared that the executive organ was to have a limited membership; in that connexion, various figures had been mentioned, the highest being 35. However, the executive organ would be empowered to decide matters which could affect all States. Its decisions would enjoy little authority if they were not generally agreed, i.e. taken by consensus and not over the objections of a number of States.

Adoption of the principle of consensus in the executive organ would also be a guarantee for the States represented thereon who might find themselves in a minority in the Assembly with regard to a particular question. If the two-thirds majority rule was accepted in respect of the Assembly, it should be borne in mind that a two-thirds majority in the 1970s was not at all the same as a two-thirds majority in the 1940s, when the United Nations and its General Assembly had been established. In the 1970s a two-thirds majority rule might lead to a situation where a decision could be taken over the objections of, say, 50 States, a number approximately equal to that of the founding Members of the United Nations. The adoption of the principle of consensus with regard to the executive organ could thus compensate for possible negative consequences which might result from the application of a two-thirds majority rule in the Assembly. If the two-thirds majority rule were adopted both in the Assembly and in the Executive Board, the concept of common heritage would be meaningless.

It should be emphasized that a variety of social and economic systems would be represented among the States participating in the international agency, and that would inevitably affect their interaction and co-operation in the exploration and exploitation of sea-bed resources. The principle of consensus was essential to ensure respect for the interests of States where a socialist economy prevailed and socialist principles were followed in the exploitation of natural resources. That principle, as expressed in the Soviet draft, would also guarantee that the interests of other States would not be placed in jeopardy. It would be a mistake to identify the principle of consensus with the concept of a veto. A veto meant that no decision was taken and the

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question remained unresolved. Under the consensus system, there might be objections to a certain course of action, but that would not mean that the issue would be shelved. New ways would be sought to find a solution acceptable to all concerned. It should also be pointed out that the possibility of objections would act as a deterrent to attempts to impose decisions on the international agency which would deny the legitimate interests of particular States and, in the final analysis, the higher interests of international co-operation in the exploration and exploitation of sea-bed resources. The principle of consensus would be an important incentive to find solutions to problems in a spirit of co-operative. Without co-operation it was scarcely possible to envisage rational and effective exploitation of sea-bed resources and the participation of all States in such activities.

Mr. PINTO (Ceylon) said that his delegation envisaged an international sea-bed authority consisting of an Assembly of all Contracting Parties, a Council, a President and his staff, an Economic and Technical Commission and a Tribunal. The Authority would have full international legal personality.

The Assembly would be the highest plenary organ and take decisions on all matters of general policy and important questions of an operational character. The Council would serve as the executive organ responsible for the day-to-day management of the affairs of the Authority. The Council should consist of approximately 35 States and its composition should reflect four principle elements: advanced sea-bed technology, political considerations, equitable geographical distribution and special group interests. Consideration might be given to designating a group of approximately seven members which were among the most advanced in sea-bed technology; the remaining members might be elected for a specified period by the Assembly on the basis of the criteria mentioned. The definition of special interest groups - which included so-called "shelf-locked" States and States with narrow shelves - would prove a highly complex task.

Decisions in both the Assembly and the Council would be by majority vote, qualified as necessary in the case of important questions. His delegation would be most reluctant to write into the statute of the Authority a system

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which would amount to a veto or weighted voting. Although the power to decide by majority would exist, it would not necessarily be used constantly or even frequently, and in practice decisions might well be taken by consensus.

The President of the Authority might be selected by the Council and approved by the Assembly on a relatively flexible basis, so as to ensure that the position was filled by a highly qualified individual. As ex officio President of the Council, without a vote, and as chief of the operating staff of the Authority, he would form a vital link between the executive organ and the operations of the Authority, thereby ensuring maximum efficiency in an essentially operations-oriented organization. The statute of the Authority would contain the usual provisions regarding the international character and independence of the staff.

The Economic and Technical Commission would consist of perhaps 15 experts serving in their personal capacity, who would be designated by the Council on the basis of technical expertise and equitable geographical representation. The Commission should be the technical advisory arm of the Authority responsible for authorizing operations on the international sea-bed, supervising operations and formulating operating rules and practices.

The Tribunal would be a permanent organ with compulsory jurisdiction in disputes relating to the interpretation and application of the convention establishing the international régime. Its members would be elected by the Assembly for a specified term. Alternatively, a more flexible arbitration procedure could be set up. The decisions of the permanent Tribunal or an arbitration tribunal would be final and binding on the Parties and enforceable in all member States. Provision might be made for seeking advisory opinions of the International Court of Justice in appropriate cases.

Turning to the rules and practices relating to activities for the exploration, and exploitation and management of the resources of the area, as well as those leading to the preservation of the marine environment and scientific research, including technical assistance to developing countries, he said that the Authority should have comprehensive powers and exercise jurisdiction over the international sea-bed. He wished to propose two changes in the draft statute for

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(Mr. Pinto, Ceylon)

an international sea-bed authority submitted by the United Republic of Tanzania (A/AC.138/33), which reflected the list of functions originally proposed by his own delegation. Subparagraph (5) of article 16 should begin with the words: "To carry out, and encourage, assist and regulate the carrying out of research...". Subparagraph (12) of that article should stipulate that the technical rules, regulations and standards established by the Authority would become binding with respect to sea-bed operations after certain procedures had been followed.

The principal activities of the Authority would be to: (i) explore and exploit the sea-bed for peaceful purposes on its own or through contractors or appropriately negotiated joint ventures, or a combination of those methods, as well as to regulate, supervise and control such exploration by others through a system of licensing; (ii) ensure the equitable sharing of all benefits derived from sea-bed exploration and exploitation in accordance with established rules and procedures; (iii) see to the disposition of raw materials coming under its control; (iv) ensure market regulation with respect to land minerals likely to be affected by sea-bed exploitation; (v) carry out and promote scientific research and the transfer of technology, and disseminate scientific information; and (vi) carry out pollution control operations, which might cover the marine environment as a whole.

The Economic and Technical Commission would have over-all responsibility in the conduct of the Authority's operations under the general direction of the Council.

He reiterated his delegation's firm belief that the ability of the Authority to carry out exploration and exploitation activities on its own represented the highest expression of its central role as the administrator of the common heritage of mankind. None of the arguments against attributing that function to the Authority were convincing. His delegation saw nothing unusual in conferring on an institution a power which it ought to possess over the long term and leaving to its policy-making organ the decision as to precisely when that power should be exercised. His delegation had an open mind as to which method the Authority might adopt to conduct such exploitation, although for the time being it was giving most serious consideration to the establishment of an autonomous

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sea-bed development corporation under the Authority's auspices. Tentatively, it envisaged a system whereby both licencees of the Authority and the Authority itself, through the aforementioned methods, would carry out exploitation activities.

His delegation appreciated the effort made by the United Kingdom, through its proposal to establish a licence quota system to help the developing countries participate in and profit from sea-bed exploitation. It would welcome clarification as to whether the quotas would be allocated on the basis of the nature of the minerals to be exploited, which countries would be granted licences in a particular area and on what basis, and the manner in which they would be offered.

With regard to the equitable sharing of the benefits to be derived from the area, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked, he said that the benefits could be composed primarily of funds (in the form of revenues), raw materials and scientific information. Participating States should share in the benefits in proportion to their needs. The details of his delegation's suggestions could be found in the records of the preceding session.

Turning to the economic considerations and implications relating to the exploitation of the resources of the area, including their processing and marketing, he said that one of the principal functions of the Authority should be to establish or adopt in consultation, and where appropriate in collaboration, with the competent United Nations organs, measures designed to minimize and eliminate fluctuations of prices of land minerals and raw materials that might result from the exploitation of the resources of the international sea-bed, and any ensuing adverse economic effects. He hoped that the United Nations and UNCTAD secretariats would provide advice - preferably in advance of the summer session - regarding the methods by which the Authority could influence the marketing of raw materials. The Authority should somehow play a role in controlling production and prices of minerals, either on its own or through existing mechanisms.

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His delegation fully supported the principle that the particular needs and problems of developing land-locked countries should receive the fullest examination with a view to ensuring equitable apportionment to them of all benefits derived from the international sea-bed.

With regard to the relationship of the international machinery to the United Nations system, his delegation envisaged that the Authority would conduct its activities in accordance with the purposes and principles of the United Nations Charter and would report to the General Assembly, to the Economic and Social Council and, where appropriate, to the Security Council. It should also have the power to enter into special agreements with the specialized agencies of the United Nations and other international and regional organizations.

Lastly, his delegation shared the Chilean representative's concern regarding the increasing exploitation of the international sea-bed by commercial enterprises prior to the establishment of the international régime, in a manner inconsistent with General Assembly resolution 2574 D (XXIV). It accordingly supported his proposal that a supplementary study should be prepared on new technological activities in the area before the Committee's summer session. Such a study would enable the international community to consider in advance what measures would be needed if it was determined that exploitation activities being carried out by certain States on the assumption that they would be consistent with that resolution and the régime in fact proved not to be so.

Mr. Engo (Cameroon) resumed the Chair.

Mr. MYRSTEN (Sweden) said that the comparative table of draft treaties, working papers and draft articles (A/AC.138/L.10) was a valuable basis for discussion of the scope, functions and powers of the international machinery.

Since no existing body within the United Nations family provided a suitable organizational framework for discharging the functions of the machinery to be established, it was necessary to establish an international sea-bed Authority. That body must have full juridical personality and its privileges and immunities should essentially be those required for the exercise of its functions and the fulfilment of its objectives. An exception from the immunity principle would be

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necessary in respect of the Authority's ability to exploit the resources of the sea-bed itself or undertake ventures of a commercial character.

After reading out paragraph 9 of the Declaration of Principles in General Assembly resolution 2749 (XXV), he said that his delegation had always favoured the idea of establishing at the outset strong machinery with broad competence and extensive powers, some of which could later be delegated to other organs or States. The Authority should be in a position to regulate, administer and supervise the activities mentioned specifically in the Declaration of Principles. It should also be entrusted with the supervision and control of the application of agreements, where they provided for such supervision or control - drawn up pursuant to paragraph 8 of the Declaration of Principles.

The Authority should be empowered to issue licences for the exploration and exploitation of the natural resources of the sea-bed. The licence fees should preferably be based on a percentage of the profits, rather than on fixed payments and royalties, and licences should in principle be granted directly to States. Should that system be considered too cumbersome, his delegation could envisage the issue of licences and sub-licences to natural or juridical persons, under state supervision and responsibility. The Authority should ultimately undertake exploration and exploitation activities itself, either on its own or in joint ventures with member States or public or private companies. The treaty should not rule out any of those possibilities for exploration and exploitation.

The Authority should also ensure the equitable distribution of the benefits deriving from the exploitation of the resources in the international area, taking into particular consideration the needs of the developing countries. Moreover, it should take steps to minimize or eliminate fluctuations of prices of land minerals and raw materials that might result from such exploitation, encourage scientific research and establish regulations to prevent pollution. The Authority would also have to ensure the participation of developing countries on an equal footing with developed countries. In that connexion, he referred to article 16 of the Tanzanian draft statute (A/AC.138/33).

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(Mr. Myrsten, Sweden)

Membership in the Authority must be open to all States, and countries which were not Contracting Parties must be able to accede to it at any time and acquire full membership. His delegation supported the proposals whereby the Authority would have as its principal organs an Assembly, a Council and a Secretariat, as well as those which would empower it to establish such subsidiary organs as might be necessary. The Assembly would be the supreme organ composed of all members of the Authority and would be competent to discuss any matter within its terms of reference or relating to its powers and functions. The Assembly should also have the power to discuss and draw up guidelines for the future policy of the Authority. It should elect the members of the Council, approve the budget of the Authority and consider the reports of the Council and the Secretary-General of the Authority. Each member State should have one vote in the Assembly, and decisions should be taken by a simple majority. Particularly important policy decisions would require a qualified majority.

For reasons of efficiency, the Council should have not more than 20 to 25 members; moreover, membership should adequately reflect the diverse interests of the Contracting States. As the Authority's executive body, the Council should execute the policy decisions of the Assembly and promulgate rules and regulations pertaining to subjects - such as those listed in article 29 of the Tanzanian draft - within the terms of reference of the Authority. The Council should also be responsible for issuing licences for the exploration and exploitation of the international sea-bed area and submit budgets to the Assembly for its approval and supervise their execution.

Each member of the Council should have one vote. Substantive decisions should be taken by a two-thirds majority, whereas decisions on procedural questions should be taken by a simple majority. Any requirement of unanimity in the Council would hamper its work and, consequently, the Authority's effectiveness.

A Secretariat headed by a Secretary-General elected by the Assembly should be established. The number of staff and working facilities would depend on the activities of the Authority.

At the present stage, his delegation would prefer that disputes which could not be settled in accordance with Article 33 of the United Nations Charter should be brought before the International Court of Justice.

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(Mr. Myrsten, Sweden)

It was extremely difficult to formulate meaningful views regarding the equitable sharing of benefits to be derived from the area in the absence of acceptable parameters relating to the area and to its resources. His delegation's tentative view was that, during the years immediately following the entry into force of the treaty, the proceeds could be expected to be insignificant and it would therefore seem advisable to channel them into programmes of special interest to developing countries. Once the proceeds reached such a magnitude that they could be distributed to Governments, directly or in other ways, the Assembly should have the competence to decide how the net profits should be distributed.

Mr. KHANACHET (Kuwait) said that the international machinery for the international sea-bed area should be an autonomous universal organization within the United Nations system. It should have international legal personality which would enable it to conclude agreements with Governments and international organizations. It should also be able to own and dispose of property and conclude contracts. Moreover, Parties to the basic treaty establishing the international régime and the machinery should undertake to facilitate the work of the machinery in its dealings with them or their nationals.

The machinery should have an Assembly, a Council, a Secretariat and an organ for the settlement of disputes. Membership in the Assembly should be open to all States Parties to the basic treaty, whether Members of the United Nations or not. The Assembly should be the main legislative body and the supreme policy-making organ. It should have over-all responsibility for ensuring that the resources of the sea-bed area were employed with maximum efficiency and effectiveness for the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries. The Assembly would have to ensure the equitable sharing of benefits derived from the exploitation of sea-bed resources according to a scale to be established on the basis of definite norms giving substance to the concept of the common heritage of mankind.

(Mr. Khanachet, Kuwait)

The Council should be the executive body of the international machinery acting under the control and guidance of the Assembly. It should be competent to grant licences in accordance with criteria formulated by the Assembly and submit recommendations to the Assembly regarding the methods and regulations to be applied to activities in the sea-bed area. It should prepare and submit the annual budget to the Assembly and be responsible for determining and collecting fees and distributing benefits equitably. The Council would also organize, administer, co-ordinate and control all activities in the sea-bed area directly or through subsidiary organs.

The Council should consist of a limited number of States elected by the Assembly on the basis of equitable geographical representation for a term of three years. One third of the members of the Council should be elected each year, and retiring members should be eligible for immediate re-election. All members of the Council should have equal status and voting rights.

The Secretariat would be recruited in such a manner as to secure the highest standards of efficiency, competence and integrity. Due regard should be had to the importance of recruiting staff on as wide a geographical basis as possible. The developing countries, which constituted the overwhelming majority of States, must enjoy representation commensurate with their special interests and needs. Bureaucracy must be avoided at all costs.

The international machinery should also include an appropriate organ for the settlement of disputes. Since the disputes would mainly be between companies, the International Court of Justice was not competent to settle them. Even in the case of disputes between Governments, the present procedures of the Court were too cumbersome to provide a speedy remedy. Accordingly, the juridical organ should offer three methods of settling disputes: conciliation, mediation and binding arbitration. However, because there was no body of arbitral precedents in the field, the arbitrators should be selected with great care to ensure a high level of integrity and expertise.

(Mr. Khanachet, Kuwait)

The constituent instrument of the international machinery should entrust it with comprehensive powers, which it would exercise immediately in some cases, and when it acquired adequate material resources and staff in others. The machinery should function as an integral part of the régime and should serve as its executive organ. As the administrator of a trust for the benefit of mankind as a whole, the machinery should have extensive regulatory and operational functions including the organization, administration, control and co-ordination of all operations relating to the development of sea-bed resources. The machinery should also be recognized as a subject of international law. Its scope should coincide with that of the régime and the area which it governed and should cover the exploitation of both mineral and living resources.

Although his delegation would like the machinery to engage directly in operational activities, it realized that in the initial stages at least, licensing would be one of its major functions. Licences should not be granted to States or groups of States, but to physical and juridical persons. Licences should be governed by a new set of rules to be embodied in the treaty establishing the régime, rather than by the domestic laws of States. The international inspection of operations would have to be conducted by the machinery or under its supervision. The international machinery would naturally grant licences according to definite objective criteria, including the merits of the applicants, the needs of developing nations and the necessity of preventing disproportionately large areas from being placed under the control of a single operator.

If the international machinery decided not to engage in operational activities itself, they should be entrusted either to national and international companies which satisfied criteria established by the Assembly or, preferably, to joint ventures formed expressly for the purpose of sea-bed exploration and exploitation. In any case, a fair return should be given to investors and adequate remuneration to concerns engaged in the operations. Joint ventures should not merely provide partners from developing countries with technicians and managers but should, in particular, impart technical and managerial skills through training and sharing of knowledge. Despite their shortcomings, partners from developing countries could provide a variety of facilities and resources and would in due course make an effective contribution to the joint venture.

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(Mr. Khanachet, Kuwait)

The primary role with regard to training must be played by the international machinery, which should organize programmes for training nationals from the developing countries. It should also collaborate with Governments, operators and, academic, scientific and technical institutions in disseminating knowledge as a preliminary to making it available to all without any restrictions or discrimination. The machinery should be actively involved in scientific research for the exploitation and exploration of the resources of the area and see that nationals of developing countries played an active part. It should also strive for the transfer of operative technology to developing countries.

The concept of the trusteeship zone advocated by the United States seemed to appear time and again under different names. The Netherlands delegation, in its working paper concerning the concept of an intermediate zone (A/AC.138/SC.I/L.9), had recommended that a working group should explore that concept, without prejudice to whether the zone should be established and where. In view of the Committee's heavy burden of work, however, it was not advisable to set up groups to study concepts or proposals which had already met with wide opposition and had little chance of general acceptance.

His delegation did not agree with the United States representative that the projected expansion of world demand for minerals was such that there was no reason to contemplate any significant adverse impact on the economy of land producers. It was firmly convinced that only an international machinery with comprehensive powers was capable of dealing with the problem on a long-term basis. The international machinery should ensure the rational exploitation of the sea-bed area and prevent abuse, waste and mismanagement. It should undertake a general survey of resources listing existing minerals and those with a potential for commercial exploitation. It should establish an order of priority for exploitation based on the requirements of world development, taking into account the special situation of developing countries which produced minerals of a non-renewable character. It should also prevent a glut on world markets which would have a depressing effect on the economies of developing countries, especially those whose economies were dependent on a single commodity. One solution would be to conclude international commodity agreements. It was perhaps preferable to set a ceiling for the

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production of minerals of which a surplus existed in world markets. The entire procedure should be subject to constant review in the light of developments in the sea-bed area and changing needs in world markets.

In view of the financial plight of the United Nations, a reasonable portion of the benefits derived from sea-bed exploitation should be allocated for the purpose of international development within the United Nations system.

Lastly, he reiterated his request for firm assurances from the home States of consortia engaged in experimental activities on the sea-bed that those companies would not undertake commercial exploitation of sea-bed resources prior to the establishment of the régime. The Committee should unanimously reaffirm that no arrangements made prior to establishment of the régime could have any validity since they would be outside the law and contrary to the wishes of the international community.

Miss MARTIN SANE (France), replying to points raised by the representative of Chile in his statement, stated that Eurocéan, which was directed by Jacques Cousteau, was a non-profit association designed to promote marine science industries in Europe. It was not engaged in operational activities. As for the Société le Nickel, its activities were of an experimental nature. In taking samples of manganese nodules, the Société was not prospecting with a view to establishing a mining claim; extraction of metals from the nodules in commercial quantities still appeared to be but a very distant prospect. Moreover, techniques for processing the nodules and separating the metals they contained were still in their infancy. There was no cause for any delegation to become alarmed over the activities of either enterprise. Indeed, such activities were perhaps to be commended, for the future treaty would be pointless if there was no possibility of exploiting sea-bed resources once it entered into force.

The CHAIRMAN, recalled that at the 40th meeting he had suggested setting up a Working Group to draft a paper showing areas of agreement and disagreement on the various issues before the Sub-Committee. Consultations regarding the Working Group were near to a successful conclusion. Many delegations had expressed the wish that the number of participants in the group should be 33 instead of 31, as originally suggested; he hoped that the new figure would prove generally acceptable and that he would be able to announce the membership at the next meeting.

The meeting rose at 1.05 p.m.

SUMMARY RECORD OF THE FORTY-FOURTH MEETING

Held on Monday, 27 March 1972, at 3.20 p.m.

Chairman:	Mr. ENGO	Cameroon
later,	Mr. RANGANATHAN	India

ORGANIZATION OF WORK (continued)

The CHAIRMAN announced that the Bureau and the representatives of the different regional groups had agreed on the establishment of a 33-member working group. If there was no objection, he would take it that the Sub-Committee approved that decision.

It was so decided.

The CHAIRMAN announced that the working group would be composed of the representatives of the following countries: Afghanistan, Algeria, Australia, Canada, Ceylon, Czechoslovakia, Ethiopia, Finland, France, Indonesia, Iraq, Iran, Japan, Kenya, Kuwait, Madagascar, Mali, Malta, Mexico, Morocco, Nigeria, Peru, Poland, Romania, Senegal, Trinidad and Tobago, Union of Soviet Socialist Republics, United States of America, Uruguay, Venezuela, Zaire, Zambia, and one other country, which would be announced when it had agreed to serve. The establishment of that group would not constitute a precedent. He urged the Sub-Committee to approve the composition of the working group in its traditional spirit of compromise. He suggested that the working group might meet on 28 March at 10 a.m. to elect its Chairman.

Mr. SOTO (Peru), speaking as the Chairman of the Latin American group, said that although the composition of the working party was not entirely satisfactory to the Latin American countries, they would not oppose its establishment, provided that it did not constitute a precedent, that the country still to be nominated was a Latin American country, and that representatives of countries that were not members of the working group might participate in its work.

The CHAIRMAN confirmed that the working group would be open to other representatives. He suggested that the Sub-Committee might approve the composition of the working group as announced by him, subject to the observations made by the representative of Peru.

It was so decided.

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STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (continued)

Mr. PARDO (Malta) said that the functions and powers of the future international machinery must be defined in relation to its purposes. The point of view of the majority of the Sub-Committee, which was not shared by the Maltese delegation, was as follows: the primary purpose of the machinery would be either the management, exploration and orderly exploitation of the sea-bed and of its resources, or only the exploration and exploitation of the mineral resources of the sea-bed. However, the question arose whether those were the only, or the most important, considerations to be borne in mind in establishing an international machinery whose scope would be limited to the exploration and exploitation of the resources of the sea-bed beyond the limits of national jurisdiction. Even assuming that the limits of the international sea-bed could be fixed and a machinery could be established for mineral resource exploration and exploitation, would that machinery be viable? It would certainly not be viable unless its powers were extended well beyond what was contemplated in the Sub-Committee's programme of work and in most of the draft conventions, draft articles and working papers before it. There were three main reasons for that. First, an international machinery with competence to deal only with mineral resource exploration and exploitation beyond the limits of a more or less precisely defined national jurisdiction would relieve only a very few of the pressures impelling coastal States to extend their jurisdiction over the marine environment. Secondly, the mineral resources of the sea-bed beyond national jurisdiction would become increasingly valuable as technology advanced and the exploitation of land-based resources became more intensive. Thirdly, international agreements were implemented in good faith only in so far as they were in accord with the interests of the signatory States. Long-term agreements were particularly vulnerable, but they were denounced or openly violated only when the political cost of such action was less than the political or economic advantages expected from it. Therefore, sooner or later, the limits of national jurisdiction established in an international treaty of a universal character would become unsatisfactory for one reason or another to one or other of the signatories. If the attempts that would then be made to undermine the international limits agreed upon were successful, the

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international machinery would be faced with a crisis of credibility. There were two ways of ensuring that the future treaty on limits would be respected. The first, which was the normal procedure, would be for the States which considered their interests adversely affected to protest. That was a dangerous method in view of the possibility of conflict; it would also be inequitable, since no State could interpret international law unilaterally. The second way would be to empower the machinery to protect the territorial integrity of the sea-bed beyond national jurisdiction. The possibility of mobilizing international opinion would enhance the political cost of evading the sea-bed limit provisions of the treaty, but that would not be enough. The Maltese delegation would return to that point.

As to the exercise of rights over the international sea-bed, paragraph 3 of the Declaration of Principles provided that: "No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international régime to be established and the principles of this Declaration." Nevertheless, several of the draft treaties and working papers submitted for consideration by the Sub-Committee suggested the acquisition by States of semi-permanent rights on the sea-bed beyond national jurisdiction for resource exploration and exploitation, rights that would be regulated only in a rather general manner by a rather weak machinery. Since the majority of the Committee wished the future machinery to deal only with sea-bed resource exploration and exploitation and assuming that the conclusion of the negotiations would be a compromise, it was to be expected that, under the future treaty, some States would acquire a number of important and virtually unsupervised rights in the international sea-bed area, particularly in connexion with uses of the sea-bed not directly related to exploration and exploitation. Such uses already existed, their importance was increasing, and they might eventually impinge upon resource exploitation. Other rights might well be acquired under paragraph 13 (a) of the Declaration of Principles, for instance, in connexion with artificial islands and floating harbours and airports anchored to the sea-bed. In the circumstances it was to be feared that the future machinery would find itself operating under increasing restraints which would impair its efficiency. The only

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remedy was to empower it to protect the integrity of the sea-bed beyond the limits of national jurisdiction, in other words, to interpret the principle embodied in paragraph 3 of the Declaration. If it was fully to achieve its purpose, it should be entrusted with additional functions not mentioned under point 2 of the programme of work.

First and foremost, the machinery should harmonize the uses of the international sea-bed area and also harmonize those uses with those of the superjacent waters. Existing international law was clear on the point that the freedoms of the high seas must be exercised with reasonable regard to the interests of other States, while "the exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication" (Convention on the Continental Shelf, 1958, article 5 (1)). There were no generally agreed principles of international law with regard to the manner in which the sea-bed beyond national jurisdiction, as distinguished from the high seas and the continental shelf, should be used. The future international machinery should, at the very least, have power to harmonize different uses of the sea-bed beyond national jurisdiction in order to fill that gap in international law. In practice, uses of the sea-bed often affected those of the superjacent waters. The exploitation of coastal oilfields, for instance, might be a danger to navigation. If it was the State involved in such sea-bed activities which was to be responsible for harmonizing its use of the sea-bed with the uses of the superjacent waters, the international machinery would be gravely weakened and the vital interests of many countries would be partly dependent on the behaviour of that State. The impingement upon freedom of navigation might be comparatively small, but a serious precedent would be set in allowing a State to exercise semi-permanent jurisdiction over an area beyond the territorial sea and the continental shelf. To avoid that danger, some countries had had recourse to the Inter-Governmental Maritime Consultative Organization (IMCO), which enabled them to harmonize their interests and attain international cover for national decisions. But IMCO would no longer be the appropriate international agency for harmonizing uses of the sea-bed

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beyond national jurisdiction with those of the superjacent waters when the international machinery had come into existence. The Inter-Governmental Maritime Consultative Organization was dominated by a comparatively small group of Powers, and it would be inappropriate that they, under cover of an international organization, should be able to place constraints on jurisdictional integrity over the sea-bed, which must remain the prerogative of the future international machinery. In any event, IMCO was an agency which was primarily concerned with certain technical aspects of navigation and ship construction, and it would be more appropriate to utilize its technical competence by amalgamating it with the future international machinery. That would have the advantage of simplifying somewhat the growing complexity of the United Nations family and of eliminating some problems of co-ordination.

It was generally agreed that the machinery should encourage research on the international sea-bed area and promote international co-operation in that field. In that connexion, consideration could be given to enlarging its functions, taking into account the provisions of paragraph 10 of the Declaration of Principles. Certain facts would have to be taken into consideration. First, when oceanographic ships undertook a voyage to carry out research on the sea-bed and the superjacent waters, it was impossible to separate those two types of research. Secondly, the combined application of the principle of freedom of scientific research on the high seas enunciated in article 5 (8) of the Convention on the Continental Shelf, and paragraph 10 of the Declaration of Principles would result in the establishment of three different régimes governing scientific research beyond the limits of national jurisdiction. Such a situation could not satisfy scientists or States and could only prove deleterious to the interests of the international community, since accelerated and intensified research was essential, not merely in the interests of science but also in the interests of fishery conservation and the discovery of mineral resources. Consequently, it would be realistic to agree that only two régimes were necessary: one governing research conducted by States within the national jurisdiction of a coastal State, and the other governing research beyond that jurisdiction, the latter régime being based on paragraph 10 of the Declaration of Principles. Moreover, it would have to be agreed that the machinery should be the sole intergovernmental organization competent to deal with oceanic research. That implied the assumption by the

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machinery of the present functions of the Intergovernmental Oceanographic Commission (IOC) another step which would have the advantage of simplifying the international system and preventing co-ordination problems with other organizations in the United Nations family which aspired to sectoral competence in oceanic research.

Some of the draft conventions submitted to the Committee took the position that the future international machinery should concern itself only with the prevention of pollution caused by the development of sea-bed resources. Although that attitude was in accordance with resolution 2750 C (XXV), it was inconsistent with the implications of paragraph 11 of the Declaration of Principles and was not very practical. Apart from the United Nations, there were six specialized agencies (UNESCO and its subsidiary body, IOC, FAO, WHO, WMO, IMCO and IAEA) that were particularly interested in the question of marine pollution, and that number no doubt would rise. The establishment of a further agency dealing, inter alia, with certain aspects of marine pollution, would only aggravate the existing serious problems of co-ordination and the interagency battle for funds. If the competence of the future international machinery was limited to the prevention of pollution arising from the development of sea-bed resources, that would only encourage the tendency towards an excessively fragmented consideration of marine pollution, and a unique opportunity for reforming an unjustifiable, and indeed shocking, situation, would have been lost. At the very least, the international machinery should have exclusive competence at the intergovernmental level to deal not only with pollution arising from the exploration and exploitation of the sea-bed beyond national jurisdiction, but also with pollution that might directly or indirectly affect the sea-bed or the activities carried out there.

With regard to the transfer of technology, the competence of the machinery could not be limited to technology used for the exploration and exploitation of the sea-bed. Such technology was normally part of a system embracing the sea-bed, the superjacent waters and the surface. Hence, in that field also, the competence of the international machinery must be enlarged if the machinery was to serve a useful purpose.

Turning lastly to the question of the settlement of disputes, which he classified in five categories (disputes between States, between States and the international machinery, between States and an intergovernmental organization

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other than the machinery, between the machinery and another international organization and, finally, between States or the international machinery and physical or juridical persons), he recalled that it had been proposed that recourse should be had in such situations to the International Court of Justice. However, changes in the Statute of the Court would be required, and Court procedures were slow, expensive and probably inappropriate to the majority of the cases that were likely to arise. But the basic objection was of a political nature. Indeed, article 4 of the Statute of the Court gave the General Assembly and the Security Council a decisive say in the composition of the Court. Such a method of selecting judges was not acceptable in the case of disputes arising in an area under the jurisdiction of an international machinery with functions and powers quite different from those of a specialized agency.

Accordingly, it would be preferable to establish a new judicial organ to deal with disputes. Each State member of the machinery would nominate a maximum of five unpaid judges to a roster, which would be kept by the Secretary-General of the machinery. Each party to a dispute would select one judge from the roster and the Secretary-General would select a judge to preside over the Court. The judges on the roster would elect from their number 25 judges to constitute a Court of Appeals, which would sit only rarely in plenary session, since appeals would normally be heard by a regional section consisting of five judges. His delegation planned to submit detailed proposals on the matter at the next session.

It would therefore appear that the subitems under item 2 of the Sub-Committee's programme of work were not the only important questions with which it must deal, and any working groups that might be established would have to take that fact into account. Incidentally, it would be preferable at the present stage to set up only one working group to examine the status, scope, functions and powers of the international machinery.

His delegation, acting in a constructive spirit, had based its present intervention on the assumption that the international machinery would be concerned primarily with the exploration and exploitation of the international sea-bed area.

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However, it did not share that assumption, and its position on the matter was set forth in part IV of the draft treaty it had submitted (A/AC.138/53). It favoured a comprehensive approach to the problems of ocean space and looked forward to the establishment, not of a machinery for the exploitation of resources, but of an institutional system capable of coping with all those problems and of effectively promoting the preservation of the marine environment and the development of ocean space resources for the benefit of mankind. That system must be based on a new equitable order in ocean space and on the harmonization of the interests of the coastal State with those of the international community. By its very nature, it could not be subordinated to the United Nations or form part of the United Nations system; however, a formal link with the United Nations system would be useful and it was to be hoped that the two systems would co-ordinate their action when necessary.

His delegation was convinced that unless a comprehensive approach to the problems of ocean space was adopted, it would be impossible to reach agreement on a treaty establishing an international machinery or on the major subjects dealt with by the other Sub-Committees; the result would be anarchy, with all the consequences that that entailed for the development of marine resources, and probably also for international peace and security.

Mr. JOHNSON (Jamaica) said that he recognized the urgency of the Committee's work and would refrain from restating his country's position, which was reflected in the Declaration of Principles and in the 13-Power working paper on the proposed régime. He supported the objections raised by the representative of the United Republic of Tanzania to the proposal that a working group should be established for the purpose of exploring the concept of an intermediate zone, for the application of that concept would be prejudicial to the interests of a large number of States. It was also opposed to the idea of granting licences on the basis of population and gross national product, for that would be inconsistent with the concept of the common heritage of mankind. It was opposed to any system based on licensing for exploration and exploitation, and would prefer those operations to be carried out by an international authority. To that end, the authority would work in conjunction with qualified bodies but would retain

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ownership of and effective control over sea-bed resources in the interest of all mankind. The establishment of such an authority would not complicate negotiations any more than a system of licensing. As to the funds required for exploration and exploitation, the commercial value of the resources in question would amply justify joint ventures. Such ventures could prove as profitable for the operator as any system of licensing, for similar scales could be used to assess margins of profit to be received by the operator and returns accruing to the authority. In any event, the principal virtue of a joint venture was that it ensured the effective control of the authority over all aspects of resource exploration and exploitation. In contrast, under a licensing system the international machinery, having no real regulatory powers, would be at the mercy of States, if not companies.

Those who favoured a licensing system had made provision for responsibilities and obligations to be imposed on licencees, and also for arbitration; however, no indication had so far been found of how the proposed machinery could ensure fulfilment of those responsibilities, or, for example, revoke the licence of a major company of a major Power which had installed elaborate and expensive exploitation equipment. In addition, his delegation feared that some of the States which were in favour of the licensing system would also seek a voting system in the organs of the authority, which would have the effect of paralysing the authority even at the level of decision-making.

In summary, any licensing system which did not provide for effective powers and enforcement machinery in the authority would lead to a neo-colonialist carving-up of the sea-bed. Even if adequate enforcement machinery was established, the cost would be such that it would be preferable to consider a common enterprise.

Mr. van der ESSEN (Belgium) said that his country had been among the sponsors of the Declaration of Principles adopted by the General Assembly in 1970, and that it therefore accepted the logical consequences of that document. According to the first principle, all nations were co-owners of the sea-bed and ocean floor. That common heritage of mankind should be managed by an administrator, who would be chosen from the members of an international or supra-national authority and who would be responsible to States. The membership of that authority

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(Mr. van der Essen, Belgium)

would be a fairly restricted group, composed of representatives of coastal States, States using the high seas and land-locked States. In accordance with the seventh principle, it seemed desirable to allot the greater part of the possible profits to developing countries, but for that, the exploitation of the area would have to be really profitable. The international area should therefore extend as far as possible, and areas under national jurisdiction should be relatively modest. In addition, the authority responsible for administering the international area should have real powers and constitute a machinery "with teeth in it". Nevertheless, if the area turned out to be unproductive because of the limits selected, a costly administration would be superfluous.

Whether the authority should undertake direct exploitation or confine itself to granting licences would also depend on the limits to be established. If the area was suitable for exploitation, the authority should be left to decide which alternative it preferred, in the light of the means at its disposal.

The adoption of modest limits for national jurisdiction would involve the renunciation by coastal States of a theoretical right which they might claim under article 1 of the Geneva Convention on the Continental Shelf. That article, in fact, established no other limit to the extent of the shelf than the very imprecise one of profitability. Consequently, if a State undertook exploitation beyond a limit of 200 metres, that fact proved that the area in which the State was carrying out its activity was profitable. In order to compensate those States for renouncing that theoretical right, it would be useful to consider the concept of an intermediate area, which had been suggested by the representative of the Netherlands (A/AC.138/SC.I/L.9) and, if necessary, establish a working group for that purpose.

Mr. JOSEPH (Trinidad and Tobago) stressed the link between the question of the régime to be set up based on the Declaration of Principles and the question of the international machinery, since the legal and administrative nature of the machinery must necessarily derive from the principles contained in the Declaration. His delegation had already set out its position on the matter in the working document which it had introduced in the Sub-Committee on behalf of the Latin American countries (A/AC.138/49). In that connexion, he drew attention to paragraph 53 (h) of the Committee's report to the twenty-sixth session of the

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General Assembly (A/8421). That paragraph summarized the basic thinking of the Latin American countries: it stressed the need fully to respect the principle of a common heritage and, consequently, to provide the international body which was envisaged with exclusive jurisdiction over the area and its resources: that jurisdiction would take on practical form in activities undertaken jointly with other entities, public or private, and in a refusal to institute a system of licences and concessions which would be inconsistent with the principle of a common heritage. The establishment of the international machinery should be entirely subordinated to recognition that the area was the property of all mankind, a principle which should be clearly set out in the instrument setting up the international machinery. All States were entitled on the basis of sovereign equality to participate in administering and managing the area and its resources. The mechanism to be created should have a life of its own, guaranteed by a distinct legal personality, and must not be a subsidiary organ of any other body. That did not, of course, preclude functional links with organs and agencies of the United Nations system. The international machinery should be endowed with comprehensive powers to ensure the orderly development of the area, rational management of its resources and equitable sharing of benefits. On the question of profits, his delegation reaffirmed that the returns accruing to the international sea-bed authority belonged exclusively to that authority and should be equitably apportioned among all States.

The international machinery should be granted powers enabling it to manage and control all aspects of sea-bed operations at all stages. During the initial phase, the authority would in all probability be co-manager in a system of joint ventures. It should never merely be a grantor of concessions, encouraging licencees to use the common heritage of mankind for their own purposes. That heritage had to be preserved for the generations to come. For that reason, a provision similar to article 16 (e) of the Latin American working paper (A/8421, page 96) should therefore be included in the instrument establishing the authority.

It was also essential that the authority should have the function of directly exploiting the area itself. Some considered that a controversial issue. The proposals submitted by the United States, the United Kingdom, France and the Soviet Union did not conceive the international authority as having the sole right to exploit the area. In contrast, both the Tanzanian and the Latin American

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proposals made provision for the international machinery to engage directly in exploration of the area and exploitation of its resources. The main objection to that proposal was that direct exploitation of the resources of the area would require heavy capitalization, which the authority would not initially be in a position to provide. That did not mean, however, that the machinery should not be given the power to conduct scientific investigations and to exploit the resources of the area, operating either through an agency of its own established especially for that purpose or through arrangements with private or independent contractors. It was those objectives which were covered by article 15 of the Latin American working paper (A/8421, page 96); his delegation considered that such an article should be built into the institutional mechanism of the international sea-bed authority.

With regard to the principle of direct exploitation, the authority should institute a short-term system to achieve its stated objective. His delegation considered that a system of joint ventures was a meaningful way of obtaining that objective, since it would enable the international machinery to develop the skill and expertise necessary for direct exploitation of the resources of the area. It would bring the additional advantage of solving the financial problems connected with direct exploration and exploitation. For that purpose, the authority should establish a subsidiary body which, acting on its behalf, might enter into contractual arrangements with independent entities for exploration and exploitation of the area. Such arrangements would not necessarily involve the authority in initial expenditure, but could simply provide for profit-sharing when commercial exploitation of the resources was begun. It should be noted that, under that system, the authority would have direct access to all operations at all times, and that all the core-samples and specimens taken from the area would become the property of the authority.

The other powers and functions to be granted to the machinery should of necessity include: (a) the study of resource-management techniques; (b) regulations for the prevention and control of pollution; (c) regulations for safety measures and rescue operations; (d) the establishment of marine parks and recreational areas; (e) ocean space planning and development; (f) the regulation of scientific research, particularly from the international point of view;

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(Mr. Joseph, Trinidad and Tobago)

(g) publication and dissemination of information regarding ocean space and its resources; (h) the establishment of reserve areas for later exploitation; (i) the transfer of ocean-based technology to developing countries; and (j) the training of personnel from developing countries in regional oceanographic institutes with a multidisciplinary base. To that list might be added the preservation of the marine environment, the conservation of all the resources of ocean space beyond national jurisdiction and the prevention of unjustifiable interference with navigation and overflight in the area. The international machinery should also include a planning unit which would monitor on a continuing basis the economic effects of the exploitation of sea-bed resources with a view to their preservation and conservation, and which would take measures to ensure that the economies of developing countries were not adversely affected by the exploitation of the resources of the area. The unit should have the authority to control, reduce or even suspend production in the area. It should also undertake studies on production, consumption and marketing trends and initiate action to ensure favourable marketing arrangements for products on which the developing countries depended, in many cases, for the viability of their economies.

He had focused on the chief characteristics of the international machinery and had addressed himself only indirectly to the question at its institutional structure. His delegation reserved the right to return to that point when the Committee established a working group to discuss it in detail.

Mr. RUIZ MORALES (Spain) said that the general principles to be used in resolving major problems of the status of the sea-bed and the ocean floor had been set forth in General Assembly resolution 2749 (XXV). Two fundamental principles, namely that the exploitation of the area must be carried out for the benefit of mankind as a whole and that the developing countries should have priority in the distribution of benefits accruing from such exploitation, had been set forth for the first time in that resolution.

The Committee was now faced with the task of deciding on the composition and structure of the organization that would be responsible for administering the international area of the sea-bed and the ocean floor on behalf of the international community. The organization should, on the one hand, have broad regulatory powers

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(Mr. Ruiz Morales, Spain)

in respect of exploitation of the resources of the area and, on the other hand, should be simple and efficient so that maximum benefit could be derived from exploitation. It would serve no useful purpose to create a highly complicated organization that imposed a heavy financial burden on member States. That would work to the particular detriment of the developing countries and would not be in keeping with the letter and spirit of Assembly resolution 2749 (XXV).

From the various proposals reproduced in document A/AC.138/L.10 it could be seen that the main organs to be established were an assembly, a council, a secretariat and, finally, a tribunal for settlement of disputes.

The assembly should be composed of all member countries of the organization and have the powers necessary to regulate exploitation of the resources of the area. As the supreme body it should also be able to review the work of the other main organs. It would also be responsible for establishing any subsidiary bodies that might be required. Each State would have one vote, and as a general rule decisions would be taken by simple majority; the organization's charter would specify situations in which a larger majority, such as two-thirds, would be required.

The council would be the executive organ and as such would exercise whatever authority the assembly conferred upon it in specific fields. It could also submit proposals of a general nature for action by the assembly. To ensure democratic proceedings, the council's members should be elected by the assembly in a manner that safeguarded the interests of all regional groups and of land-locked countries. Also, non-member countries should be able to participate in the deliberations on questions of direct concern to them. Decisions would be taken in the same way in the council as in the assembly.

The secretary-general of the organization would be appointed by the assembly, and his functions would be conferred on him either by the assembly or by the council. The size of the secretariat would be limited so as not to consume too large a share of the resources of the organization.

A tribunal did not seem to him to be indispensable. On the other hand, a process of conciliation should be established, through the use of a special body composed of technicians and jurists, as circumstances might require. Ad hoc

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(Mr. Ruiz Morales, Spain)

arbitration committees could also be set up to deal with specific disputes. Matters involving international law as such should, however, be referred to the International Court of Justice. Members would be obliged to engage in conciliatory proceedings, but arbitration and judicial proceedings would require the consent of the parties.

Miss TOMATIS (Peru) said that under the 13-Power Latin American working paper (A/AC.138/49), the sea-bed area would be managed by an "International Seabed Authority" which would be a public body established under a universal treaty and given the legal capacity necessary for the exercise of its functions and the fulfilment of its purposes. The universal nature of the Authority meant that it could not come under the United Nations inasmuch as certain States were not United Nations members.

The 13-Power draft did not give the Authority the power to grant licences to explore or exploit the sea-bed to persons, natural or juridical, public or private. The Authority would undertake that type of activity itself, independently, through joint ventures, or through contracts for services with such persons. An international machinery which merely laid down some rules, granted licences, collected royalties and distributed benefits would be very convenient for the major Powers, who would take for themselves the heavy profits derived from the resources of the area. Their representatives termed the Latin American working paper Utopian because they could not reconcile themselves to the idea of giving up, even in part, their monopoly of power, technology and capital, even in the case of resources which they themselves had agreed to consider as the common heritage of mankind.

At the beginning the international Authority would admittedly not have the funds needed to undertake operations itself. However, the income that it obtained through joint ventures or contracts with adequately financed enterprises would eventually enable it to overcome that difficulty. In that regard the Latin American idea resembled the system prevailing in companies or organizations where participants agreed to contribute assets and services towards a collective economic activity and

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(Miss Tomatis, Peru)

then to share the benefits. In the present instance, the international Authority would provide resources and administrative services, on behalf of mankind, the enterprises would provide capital and technology, and the interested States would provide the necessary guarantees.

Two of the functions conferred upon the Authority in the 13-Power working paper deserved special mention. The first (article 14 (e)), which concerned the adoption of measures to protect the economies of raw material-exporting countries, implied that the Authority should adopt a policy that would avoid imbalances in the world mineral market, i.e. in respect of demand for a given commodity. That was why the International Seabed Enterprise was required to submit short and long-term programmes for the approval of the assembly. The second function (article 16 (d)) concerned the priority to be given to the developing countries with regard to the location of processing plants for the resources extracted from the area.

The structure and functioning of the Enterprise had not yet been determined by the sponsors of the draft, but she wished to make some observations of her own on that point.

The assembly, as the supreme organ of the Authority, should be responsible for assigning to the Enterprise the areas that would be explored and, if appropriate, exploited. On the other hand, the Enterprise, through the council, should be able to ask the assembly to allot certain areas to it. Those areas would form a part of its assets and would thus increase its capital. For them to be extended, account would be taken of results obtained and, in the case of exploitation, the kind of product extracted. Distribution of benefits would be carried out by the assembly on the basis of recommendations of the council, taking into account in particular the interests of the developing countries. The Enterprise would be empowered to conclude contracts with persons, natural or juridical, public or private, national or international, or to associate with them in joint ventures. Such persons would be required, for the purpose, to apply to the international Authority through the Enterprise, the final decision being taken by the assembly.

The minimum percentage of participation by the Enterprise in joint venture capital would have to be determined. The Enterprise would have a voice in the management of any new companies thus formed, a voice that should be decisive with regard to the adoption of certain agreements.

(Miss Tomatis, Peru)

As to the Council, its membership should reflect the principle of equitable geographical distribution and it should function along the lines of organs of the United Nations General Assembly - i.e. without weighted voting or permanent members - thus responding to the requirements of an organization set up in conformity with the principles of legal equality among States.

Different proposals had been advanced for the distribution of seats. The Soviet Union, for example, had introduced the concept of legal equality among regional groups, which corresponded neither with reality nor with recognized legal principles. Other delegations had proposed that the seats should be distributed according to the various special interest groups, e.g. the land-locked countries and and the so-called shelf-locked countries. But if one was to begin to draw up such groupings the result would be a mosaic comprising many different categories of countries. It was questionable whether there was justification for introducing any distinctions other than those given in the Declaration of Principles, namely between coastal and land-locked countries and between developed and developing countries.

In conclusion, her delegation felt that it would be premature to close the debate on the question of international machinery. Certain of its aspects should be discussed in more detail, which could be done during the first week of the following session.

Mr. Ranganathan (India) took the Chair.

Mr. JAYAKUMAR (Singapore) said that the question of limits, of which his delegation had already spoken in connexion with agenda item 1, was also of crucial importance in relation to the organs of the international machinery (item 2). If the extent and the economic importance of the area to be administered were slight, a simplified machinery would be sufficient. If they were not, the situation would be very different. In view of the close relationship between the question of limits and the international régime and machinery, the various proposals concerning those limits should be appraised. In that regard, it would be advisable that the Secretariat should be requested to prepare a study on the economic implications and significance of those proposals, in the light of existing data and knowledge, so that it could be taken up by the Sub-Committee at its coming summer session. That document would complement the one which the Secretariat had prepared concerning

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(Mr. Jayakumar, Singapore)

the possible impact of sea-bed mineral production on world markets (A/AC.138/36), in which it had stressed the importance of the final delimitation of the area.

As to the international machinery, there should be two principal organs: an assembly, in which all States parties would be represented and which would meet every two or three years, and a council so composed as to present various interests, such as those of coastal States, land-locked States and the developing countries. The assembly would decide general questions of policy while the council would be responsible for implementing them and administering the international régime; the latter would also have the authority to establish specialized committees. The procedure should be simple and promote efficiency. In addition, the treaty should specify procedures for settling disputes. Some innovation might be necessary in that area since the disputes might involve more specialized questions than those before the International Court of Justice.

The international machinery should have the authority either to undertake exploitation of resources on its own, to do so in collaboration with other bodies or to grant licences to States or corporations, on the understanding that its exclusive and supreme authority would never be compromised. The question was not whether it would be able to undertake exploitation in the near future but whether it should have the right to do so when it could. That right should be given to it in the treaty, which should simply state broad principles concerning exploration, exploitation and management of the resources. The details would be worked out by the council and would be the subject of rules and regulations approved by a two-thirds majority of the assembly; those rules and regulations would be binding on all member States.

In the sharing of the benefits, which included not only financial benefits but also raw materials and technical know-how, the handicapped position of the land-locked and shelf-locked States should be borne in mind. The benefits would be divided into two portions, one for the developed countries and the other for the developing countries. The latter portion should be much greater, in accordance with principle 9 of the Declaration, and also because the developing countries far outnumbered the other countries. The exact ratio would have to be negotiated. Each portion would be distributed among member States according to the size of their

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(Mr. Jayakumar, Singapore)

populations and their average per capita income, with adjustments being made in favour of land-locked States, shelf-locked States and coastal States with no continental shelf. The distribution arrived at should be reviewed every five years.

The problems of land-locked countries were linked with the need to cross the territory and territorial waters of coastal States and would be influenced by the régime and international machinery to be established. It was imperative that the treaty should declare that a land-locked State had the right of transit or access through the territory, the internal waters and the territorial sea of the coastal State to the international sea-bed area for the purpose of exploring and exploiting the resources of the sea-bed. The details could be worked out on a bilateral basis, but it would be preferable if the international machinery recommended the kind of arrangement to be concluded, as suggested in the 7-Power working paper.

Mr. Engo (Cameroon) resumed the Chair.

Mr. LEVY (Secretary of the Sub-Committee) explained that the Secretariat would have considerable difficulty in preparing the study referred to the representative of Singapore. At the moment it would seem impossible to have the study ready for the summer session. Moreover, the Secretariat was already preparing a report to supplement the previous year's report and hoped to submit it six weeks to two months before the summer session.

Furthermore, in view of the resources available to it, the Secretariat would probably not be able to produce the suggested study without the help of consultants; that would involve financial implications which would necessitate a decision by the Sub-Committee.

The meeting rose at 6 p.m.

SUMMARY RECORD OF THE FORTY-FIFTH MEETING

Held on Tuesday, 28 March 1972, at 11 a.m.

Chairman:	Mr. ENGO	Cameroon
later,	Mr. RANGANATHAN	India
later,	Mr. THOMPSON-FLORES	Brazil

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (continued):

Mr. CORALCZYK (Poland) said that the position of his delegation on the item under discussion had been stated in the working paper it had submitted to the Committee at its last session (A/AC.138/44). At present he wished to add only a few observations on certain specific points.

With regard to the functions and powers of the international machinery, his delegation was of the opinion that the competence of the international machinery should be confined, in principle, to the problems of exploration and exploitation of the mineral resources of the area beyond the limits of the continental shelf. For the reasons it had stated at Geneva, his delegation was opposed to direct operational activities by the international organization. In its opinion, a licensing system would be the most suitable scheme to ensure international management of the exploitation of the mineral resources of the area. If properly conceived, the licensing system should satisfy the legitimate needs and aspirations of the developing countries, as well as those of other countries which, like Poland, did not at present possess the technology and the capital to undertake exploration and exploitation of the resources of the area.

With regard to the scope of the functions and powers to be attributed to the international machinery, the Polish proposal provided for several developmental stages. That proposal had been supported by certain delegations and at the present session by the Colombian delegation among others. Such an approach to the function and powers of the organization could serve as a compromise solution which would facilitate agreement on the matter.

Various proposals had been put forward concerning the voting system to be adopted in the international machinery. In his delegation's view, the voting system should be conceived in such a way as to safeguard the legitimate interests of all States and groups of States. No group should be placed in a position in which it might be dominated by another group or coalition of groups. The Polish working paper supported the application of the principle of consensus as broadly as possible in the executive bodies; at the same time, it proposed that the main executive body, the Council, should apply a group voting system. Under that system the adoption of a decision would require not only a specified majority of

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(Mr. Goralczyk, Poland)

votes of member States but also a certain minimum number of votes from each group of States. It should be emphasized that the Polish scheme did not envisage special privileges for any State or group of States: accordingly, no provision for weighting votes or extending the right of veto to particular States had been made.

A precise definition of the territorial scope of the activities of the international organization was a prerequisite for its establishment. The work of the Sea-Bed Committee was based on the assumption that there existed an area of the sea-bed which was not subject to the sovereign rights of coastal States. Proposals had been advanced in favour of establishing a 200-mile limit or putting the entire continental margin under the jurisdiction of the coastal State. If those proposals were accepted, the most valuable resources, i.e. petroleum and natural gas, would fall under the jurisdiction of the coastal State, and the role to be played by the international organization would be substantially diminished. Discussion of the functions and powers of the proposed international organization would to a large extent depend on the definition of its territorial scope. In that regard the Polish working paper proposed a combination of distance and depth criteria, the distance proposed being the average width of the continental shelf. Whatever criteria were finally adopted, it was important to start a serious discussion of the problem, which should be given priority among the problems relating to the international machinery.

In conclusion, he wished to say a few words about the next stage of work on the item under discussion, concerning which the Chairman had made several observations at the 40th meeting. First of all, it might be advisable not to set up a working group to deal with the question of international machinery until the Working Group on the international régime had reached some conclusions on the main issues before it, namely, the problems of the status, scope and basic provisions of the régime. Secondly, the six specific topics included in the item under discussion were very diverse, and it would be difficult for just one working group to deal with all of them adequately. It would therefore seem preferable to set up two, three or even four working groups. Some of the topics were closely linked and might be allocated to the same working group. That was the case with subitems (a) and (f) and similarly with (c) and (d), which might further be linked with subitem (e).

Mr. Ranganathan (India) took the Chair.

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Mr. ESPINOSA (Colombia) recalled that in his statement at the 39th meeting of the Sub-Committee he had touched on the question of international machinery. He would like now to amplify those remarks in light of the observations made by the United Kingdom representative at the 41st meeting. In particular, he would attempt to explain how the International Sea-bed Enterprise envisaged in the Latin American working paper (A/AC.138/49) would obtain the initial funds necessary for collective development of the area which was the common heritage of mankind.

The United Kingdom representative had said that direct exploitation of the minerals of the area would require the investment of thousands of millions of dollars and that it would not be realistic to suppose that the international capital market or the States parties to the convention would be able to subscribe sums of that magnitude to the future authority. The Latin American working paper did not envisage any such "subscription", and his delegation last August had answered the "high initial costs" argument used by delegations opposing the system of direct exploitation (A/AC.138/SC.I/SR.22). On that occasion it had proposed that investments should be channelled through the authority to enable the international enterprise to become operational. What was intended, however, was something quite different from a "subscription" of capital to the enterprise. The United Kingdom representative had also argued that if the international authority was to set aside thousands of millions of dollars from the revenues it acquired from licensee States in order to amass the capital for direct investment, the States parties could not expect a worth-while distribution of benefits for years to come. In saying that, he had overlooked the fact that the developing countries would willingly make the sacrifice of postponing the distribution of benefits to strengthen the common heritage which in large part was theirs. Only by making such a sacrifice could the developing countries ensure that the powers that be would not continue to appropriate for their own use that which belonged to everyone. The United Kingdom representative, in defending his proposal for exclusive licences and quotas, had also neglected to indicate where the developing countries would obtain the capital necessary to utilize the quota allotted to them. Perhaps he had taken it for granted that the States where capital and advanced technology were in short supply would be content to postpone indefinitely the use of their quotas while others, with the power to do so, would exploit the common

(Mr. Espinosa, Colombia)

heritage of mankind; or perhaps he had intended that the developing countries should enter into some arrangement with industrialized countries or powerful corporations which would give them direct access to imported technology and know-how. Neither postponement of their rights nor such arrangements would receive the support of the majority of the States represented in the Sea-Bed Committee, which were prepared to make sacrifices to establish and augment a collective capital fund but would not wait patiently for decades to benefit from one-sided licensing schemes which were at variance with the principles enunciated in General Assembly resolution 2749 (XXV).

It was hard to understand why the concept of joint ventures and contracts proposed in the Latin American draft was criticized by those who were suggesting similar arrangements which however, would place the developing countries at a disadvantage in relation to rich and powerful corporations. It had been said that under the various licensing schemes the developing countries would have access to foreign technology: that was all very well in theory but in practice only direct negotiations between the international enterprise and the developed countries or their corporations could guarantee such access. In that connexion, it should be pointed out that all of the drafts before the Sub-Committee provided for transfer of technology to the developing countries and adequate training of personnel from those countries.

The Latin American working paper on the sea-bed régime gave full expression to the intent of General Assembly resolution 2749 and 2750 (XXV). Article 3, for example, provided that: "Exclusive jurisdiction over the area and administration of its resources shall be exercised on behalf of mankind by the Authority established under this Convention". Articles 15 and 33 also contained key provisions relating to the system of contracts and joint ventures and the functions of the international machinery. The Latin American draft did not envisage the granting of licenses as a permanent feature, which would have the effect of perpetuating conditions of injustice that should be eliminated once and for all. In authorizing the establishment of a system of contracts and joint ventures, the

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(Mr. Espinosa, Colombia)

Latin American draft met the need to attract investment funds; unlike other drafts which envisaged direct exploitation, the Latin American draft did not authorize the granting of licences in the initial stage when the international enterprise's operating capital was still being accumulated, but only a system of contracts for services and joint ventures which the international authority could continue for an indefinite period to conclude. It was obvious that in the initial contract for services, conditions would have to be such as to attract wealthy corporations and States to invest capital which the international enterprise would lack at the outset. Similar inducements would have to be offered to join ventures in the first few years when the international authority would not have sufficient resources for substantial investments.

Precedents for the concept advanced in the Latin American draft could be found in the joint ventures set up to prospect for and exploit hydrocarbons in various developing countries. That system might well be extended to the exploration and exploitation of sea-bed resources. In the developing countries there were, as a rule, State enterprises which dealt with all aspects of the petroleum industry. States acted through them just as the international authority would act through the international enterprise in managing the common heritage of mankind. When State enterprises decided to open a particular area to prospecting with a view to future exploitation, they solicited bids from interested companies. The contracts for the prospective joint ventures included a clause in which both parties agreed to engage in prospecting and exploitation while sharing the costs and risks thereof in an agreed proportion. The properties acquired and the hydrocarbons extracted were similarly shared in accordance with the previously agreed percentages. The company entering into a contract with the State enterprise undertook to invest, at its own risk, a minimum sum over a period of years in prospecting for hydrocarbons. The company engaged in prospecting was required to share with the State enterprise all geological and geophysical information which it obtained; plans for drilling and the results of exploratory drilling must likewise be communicated as well as any study or report prepared

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(Mr. Espinosa, Colombia)

by the company concerning the area covered by the contract. For its part, the State enterprise reserved the right to oversee all operational activities and to verify information supplied to it. If petroleum was discovered in commercial quantities, areas were set aside for exploitation in accordance with the terms of the contract. If it agreed to commercial exploitation, the State enterprise participated in the development of the field and repaid the company a percentage of the costs incurred in drilling and completing wells to be used for commercial production. The repayment was made by the State enterprise in money or petroleum, at its option, after agreed-upon dividends and royalties were deducted. The wells became the property of the mutual fund in which the State enterprise and the company concerned participated in agreed shares. It should be noted that only after commercially exploitable petroleum was found did the State enterprise assume the obligation to pay a percentage of the costs incurred in prospecting and it could pay its share with the petroleum produced from the wells drilled by the company.

The private company was referred to as the "operator" and could appoint a manager with the consent of the State enterprise. A board of directors consisting of representatives of the State enterprise and of the private company approved or rejected the annual programme of operations and the budget. The venture periodically received contributions from the State enterprise and the company in accordance with the programme and the budget and in conformity with the established percentages. If the State enterprise lacked resources its percentage contribution could be slight, and its share in the profits would accordingly be reduced. The State enterprise could, however, obtain financing enabling it to increase its contribution to specific projects.

It should be emphasized that the private companies did not "subscribe" funds to the State enterprise; rather, they contributed a percentage to finance agreed projects. Similarly, States or companies which decided to collaborate with the international enterprise in particular projects would be investing capital to further those projects, not "subscribing" to the international enterprise.

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Under the joint ventures to which he had referred, the State enterprise received a royalty equivalent to a percentage of production agreed in the contract. Thus, the State enterprise received a share of the yield in return for its investment and a share as the owner of the resources exploited. Such contracts were valid for a maximum of 31 years - up to 6 years for exploration and up to 25 years for exploitation - after which the State enterprise took over the facilities and operations without charge and assumed the rights provided for in the contract.

Such arrangements certainly were not unrealistic and there was no reason to discount the possibility that similar associations could yield satisfactory results on a world-wide scale, thereby bringing the common heritage of mankind within the grasp of all. States and companies alike could provide capital and technology for the exploitation of hydrocarbons, manganese nodules and other resources, including the living resources, of the sea-bed.

In view of the foregoing considerations, his delegation did not attach the same importance to a licensing system as did some others. There were better ways of achieving the desired end. It was essential to bear in mind that General Assembly resolution 2749 (XXV) had been adopted and could not be ignored or contravened.

His delegation rejected the arguments still advanced by some delegations from industrialized countries whereby the guidelines for the international machinery consisted of arrangements which perpetuated or established certain privileges. That would be contrary to the "common heritage of mankind" concept. Although it would not be easy to reach agreement on such complex matters, the difficulties would gradually disappear as States demonstrated their determination to follow the guidelines worked out within the United Nations.

Mr. Thompson-Flores (Brazil) took the Chair.

Mr. AL-QAYSI (Iraq) said that the international machinery to be established under the régime should be of a universal character, and its scope should correspond to, if not be identical with, that of the international régime. Moreover, the machinery should be an autonomous organization endowed with full international legal personality.

Two approaches to the functions and powers of the international machinery had emerged in the Sub-Committee. The developed and technically advanced countries appeared to favour the establishment of a mere licensing authority, whereas the developing countries advocated an agency with wider powers which could itself carry out exploration and exploitation.

Despite the clash of interests which those two approaches reflected, accommodation was still possible. The Declaration of Principles contained in General Assembly resolution 2749 (XXV) demonstrated the collective political will of the vast majority of nations. There did not appear to be any disagreement that the key concept in the Declaration was the principle that the sea-bed and ocean-floor beyond the limits of national jurisdiction constituted the common heritage of mankind. It was thus difficult to envisage any process whereby a purely mercantilist laissez-faire system of licences could be reconciled with that concept. Nevertheless, the machinery could not be expected to operate at full strength from the outset.

The machinery should be endowed with comprehensive powers to manage, administer, supervise, control, explore and exploit the resources of the international area. Some type of licensing system would be required during the early stages of operation; however, it should in no way compromise the comprehensive powers of the authority.

There appeared to be wide agreement within the Sub-Committee on the more particular question of the types and functions of the organs of the international machinery. For those organs to be effective, all interests involved should be equally represented, and none should have the power of veto. Procedures should be sufficiently flexible to avoid wasting money by a delay in settling disputes.

His position on subitem (b) was that the international machinery should actively engage in scientific research for the exploration and exploitation of the area. It was also essential to provide adequately for the transfer of

(Mr. Al-Qaysi, Iraq)

technology to and the training of nationals of the developing countries. Particular attention should be paid to the interests and needs of the developing countries, whether landlocked or coastal, in respect of subitem (c). He endorsed the view expressed at the 43rd meeting by the representative of Kuwait concerning subitem (d), and stressed the need to remedy the inequities of nature with regard to (e).

Finally, the authority should operate as far as possible within the United Nations system.

Mr. FRANGOULIS (Greece) said that the proposed sea-bed authority should collaborate with existing international institutions for the purpose of strengthening and expanding international co-operation. The international machinery should be empowered to make full use of the common heritage of mankind for the benefit of the international community without assuming duties already entrusted to other bodies. A precise definition of the scope and powers of the authority was therefore required to avoid duplication of work or overlapping jurisdictions.

The exploitation of the resources of the international sea-bed area should take into account the opportunities for increased prosperity offered by modern technology. Sea-bed exploitation constituted a new element in the world economy which could best be promoted under the auspices of an international organ. That body should confine its activities to those prescribed in the relevant General Assembly resolution and should not become involved in economic activities conducted in superjacent waters.

The authority's functions should include the maintenance of peace and order, the issuance of licences and concessions, the collection of royalties and taxes, the enforcement of safety and anti-pollution regulations, the conduct of scientific research and the protection of archaeological and historical discoveries.

The authority should have the status of a United Nations agency and should conduct its activities in accordance with the letter and spirit of the Charter of the United Nations. Moreover, its activities should not interfere with generally and traditionally accepted principles regarding the freedom of the high seas and in particular, should not impede navigation or fishing or cause pollution or damage to animal or plant life.

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(Mr. Frangoulis, Greece)

Turning to the make-up of the proposed authority, his delegation agreed with the suggestion that no exception should be made to the generally accepted rules regarding the structure of independent, self-supporting organizations. Provision should be made for an Assembly, a Council and a Tribunal. Such a three-way distribution of power would best serve the purposes of the machinery. It would enable States to share equitably in the common heritage, with particular emphasis being placed on the special needs and interests of the developing countries. In addition to adequate revenue-sharing, it was also necessary to ensure that sea-bed exploitation did not adversely affect the production of certain minerals in developing countries and the position of their exports on world markets. Every effort should be made to avoid a cumbersome or bureaucratic structure.

The proposed machinery should keep pace with the exigencies of international life. It should not upset the existing order of international co-operation in any area, but should instead function in a spirit of conciliation and understanding for the benefit of the international community.

Mr. KALONJI TSHIKALA (Zaire) said that, inasmuch as the various aspects of the law of the sea were very closely interrelated, his intervention would also touch upon matters falling within the competence of the other Sub-Committees. His delegation attached the highest importance to paragraphs 7 and 9 of the Declaration of Principles contained in General Assembly resolution 2749 (XXV), which would enable all countries - including developing countries and those which are land-locked, shelf-locked or which had short coastlines - to enjoy their rightful share of the resources of the sea.

The principle that the exploration of the area and the exploitation of its resources should be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, implied not only that all States should have the right of access to those resources, but also, that they should be guaranteed the right to benefit therefrom. The Belgian representative had observed that the right of access to the sea, in the case of land-locked States, was an imperfect right, since enjoyment of it depended on the conclusion of an agreement with the transit State. The obligation to negotiate was not, however, equivalent to an obligation to conclude an agreement (A/AC.138/SC.I/SR.42).

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(Mr. Kalinji Tshikala, Zaire)

That also applied to shelf-locked States, since for then access to the international area must be over the continental shelf or through the territorial waters of another State. Guaranteed access was crucial to the developing countries, some of which - particularly those in Africa - were in a hostile political environment. Such a guarantee would also give the concept of the common heritage of mankind its full meaning. Moreover, its inclusion in an international treaty of a universal character would not jeopardize the sovereignty of transit States, inasmuch as the modalities governing the right of transit would be negotiated in bilateral or regional agreements and would protect the legitimate interests of all concerned.

The international régime to be established pursuant to paragraph 9 of the Declaration of Principles could eventually be expected to produce revenue. The developing countries had neither the capital nor the advanced technology required to exploit the resources of the area themselves, and were therefore obliged to turn to the international authority to safeguard their interests. In order to derive maximum benefits from the area, it must be as large as possible and include exploitable resources. Accordingly, areas under national jurisdiction should be reduced to a minimum. The orderly and safe development of the area and the equitable sharing by States in the benefits derived therefrom were at stake.

The international machinery should be endowed with real powers enabling it to be actively functional and respond to real needs. Bureaucracy was to be avoided.

The exploitation of the resources of the area could be carried out directly by the authority or indirectly by States (not private entities), which would be granted licences under the authority's supervision. The granting of licences must not jeopardize the orderly and safe development and rational management of the area and its resources or the expansion of opportunities in the use thereof. The areas exploited under licence would not be too vast, nor would they be reserved exclusively for certain States. The developing countries stood to benefit from a quota system, under which they would have priority in areas of the sea-bed near their coasts.

The benefits to be derived from the area should be shared in such a way - for example, on the basis of a country's gross national product, the size of its population and its geographical location with respect to the sea - that the

(Mr. Kalonji Tshikala, Zaire)

poorest countries, the most densely populated countries and those furthest from the sea would receive a proportionally larger share of the benefits. A portion of the income derived from the exploitation of the international area could be deposited in a joint fund which would be used to finance technical assistance projects for training in developing countries.

A major function of the international machinery to which the developing countries attached considerable importance would be control over production and markets aimed at avoiding fluctuations in the prices of raw materials which could adversely affect developing countries which traded in land-based resources. The Republic of Zaire, as a producer of cobalt, manganese and copper, would be watching with keen interest the economic impact of the exploitation of marine resources. Land-locked and shelf-locked developing countries were particularly vulnerable, since the exploitation of those resources was conducted in very deep areas of the sea-bed, and not on the continental shelf under the jurisdiction of the coastal State. There was thus all the more reason to ensure that they received a larger share of the income and played a more effective part in the activities of the machinery. The authority would exercise control over the production of raw materials by placing restrictions on the granting of concessions, pre-empting a share of the yield, or imposing a stabilizing tax.

The organs of the international machinery should comprise an Assembly consisting of all member States, a Council whose membership - numbering at least 35 - would be representative of all interests and geographical characteristics, a mechanism for the settlement of disputes and a secretariat, which latter, in addition to its administrative duties, would have the responsibility of assisting developing countries.

A solution must be found to the thorny problem of limits before the international régime and machinery could prove viable. Similarly, such concepts as intermediate trusteeship zone and economic zone had meaning only in relation to well-defined limits. As noted earlier, any attempt to restrict the scope of the international régime and its machinery should be rejected. Moreover, any undue extension of the limits of national jurisdiction would be a severe blow to the developing countries. However, his delegation did acknowledge the need for developing coastal States to establish safety zones, in accordance with realistic

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(Mr. Kalonji Tshikala, Zaire)

safety and economic considerations. It also agreed with the representative of Singapore (A/AC.138/SC.I/SR.44) that the Secretary-General should be asked to prepare a study of the economic implications and significance of the various limits which had been proposed.

Mr. MAHMOOD (Pakistan) said he favoured an international sea-bed authority with sufficiently extensive jurisdiction to ensure rational exploration, conservation, exploitation and development of both the mineral and living resources of the sea-bed and ocean floor beyond the limits of national jurisdiction. The international authority should not be merely a licensing or supervisory body, but should engage in operational activities directly or through joint ventures.

As generally agreed, the international machinery should consist of four organs. The first would be the assembly, a policy-making body open to all member States. Its decisions would be implemented by an executive council on which all types of States, whether developed or developing, land-locked or coastal, should be adequately represented. Decisions in the executive council should be taken on the basis of one State, one vote. There should also be a secretariat, with access to the work of marine scientists throughout the world, and finally, a judicial organ whose procedure for the settlement of disputes might include conciliation, followed by compulsory reference to the International Court of Justice.

To enable all States to share equally in its work, the international authority would, in the initial stages, have to provide technical assistance and training to the developing countries. The authority would also have to ensure, by constant supervision and any necessary action, that the exploitation of the mineral resources of the sea-bed did not adversely affect those developing countries whose economy was dependent on primary mineral production. The universal nature of its tasks and composition made it logical that the international sea-bed authority should be a United Nations body working in close co-operation with organizations within and outside the United Nations system.

Reverting to the concept of an intermediate zone introduced by the Netherlands delegation in document A/AC.138/SC.I/L.9, he recalled that the Geneva Convention on the Continental Shelf described national jurisdiction as extending to the point at which the sea-bed and ocean floor admitted of exploition. It was clear, however,

(Mr. Mahmood, Pakistan)

from paragraph 3 of document A/AC.138/SC.I/L.9 that the concept of an intermediate zone reduced the existing legally recognized rights and powers of coastal States. For that reason, his delegation was opposed to the concept of an intermediate zone and to the establishment of a working group on that matter. His view was that national jurisdiction should extend to a uniform distance of 200 miles from the coast, with all remaining areas of the sea-bed being controlled by the international authority.

Mr. ROSTOV (Bulgaria) said that the question of the status, scope, functions and powers of the international machinery was a highly complex one and that proposals so far made concerning the machinery could be divided into two groups. The first consisted of proposals to create international machinery which would itself have the facilities to explore, exploit and market the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction. The second group consisted of proposals for the creation of international machinery which would be responsible for organizing, co-ordinating, directing and controlling the exploration and exploitation of those resources on the basis of international co-operation between all States.

His delegation had already stated that the first type of international machinery was unacceptable for political, legal and practical reasons. Firstly, any international organ which sought to be viable and efficient must bear in mind the differing political outlooks and degrees of technological development of participating States. Secondly, it was politically unacceptable that an international body, such as the proposed supranational machinery, should be established to control individual States, whose sovereign interests should always come first.

The concept of supranational machinery called for an international body with exclusive jurisdiction over the sea-bed and the management of its resources. At no point in the Declaration of Principles (General Assembly resolution 2749 (XXV)) was there any call for States to abdicate their rights to explore and exploit the resources of the international area in favour of the future international machinery. Indeed, the Declaration stated in paragraph 6 that "States shall act in the area in accordance with the applicable principles and rules of international law",

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(Mr. Rostov, Bulgaria)

and again in paragraph 12 that "in their activities in the area, including those relating to its resources, States shall pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as of all other States which may be affected by such activities".

Apart from such objections on legal and political grounds, he could point to a series of organizational problems which would result from the establishment of such an international body. Thus, even if the international machinery were at some stage able to finance itself by utilizing the profits from the sale of resources of the international area, it would initially require capital investment. There would then be a risk of its becoming a mere extension of one of the large capitalist companies. There would also be the problem of managing the financial resources of the machinery in such a way that the common heritage did not become a burden for the international community.

It was clear that a more moderate and pragmatic approach was necessary. What was required was international machinery responsible for and capable of the organization, co-ordination, management and supervision of the exploration and exploitation of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction in the interests of the international community, with special attention being paid to the interests of the developing countries. His delegation, therefore, favoured the approach in the working paper submitted by Poland (A/AC.138/44). The international authority should ensure that all States had an equitable share in the exploration and exploitation of the mineral resources of the international area and in the profits derived from such activities. It should also lay down and enforce technical standards for such exploration and exploitation and prevent any danger to the marine environment or human life.

His delegation was convinced that the international machinery should be a full member of the United Nations family, with the status of an intergovernmental organization. It should have the right to conclude agreements, dispose of property, assume international responsibility and enjoy the legal capacity, privileges and immunities provided for in Articles 104 and 105 of the United Nations Charter. It should also have all such power within the territories of its member States as was necessary for the accomplishment of its tasks.

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(Mr. Rostov, Bulgaria)

Finally, he recalled his delegation's wholehearted support for the idea expressed in article 23 of document A/AC.138/43, submitted by the Union of Soviet Socialist Republics, namely, that the decisions of the Executive Board of the international machinery should be taken by consensus. Some delegations were inclined to interpret that proposal as establishing the right to a veto. As his delegation had already pointed out at Geneva, there were fundamental differences between the right of veto and the principle of decision by consensus which implied respect for the rights of all States, and particularly of the smaller States. It was obvious that the international machinery would be ineffective unless it obtained the support of all its member States, whatever their degree of development, by adopting the equitable principle of decision-making by consensus.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE FORTY-SIXTH MEETING

Held on Tuesday, 28 March 1972, at 3.25 p.m.

Chairman:	Mr. ENGO	Cameroon
later,	Mr. RANGANATHAN	India
later,	Mr. THOMPSON-FLORES	Brazil

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (continued)

Mr. OGISO (Japan) said that the international machinery should be both effective and practical; in other words, it should be neither elaborate nor expensive. Hence, its role should be that of a regulatory body for licensing the development activities of the international sea-bed. It should also be truly international and its principal organs should be so composed as to make it possible for all member States to express their views.

The Japanese draft Convention (A/AC.138/63) suggested the establishment of four principal organs: An Assembly, a Council, a Tribunal and a Secretariat.

The Assembly would be the supreme organ. It would have the powers, among others, to elect the members of the Council, to receive, consider and approve the Council's reports and to approve the budget of the international machinery; it would be able to suspend member States from the exercise of their rights and privileges and take decisions on any matter referred to it by the Council. It would be composed of all member States, each with one vote. The Assembly would take its decisions in principle by a majority of the members present and voting but his delegation would be ready to consider other suggestions on that point.

The idea of associate membership put forward by Malta, although it appeared to be hardly acceptable at first sight, deserved further consideration.

The Council would have the task of establishing rules and procedures with regard to the issuance of exploration and exploitation licences; the collection and distribution of revenues from licence fees, rental fees and royalties; the prevention of pollution resulting from the exploration and exploitation of sea-bed resources; the supervision of resource development activities in co-ordination with national authorities; and any other matter necessary for the development of sea-bed resources.

In order to ensure the effective operation of the machinery, the Council should not be too large: a membership of 24 was proposed in the Japanese paper. Its membership would be determined with due regard for the interests of all groups of countries: developing countries, land-locked or shelf-locked countries, coastal States and developed countries. It seemed reasonable to suggest that special provisions might be drafted for a group of countries with highly developed

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(Mr. Ogiso, Japan)

sea-bed exploitation technology which would thus be able to contribute substantially to the future work of the international machinery and make it genuinely viable. The Japanese paper proposed that six member States with highly developed technology should be regularly designated in accordance with rules and procedures to be established. However, the interests of the developing countries would be amply safeguarded because, among the 18 elected members, at least 12 would be developing countries; moreover, in the actual allocation of seats, based on the principle of equitable geographical distribution, the number of such States would probably be higher. The interests of land-locked or shelf-locked countries would also be safeguarded for they would have three seats on the Council. Members of the Council would each have one vote and there would be no veto, although it might be desirable to take major decisions by consensus.

Turning to the procedure for the settlement of disputes, he felt it essential to establish a competent and independent Tribunal for the settlement of disputes arising from the exploration and exploitation of sea-bed resources. However, in order to minimize the financial burden, it would perhaps be premature to set up an elaborate institution for the settlement of disputes. The Japanese paper therefore proposed (para. 37) an ad hoc arbitral Tribunal consisting of three arbitrators, two of whom would be designated by the respective parties to the dispute, who would in turn jointly choose a third arbitrator to act as Chairman. Each Contracting Party would be entitled to nominate one member for the role of arbitrator. The Tribunal would be responsible for deciding any dispute relating to the interpretation or application of the Convention or any other matter within the scope of the Convention. However, the importance of the International Court of Justice in settling legal questions arising out of activities in the international sea-bed area should not be neglected. The Japanese paper therefore left room for some disputes to be referred to the International Court if the Parties so agreed.

The Secretary-General would perform such functions as were entrusted to him by the Council. They might pertain, for example, to the issuance and revocation of licences or to the handling of emergency cases.

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(Mr. Ogiso, Japan)

Turning to the manner in which the international machinery would govern activities for the exploration and exploitation of sea-bed resources, he explained that the method recommended in the Japanese draft would be the licence system.

The international machinery would issue licences only to member States, which could then issue sublicences to operators. The machinery would receive from licensees royalties on production, in addition to licence fees and rental fees. It would not be involved directly in industrial or commercial activities since such activities were already being carried on by a number of private or national enterprises. It would be confined to a supervisory and regulatory role, more suitable to its position as guardian of the common heritage of mankind.

Developing countries should have not only a substantial share in the benefits derived from sea-bed exploitation but also an equal opportunity to participate in exploitation itself. The Japanese draft Convention proposed to establish a system whereby all States Parties would be entitled to an equal number of licences for exploration and exploitation. Any State which had obtained a licence could conduct exploration and exploitation activities itself or could issue sublicences to public corporations, private enterprises or other entities within its jurisdiction. Foreign companies would thereby be excluded, but States lacking financial and technological capabilities could invite a competent entity from a third country to be incorporated as a company domiciled in their own countries and grant sublicences to such a company.

The exploration licence and the exploitation licence would be exclusive. The idea of non-exclusive exploration licences had been discarded to avoid possible conflicts. The rights of operators engaged in exploration would be duly protected (para. 20 (4)) because no exploitation permit would be issued for an area in respect of which an exploration licence had already been granted.

The international machinery would be entitled to supervise all development activities in the international sea-bed area in order to determine whether such activities were in compliance with the international Convention and with the terms of specific licences. Each Contracting Party could carry out inspections in order to supervise the activities of its sublicensees (para. 16). It might be advisable to have a provision for co-ordinating such supervisory action by the international machinery and the Contracting Parties.

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(Mr. Ogiso, Japan)

Licences would be issued on a first-come first-served basis and lots would be drawn if applications were submitted on the same date. The duration of an exploration licence would be two years and they might be renewed three times at the maximum. The duration of an exploitation licence might be about 15 years and it might be extended for a limited period.

Licensees and sublicensees would be expected to start operations within a reasonable period, for example, within one year from the date of issuance of the licence. There should be no suspension from operations over a period exceeding two years under an exploration licence and three years under an exploitation licence. Violations of those rules or the failure to pay fees and royalties would involve revocation of the licence. For their part, licensees could relinquish their licences whenever they wished to give up operations.

Paragraph 10 of the Japanese draft stated that, prior to the start of an operation, a licensee Party should inform the international machinery of a work plan whereby measures were specified for the purpose of ensuring the safety of human life and the protection of the marine environment. Paragraph 11 stressed the responsibility of the licensee to minimize possible conflicts with other users of the sea-bed and the marine environment.

The question of liability was not clearly defined in paragraph 14 of the Declaration adopted by the General Assembly and was left for further elaboration. The principle of absolute liability of States might impose too heavy a burden, particularly in the case of developing countries which might invite foreign companies to be incorporated as companies within their own territory. The tentative view of the Japanese delegation was that operators should be liable for damages caused by their sea-bed activities. The whole question of liability gave rise to a series of legal problems. It might therefore be appropriate to deal with that question in a separate convention. Naturally, the Contracting Parties to the Convention on the sea-bed régime would also become parties to the treaty on liability.

As to the relationship between the international machinery and the United Nations, the Japanese working paper envisaged that the former should submit reports on its activities periodically to the appropriate organs of the United Nations. It would also, through the Secretary-General of the United Nations,

(Mr. Ogiso, Japan)

be able to bring any matter to the attention of the Security Council, as the organ bearing primary responsiblity for the maintenance of international peace and security.

He feared that transitional machinery of the type outlined in the working paper submitted by the Canadian delegation (A/AC.138/59) might become permanent or semi-permanent. If, as envisaged in the paper, each coastal State could define arbitrarily the extent of the continental shelf over which it claimed national jurisdiction, the sea-bed area might cease to be of any economic interest. That would be a serious danger for the international community as a whole. If transitional arrangements of that kind were adopted, it would become still more difficult to arrive at a final decision on the limits of the international area.

Mr. ZAVOROTKO (Ukrainian Soviet Socialist Republic) noted the interest shown by many delegations in the setting up of an international sea-bed machinery. The status and the nature of that machinery should be based on the régime for the international area of the sea-bed and the principle of universality. That would increase its efficiency and make possible a rational use of the mineral resources of the sea-bed for the benefit of all mankind. All States must therefore be free to participate in the future international organization. His delegation favoured the idea of a steadily developing organization as described in detail in the working paper submitted by the delegation of Poland (A/AC.138/44). There were a number of specific suggestions in that paper on the guiding principles which might be taken as a basis in drafting treaty articles to ensure the efficient operation of the international machinery, particularly in its early stages. As to the structure of the machinery and the powers of its organs, reference should be made to the Soviet draft (A/AC.138/43) in which proposals relating to the organs to be set up and their powers were clearly set out in articles 17-24. The problem of the structure of the international machinery and its powers went hand in hand with the question of costs. His delegation had already stressed the need to consider that matter closely, particularly in view of the proposal to set up a special enterprise for direct exploitation within the international machinery. The representative of the United Kingdom had already pointed out that an investment of thousands of millions of dollars would be

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(Mr. Zavorotko, Ukrainian SSR)

necessary for that purpose, and that it was unlikely that the machinery would be able to obtain the capital on the international finance market or from member States. Nor would the existing international organizations be in a position to assist financially, since their budgets amounted to only a few hundred million dollars. The practical application of the idea of direct exploitation should therefore be approached with caution.

Mr. GOWLAND (Argentina) said that the fundamental purpose of the régime was the use of the resources of the international sea-bed area for the benefit of mankind. The machinery to be set up must therefore be sufficiently flexible and efficient to be able to act as rapidly as possible. The necessary steps must also be taken to extend its powers, as technological advances made possible the development of the exploration and exploitation of those resources. In such circumstances, the machinery would need to have extensive powers to regulate sea-bed activities efficiently and equitably.

His delegation, like most of the others, felt that the future machinery should consist of an Assembly, a Council and a Secretariat. The supreme body of the Authority would be the Assembly. As well as being a deliberative body, the Assembly would be able to take important political decisions. All the members of the international community would be represented on it; each would have the right to one vote and decisions would be taken by a majority vote.

The Council would be responsible for carrying out the Assembly's decisions. It would have fewer members, but they would represent all the regions equitably. Any arrangement giving the right of veto to certain States, even by the device of requiring unanimous decisions, was unacceptable. His delegation also firmly rejected any weighting system which would give the industrialized countries a privileged position.

For the time being, the functions of the Secretariat should not be too extensive, since that would involve considerable expense for member States.

The treaty would also have to establish a system for settling disputes. The setting up of new bodies might consume resources which could be more usefully employed in helping the developing countries; on the other hand, it would be helpful to draw on the experience of existing bodies. His delegation felt,

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(Mr. Gowland, Argentina)

therefore, that the International Court of Justice should be empowered to deal with any legal problems which might arise, provided that the existing procedures were simplified.

The Authority would be empowered to set up such subsidiary organs as it considered necessary.

Taking into account principle 14 of the Declaration of Principles (resolution 2749 (XXV)) and the fact that the State was the principal subject of international law, relations between companies engaged in exploration and exploitation and the international Authority should be established through the intermediary of the State.

The benefits to be derived by the developing countries from the exploitation of the resources of the area should include not only a share of the profits but also the acquisition of scientific knowledge which would enable them to participate in activities to develop those resources.

His delegation's position on the question of the limits of the international area was that coastal States had sovereign rights over the whole of the continental territory, i.e. up to the lower limit of the continental margin. That position was based not only on the current norms of international law but also on the preambles to the Montevideo and Lima Declarations signed by the countries of Latin America. Some aspects of the question of limits had been mentioned in the proposals for the régime submitted by certain delegations. A more extensive study of the matter was needed; his delegation felt, therefore, that it would be premature to set up a working group for that purpose.

Mr. Ranganathan (India) took the Chair.

Mr. JEANNEL (France) said he wished to explain the way in which his delegation envisaged the organization of the international machinery, which would have to meet the requirements of economic efficiency and international equity. States or groups of States would provide a link-up between the Authority and the undertakings engaged in the exploration and exploitation of the sea-bed; that would be preferable to direct management. At a time when the human growth rate was causing concern, it seemed essential to ensure a rational management of the non-renewable natural resources of the sea-bed. That task should be entrusted

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(Mr. Jeannel, France)

to Governments, who were responsible for the survival of their nationals, rather than to undertakings which might be tempted by short-term profits. Areas might thus be assigned by an international agency to States or groups of States, which would be responsible for arranging for them to be explored and exploited by undertakings able to give all the necessary technical and financial guarantees. The groups of States in question might be existing multi-State entities or associations set up for the purposes of a particular exploitation project. The agency would be established under an international convention on the sea-bed beyond the limits of national jurisdiction. It would consist, first of all, of an assembly or general conference composed of all member States, which would hold an ordinary session at regular intervals to take decisions on important questions such as the budget and general policy guidelines concerning the allocation of areas and the operation of the agency, to settle problems not solved by other bodies and to hold elections or make appointments. Secondly, it would have a council, consisting of some 20 members elected by the assembly, which would be responsible for the operation of the agency within the framework of the decisions taken by the assembly. The council would meet every year and discuss the allocation of areas if the problem was referred to it by a subordinate body. It would co-ordinate the activities of the agency with those of other international organizations. Thirdly, a permanent board, which would be an impartial technical organ, would have the task of allocating areas to States; it would examine their applications and urge competing States to reach agreement. It could also take certain measures connected with the supervision and inspection of areas to ensure compliance with the provisions of the convention and the decisions of the conference. The board would consist of seven independent members, appointed for their technical and economic competence and selected from among candidates proposed by Governments on a basis whereby there would be one representative for each region. The members would discharge their functions as impartial agents having an international mandate. Fourthly, the agency would have a secretariat, headed by a secretary-general, which would take care of the administrative and financial aspects of the agency. Lastly, there might be an arbitration committee with the task of settling disputes between the agency and a particular State or between various member States. It would act as a conciliator or arbiter and also interpret the convention.

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(Mr. Jeannel, France)

Each member State would have one vote, but the decisions of the international agency would have to be adopted by a larger proportion of affirmative votes than a simple majority since they would involve considerable investments. Furthermore, the convention would have to contain a provision making personal or financial participation in the activities of enterprises engaged in the exploration or exploitation of the sea-bed incompatible with the exercise of certain functions.

Mr. Engo (Cameroon) resumed the Chair.

Mr. BELYAEV (Byelorussian Soviet Socialist Republic) said that the Committee should now prepare, on the basis of all the constructive proposals that had been made, a set of draft articles for a treaty acceptable to all States. The task of the international machinery should not be confined to co-ordinating and regulating the activities of States involving the exploitation of the resources of the sea-bed and the ocean floor; it should also ensure that the benefits of such exploitation were equitably shared. His delegation considered that the highest body of the international machinery should be a general conference, consisting of all States members of the agency, which would discuss general questions relating to exploitation, consider reports from the standing executive bodies, draw up general rules for the prevention of pollution resulting from activities involving the use of the sea-bed, consider administrative and financial questions and establish executive organs. It should hold a regular session every two years and each member State should have one vote. Substantive questions should be decided by two thirds of the members present and voting, and a simple majority should suffice for procedural questions. The executive organ of the international machinery would be a council with the task of supervising the application of the provisions of the treaty on the use of the sea-bed and activities involving exploration and exploitation, of apportioning the benefits, promoting exchanges of scientific and technical information and adopting measures to prevent pollution and protect biological resources in accordance with the treaty. The council should also be responsible for settling disputes between States by means of conciliation, according to the provisions of Article 33 of the United Nations Charter. His delegation could not support the establishment of a permanent tribunal for that purpose. It was the task of the Sub-Committee to draft the articles of a treaty that would promote genuine co-operation among States instead of sowing the seeds of mistrust.

(Mr. Belyaev, Byelorussian SSR)

No State or group of States should be able to use the international machinery to damage the interests of other countries. Accordingly, the council should consist of an equal number of representatives for each regional group, and there should be separate representation for the land-locked countries whereby each group would be represented by one country. The decisions of the council should be taken by consensus so as to reflect the common will of all States.

Mr. FARHANG (Afghanistan) wished to state his delegation's views on the special needs and problems of the land-locked countries, and particularly of those that were still developing, within the context of the status, scope, functions and powers of the proposed international machinery. His delegation considered that the establishment of such machinery would be of significance only if the area in which it exercised its functions was broad enough and rich enough to benefit mankind appreciably. It should consist of: (a) an assembly composed of all States Parties to the Convention, each member State having one vote; (b) a smaller council, in which all groups of States would be adequately represented; each member of the council would be elected for a limited period of time without privileges and would have one vote; all substantive decisions would be taken by a two-thirds majority; (c) a secretariat. Exploration and exploitation of the sea-bed would be carried out by the machinery itself, by means of a contract system, or by means of joint ventures, or, lastly, through the granting of licences. In all cases the international machinery should have supreme authority in such matters.

If the land-locked countries were to participate effectively in those activities they would have to have the right of free access to the area and adequate transport and communications facilities, and there would have to be processing and storage facilities available in ports.

If the benefits deriving from the exploitation of the sea-bed were to be shared equitably, certain considerations would have to be taken into account. The land-locked and shelf-locked countries should be given special treatment, as should the least developed among the developing countries. Furthermore, if the licensing system was generally accepted, the developing land-locked countries, for want of the necessary technical and financial resources, would be unable to benefit from their quota. As for joint ventures, they could be subject to political arrangements which might not be feasible in all regions and sublicensing would greatly diminish the benefits that could otherwise be derived. The extension of national jurisdiction would not be of equal benefit to all countries. Countries with long coastlines and islands would stand to benefit the most.

(Mr. Farhang, Afghanistan)

The developing countries, including those that were land-locked, should benefit from such arrangements as technical assistance and experts and the transfer of technology. Their nationals should be given opportunities for fair employment in all administrative and technical bodies dealing with the exploration and exploitation of the sea-bed.

He supported the suggestion made by the representative of Singapore that the Secretariat should be requested to prepare, for the summer session of the Committee, a study on the economic implications of the various proposals concerning limits, in the light of existing data and knowledge. However, since it would probably be difficult to have the study ready in time, the Secretariat might be asked first to prepare a study of the extent of the areas which, in accordance with various proposals concerning limits, would come under national jurisdiction of coastal States and to submit that study to the Committee at its summer session. Then a study on the economic implications and significance of the various proposals concerning limits could be submitted to the General Assembly at its next session or to the Committee in the spring of 1973.

Mr. AKYAMAC (Turkey) observed that the question of the international machinery, like the question of the area, was a component of the new international order the Committee was trying to establish on the basis of the concept of the common heritage of mankind. The present international order was based on the Geneva Conventions of 1958, but science and technology had made great advances since that time, and the concept of the common heritage was steadily gaining recognition. At the preceding session his delegation had proposed including in the list of subjects an item entitled "Relationship of the draft articles and convention prepared in pursuance of resolution 2750 C (XXV) to, and their effect, on, the 1958 Conventions on the Law of the Sea". That document (A/AC.138/48) was still before the Committee.

The question of the resources to be exploited by the international machinery was inevitably connected with the question of the limits of the international area. The draft treaty proposed by the Polish delegation (A/AC.138/44) pointed up the difficulty of establishing a machinery without some certainty regarding the size of the area. The proposal contained in the Maltese draft was the only

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(Mr. Akyamac, Turkey)

one at the moment which met that requirement of precise definition. It remained to be determined, however, whether fixing the limits of national jurisdiction at 200 nautical miles would justify the efforts made to set up a comprehensive machinery. The outcome of many questions concerning régime and machinery would evidently depend on the definition of the international area. Every effort should be made to reconcile the divergent interests on that point. Fisheries Circulars 126 and 127 of FAO gave a general picture of the living resources of the ocean and, to a certain degree, of the continental shelf. The circulars indicated that the largest part of the fish resource was concentrated on and above the continental shelf. Consequently, if the 200-metre bathymetric line was accepted as the limit of the international area, a very considerable portion of biological resources would remain within national jurisdiction. The same would be true of the more important mineral resources of the sea-bed, such as hydrocarbons and natural gas. Manganese nodules were known to exist on the floors of the Atlantic, Pacific and Indian Oceans; it would seem, therefore, that the principal task of the international machinery should be the exploration and exploitation of manganese nodules. Under those conditions it would be advisable to be content with a more limited machinery, consisting of a conference which would meet periodically and might decide on future expansion if the need arose. The provisions of the General Assembly's rules of procedure with regard to voting might be applicable to the suggested conference. Similarly, disputes might be settled by the peaceful means provided for in Article 33 of the Charter, including arbitration. If the machinery undertook direct exploration or exploitation activities, the customary judicial procedure might be envisaged.

The powers vested in the machinery in respect of exploration and exploitation activities might go beyond the mere issuance of licences. In that connexion, the draft proposal of the Latin American countries (A/AC.138/49) provided an adequate basis for discussion. His delegation particularly favoured the idea of joint ventures for the early period of the machinery's operation. An international sea resources mining corporation, which might have a legal personality of its own, seemed to be the most appropriate agency for exploring and exploiting the resources of the international area. Equitable participation by the developing

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(Mr. Akyamac, Turkey)

countries in the work of the international agency was essential, and in that respect his delegation favoured the measures envisaged in article 16 of the Latin American draft.

The relations of the United Nations with the international machinery would be unlike those with the specialized agencies and more in the nature of a relationship between the United Nations and an international public enterprise. His delegation accepted the assumption that there would be an extensive area of national jurisdiction, but that did not mean that it would not support the idea of a larger area of international jurisdiction, which would justify the establishment of a more comprehensive machinery. The machinery should enjoy the confidence of all Member States. It was also important to safeguard the interests of the developing countries in the exploration and exploitation of land-based mineral resources. If it proved possible to derive profits from the exploitation of the area's resources, the conference should be empowered to determine how the profits should be distributed, and they should be used solely for peaceful purposes.

Mr. SMALL (New Zealand) said that a great deal of progress had been made since the time when even the inclusion of a reference to an international machinery in a General Assembly resolution had been controversial. Everyone now recognized the need to create a new and autonomous body with far-reaching powers. That body should include an Assembly, a Council, a Secretariat and a Tribunal or other mechanism for settling disputes. All States parties to the treaty should be represented in the Assembly, while the Council, which would be smaller, should reflect the interests of the countries with advanced sea-bed technology, the developing countries and the land-locked and shelf-locked countries. The special interests of countries with narrow or very broad continental shelves and of sea-locked countries should also be borne in mind. For the Assembly, it appeared, most delegations preferred a voting system comparable to the present system of the United Nations General Assembly: one vote for each State and the taking of decisions by a simple or two-thirds majority.

Four proposals had been made with regard to voting in the Council. According to the Soviet proposal, the Council's decisions on matters of substance should be taken by agreement. According to the United States proposal, the

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(Mr. Small, New Zealand)

Council's decision should be approved by a majority of its members, including a majority of each of the two groups created under article 36 of the United States text. The third proposal, that of Malta, also required a special majority but one which was very different from the kind proposed by the United States. Under the Maltese scheme the Council would consist of three groups, A, B and C. Decisions would be approved by a majority of the members of the Council, including a majority of group A and a majority of one of the other two groups. The fourth proposal was the one put forward by most delegations: the Council should take decisions by a simple majority on procedural issues and by a two-thirds majority on matters of substance.

The Soviet proposal was tantamount to giving effective veto rights to countries powerful enough to refuse to conform to the common will. Although the existence of the veto in the Security Council was a regrettable but indisputable fact, it was out of the question to establish a veto in a body which would have executive and possibly also operational responsibilities in regard to the exploration and exploitation of resources.

It was true that the Sea-Bed Committee took decisions by consensus, but it did not therefore follow that the new treaty should be adopted by consensus, much less that the executive organ of the international sea-bed authority should function in that way.

The United States proposal did not provide for veto rights, but it would enable any three of the most advanced countries to block Council decisions. Such a procedure seemed scarcely consistent with the concept of the common heritage of mankind and might paralyse the Council's work. If it should prove necessary to adopt a system of voting by some form of special majority, his delegation would prefer a flexible arrangement, such as the one proposed by the representative of Malta.

However, its preference was for the fourth possibility: adoption of decisions of substance by a two-thirds majority. The objections of those who maintained that the will of the two thirds would be imposed on the remaining third could be met by the reply that the executive organ would try to resort as infrequently as possible to the procedure of voting and that, if the Council was constituted in such a way as to represent equitably the various interests involved, it would not be possible for it to have a two-thirds majority which

(Mr. Small, New Zealand)

disregarded the view of the remaining third. Moreover, the Council and the Assembly would have to abide by the rules and criteria laid down in the treaty. Finally, the establishment of a mechanism for the compulsory settlement of disputes would provide a powerful check against any arbitrary exercise of majority voting rights in the Council and the Assembly. Any tribunal created should be competent to consider not only disputes between States parties to the treaty but also those between States parties and organs of the international machinery. It should also be able to verify the legality of decisions taken by organs of the International Sea-Bed Authority.

His delegation was studying with great interest the proposals to give the International Authority a larger role in the development of sea-bed resources. However, difficulties might arise if the Authority was to be given the necessary capital and technological expertise. His delegation would give careful attention to the United Kingdom proposal, although it was somewhat uneasy about the idea that the common heritage of mankind should be divided up on a quota basis.

Mr. HACHEME (Mauritania) said that the exploitation of the sea-bed should take account of the interests and needs of developing countries, whether coastal or land-locked. The importance of resolution 2467 A (XXIII), by which the General Assembly had established the Sea-Bed Committee, should be stressed. In that resolution, the Assembly had requested the Committee to study the ways and means of promoting the exploitation and use of the resources of that area and the economic implications of such exploitation, and to make recommendations on the subject. The resolution was still valid and should be taken into account when preparing the next Conference on the Law of the Sea. That Conference would be an event of great importance for the countries of the third world, many of which had been unable to be represented for obvious reasons at the 1958 and 1960 Conferences, and it should deal with all aspects that had not been examined during those Conferences.

The Authority to be established for the purposes of exploring and exploiting sea-bed resources should, as needed, regulate fishing activities, particularly by establishing zones where and seasons when fishing would be forbidden. It would make provisions regarding the gear and techniques to be used, adopt measures to prevent

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(Mr. Hacheme, Mauritania)

the destruction of spawn and to ensure the preservation of fishing grounds, and determine the exploitable size of the different species concerned. It should also regulate the conditions for establishing and exploiting fisheries situated on the high sea or on the continental shelf. Taxes or fees to be levied in that regard should be established by the legal document to be drawn up.

Mr. Thompson-Flores (Brazil) took the Chair.

Mr. LEGNANI (Uruguay) pointed out that, by virtue of the principles set forth in resolution 2749 (XXV) and the fundamental provisions of the régime under consideration, the sea-bed and the ocean floor beyond the limits of national jurisdiction would be a kind of res communis omnium, since it would belong jointly to all subjects of the international community. However, concepts of private law were not entirely applicable to international law. Obviously, the rules of private law regulating common property could not be extended to the sea-bed and the ocean floor beyond the limits of national jurisdiction. Yet new activities or concepts should be based on previous legal experience and closely linked to traditional legal concepts. Nevertheless, the concept of a "common heritage of mankind" was an entirely new principle which would have to be developed according to its own logic, which derived from the existence of a vast joint heritage bestowed upon a single owner, mankind, and which must be exploited in the interests of that owner. In order to reach a satisfactory solution, the scope, role and powers of the proposed international authority must be adapted to those circumstances. The 13-Power draft in document A/AC.138/49 seemed particularly appropriate. Under that proposal, the international body, entitled "the Authority" would consist of four principal organs: the Assembly, the Council, the International Seabed Enterprise and the Secretariat. The Assembly, consisting of all States members of the Authority, would draw up rules with regard to: scientific research in the area and the exploration and exploitation of its resources; the equitable sharing of benefits; the control, reduction or suspension of production, or fixing of prices of products, in order to avert any unfavourable economic effects for developing countries; measures to prevent pollution; and regional or subregional facilites, on the initiative of interested States or in agreement with them. In addition, the Assembly would approve the budget, establish its rules of procedure, constitute

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(Mr. Legnani, Uruguay)

subsidiary organs and give final approval to the reports and regulations of the other organs. It would elect the members of the Council, which would be primarily an administrative organ, and would also determine the parts of the area to be open for exploration and exploitation; it would adopt criteria for sharing benefits and would establish, as an advisory body to the Council, a Planning Commission. It would determine the membership and role of the Enterprise, and, finally, it would elect the Secretary-General, who would be the chief administrative officer of the Authority and would have advisory and administrative functions.

His delegation felt that the international machinery contemplated in those provisions was appropriate. The International Authority would have extensive powers in line with the many requirements of its task. Furthermore, it would have the necessary flexibility to adapt to extensive, numerous and complex requirements. For instance, it would, if necessary, establish subsidiary organs and conclude regiional arrangements. The decentralization thus achieved would make it possible to perform the many and varied tasks involved in developing the sea-bed.

It would be unrealistic to try to assure the exploration and exploitation of the area and to derive substantial benefits from it solely by granting licences and by levying the appropriate fees. By so doing, the international community could not directly foster, guide and supervise exploration and exploitation or control actual production. It would, however, do so indirectly by delegating exploitation to private interests (enterprises, persons or even States) and by itself administering and distributing licences, the number of which would demonstrate the considerable benefits derived from them by private interests rather than by mankind.

His delegation feared that a licensing system or definition of an area under international mandate would have the effect of granting usufruct of the common heritage of mankind to private interests and agents, in exchange for limited benefits which would not promote the development of the least favoured countries and would not appreciably improve the position of the international community. It would be preferable for that community to intervene directly in all activities in the international area, and the 13-Power draft made provision for an organization which was in keeping with the fundamental objective of enabling mankind as a whole to benefit from the exploration of its acknowledge heritage. The proposed provisions

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should be supplemented, particularly those with regard to the structure and functions of the Enterprise, the criteria for sharing benefits and methods of settling disputes. His delegation felt, without precluding the possibility of prior conciliation, that disputes should be settled by the International Court of Justice which, under its Statute, could make institutional arrangements - by forming special chambers - for dealing with particular categories of cases which could include those concerning the exploitation of the sea-bed.

The meeting rose at 6.15 p.m.

SUMMARY RECORD OF THE FORTY-SEVENTH MEETING

Held on Wednesday, 29 March 1972, at 3.25 p.m.

Chairman: Mr. ENGO Cameroon

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STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (continued)

Mr. ARCHER (United Kingdom) said that the time had not yet come to go into the details of the quota system proposed by his delegation, whose approach in that regard was sufficiently flexible. The representative of Ceylon, referring to the United Kingdom proposals (A/AC.138/46), had asked whether a country which was to receive several licences would have a choice among various minerals. His delegation had not yet given any attention to the question of what distinction, if any, should be made between areas where different minerals might be present, but it recognized that different minerals might require different sizes of blocks. It appeared that there would be no difficulty in States deciding how much of their allocation should be for licences for hydrocarbons and how much for, say, manganese nodules.

The representative of Ceylon had also asked to which particular countries licences in a particular area would be allocated, and on what basis, and what would be the method of offering licences. The purpose of the United Kingdom proposals was to ensure an equitable allocation of areas. They did not involve the selection by the international Authority of specific areas for licensing to States, nor determination by the Authority of which areas should be given to individual States. Assuming, for example, that during the first round of allocations, covering perhaps 10 per cent of the area of the international sea-bed, a State might be eligible for licences covering a total area of 500,000 square kilometres and that each licence was for 10,000 square kilometres, that State would be eligible for 50 blocks. It would choose from among all the blocks to be allocated in the international area the 50 for which it wished to apply. If more than one State applied for the same block, various methods could be used to decide on the allocation.

Mr. GUERREIRO (Brazil) said that the precise structure and powers of the machinery applicable to the international area of the sea-bed would depend to a large extent on the scope of the régime - in other words, whether it would cover the area as a whole or only the exploration and exploitation of its resources - as well as on the nature and extent of the machinery's functions.

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(Mr. Guerreiro, Brazil)

The consensus appeared to be that the organization to be established should have an assembly, a council and a secretariat.

The Assembly, in which all member States would have equal voting rights, would be the supreme body; it would adopt policies and basic decisions on all matters within the Authority's competence.

The Council would be in charge of day-to-day operations, including regulation and supervision of activities in the area, sharing of benefits among member States and co-ordination of measures to promote scientific research, prevent pollution and ensure the participation of the developing countries in the exploration and exploitation of resources. In that task, the Council would probably require the assistance of one or more subsidiary organs possessing specialized functions, such as contacts and co-ordination between the Authority and the scientific and technical world, study of exploitation activities, and the adoption of measures to deal with problems relating to price fluctuation and the behaviour of markets for specific raw materials.

In determining the size of the Council, account must be taken of the need both efficiency and adequate representation of all interests concerned. A membership of 35 appeared appropriate, but in view of current trends in such matters, the possibility of subsequent enlargement should be borne in mind. The composition of the Council must be based essentially on the principle of equitable geographical distribution; the particular interests of certain types of States could be met within the context of each regional group. On important questions, decisions would be taken by a two-thirds majority of members present and voting, each member having one vote.

It would be unreasonable to attempt to establish a system which would place the Authority, and consequently, the area and its resources, in the hands of a few developed countries. If there was to be preferential treatment, the beneficiaries should be those who were not currently in a position to avail themselves fully of the possibilities offered by science and technology with regard to the exploitation of the area.

It appeared difficult to express a definite opinion on the settlement of disputes, before a decision had been taken with regard to the exact functions and powers of the machinery. It might be wise to explore, apart from traditional methods,

(Mr. Guerreiro, Brazil)

systems such as that adopted, for example, in the Convention on International Liability for Damage caused by Space Objects.

It must be remembered that the international organization was intended to apply in practice the principle of the common heritage of mankind. For that purpose, the Authority must be empowered to co-ordinate scientific research and exploration, and even to undertake them directly. For exploitation, a system must be found which would ensure the Authority's effective control over all operations; the essential point was that the wealth of the area should not be turned over to the technically developed countries, with purely formal controls. Provision must be made to allow the technologically less advanced countries to participate actively in such operations, undertaken with the international Authority or under its control. There were a number of means of achieving that goal, ranging from the reservation of areas for enterprises from the developing countries to an effective programme for the transfer of technology to those countries.

With regard to the sharing of the benefits derived from the area, the view had been advanced that the interests of the developing countries would be adequately met through an active exploitation of the area, which would result in the distribution of benefits in the form of cheaper industrial products, abundant supplies of low-cost raw materials and the channelling of taxes on profits to existing international organizations engaged in economic assistance. His delegation wished to reiterate its opposition to any plan which might contemplate the channelling of financial benefits to such organizations. The benefits should accrue directly to States themselves as representatives of their peoples.

A related and essential point was that the machinery should be provided with sufficient power to exercise effective control over the production, processing and marketing of the resources of the area, in order that the economies of the developing areas could be protected against detrimental effects. The idea of compensating the producers of land-based raw materials from the "common pot" at the disposal of the machinery hardly seemed an adequate solution, since it would amount to utilizing money belonging to the international community, and particularly the developing countries, to finance cheaper raw materials for the industrially advanced countries.

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(Mr. Guerreiro, Brazil)

In conclusion, he felt that the issues which the Sub-Committee was discussing were extremely delicate and complex; the study of them should be continued at the next session.

Mr. KANIARU (Kenya) said that, like many other developing countries, Kenya advocated an international machinery possessing comprehensive powers and broad functions with regard to such matters as the exploration and exploitation of the resources of the sea-bed, the regulation of scientific research, control of pollution in the marine environment, control of production and marketing of raw materials from the area, sharing of benefits on an equitable basis and promotion of the technical capabilities of the developing countries in marine technology. Only such an international machinery would guarantee satisfactory returns to the developing countries and thereby make meaningful the concept of the common heritage of mankind.

The machinery should have an assembly, a council, a secretariat, a tribunal and other technical subsidiary bodies.

While it seemed that there had been no significant difference of opinion with regard to the Assembly, which would comprise all States parties to the machinery, that was not the case where the Council was concerned. A few developed countries wished to enjoy on it the privileges they possessed in the Security Council of the United Nations; his delegation could not accept such a situation. An instrument with a veto system or weighted voting would be contrary to the principle of equality among States and to the concept of the common heritage of mankind. It was therefore to be hoped that the few would yield to the will of the majority; decisions by the Council should be taken by a two-thirds majority for important questions and by a simple majority for other questions.

Although his delegation had advocated a Council of 30 members, it was quite flexible on that point. However, in its opinion, a council of 18 members would be too small, while it would not be advisable to establish a large Council which might not be able to reach decisions rapidly. The respective functions of the Council and the Assembly could be worked out on the basis of the various proposals which had been submitted.

For dispute settling, Kenya would prefer a special tribunal composed of lawyers, industrialists and scientists, which would deal with interpretation of

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(Mr. Kaniaru, Kenya)

the treaty and disputes arising between the parties; purely legal questions might be referred to the International Court of Justice. Finally, other subsidiary bodies could be established as need arose.

There had been much difference of opinion as to whether the Authority should be empowered to explore and exploit the resources of the sea-bed. His delegation for one believed that the machinery should be vested with that power as soon as the treaty came into force, although it was not to be expected that the machinery would use such a power immediately.

With regard to rules and practices relating to the exploration and exploitation of resources, he observed that at the present stage, it was necessary to work out certain standards on the basis of which the Council could formulate more detailed provisions; the elaboration of comprehensive rules would hold up the Committee's work and thus delay the establishment of the régime and the machinery. Moreover, it was not known at the present stage what problems might arise when the machinery came into operation. The statement of the representative of Malta on that point deserved careful consideration.

On the question of the sharing of benefits, he observed that the general principle was already established: benefits should be distributed equitably between all States, bearing in mind the special interests and needs of developing countries. For the developing countries, the sharing of benefits entailed not only the distribution of financial benefits but also the transfer of various aspects of technology. His delegation was studying various proposals on that point; it was also considering the proposals relating to joint ventures and the acquisition by individual States of blocks for exploration and exploitation. In the case of the developing countries, such acquisition would unfortunately be merely symbolic, since the real benefits would accrue to private companies and the States to which they belonged. Kenya was not opposed either to the principle of licensing to States, organizations or companies or to the principle of exploration and exploitation carried out jointly by the machinery and States, organizations or companies. Nevertheless, it continued to have reservations concerning a licensing system conceived on the basis of the experience of the domestic legislation of States. Those reservations also applied to the question of joint ventures which

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(Mr. Kaniaru, Kenya)

therefore warranted further study. The same was true of the subject of economic implications, on which the Secretariat had already issued an interesting document (A/AC.138/36).

With reference to the Netherlands proposal to establish a working group to explore the concept of an intermediate zone (A/AC.138/SC.I/L.9), he said that his delegation had already stated its views on the creation of a zone of that kind at the previous session. It was unable to support the establishment of a working group to study a concept which was rejected by the majority of members of the Committee.

ORGANIZATION OF WORK (continued)

The CHAIRMAN said that the Sub-Committee had considered item 2 at only six meetings, whereas 10 meetings had been scheduled for it. A further four meetings should therefore be set aside for consideration of that item at the next session.

The Working Group would be able to hold informal meetings, without summary records, in which all delegations could participate. A special rapporteur might be appointed who would report to the plenary Committee. However, no official documents would be distributed, since that would entail financial implications.

Mr. SIMPSON (United Kingdom) suggested that, after the discussion at Geneva on item 2, another working group might be established to consider that item in greater detail. The activities of that working group would be similar to those of the working group set up to consider item 1.

Mr. CHAO HICK TIN (Singapore) recalled that his delegation had expressed the view that the Secretariat should carry out a study on the question of limits so as to provide a clearer over-all picture of the economic aspects of the matter and sought information on the action that would be taken on the request. That idea had been supported by the delegations of Afghanistan and Zaire. Three proposals had been made regarding the establishment of the limits of national jurisdiction: the first proposal was to establish a limit of 200 nautical miles, and the second a limit of 40 nautical miles; under the third proposal, the limit would coincide with the 200-metre isobath.

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Mr. FARHANG (Afghanistan) said that the study might be carried out in two stages: the Secretariat might first assemble data concerning the domestic legislation of States on the question of limits; it might then meet the request made by the representative of Singapore.

Mr. GUERREIRO (Brazil) said that his delegation had serious doubts concerning the advisability of requesting the Secretariat to carry out the proposed study. In order to undertake a comparative study, it would be necessary to have a clear picture of the individual needs of the various countries, and the Secretariat was not in a position to determine what those needs were.

Mr. MONCAYO (Ecuador) endorsed the remarks made by the representative of Brazil.

Mr. OXMAN (United States of America) said that his delegation would be pleased to make available to the Secretariat the results of its own analysis of certain aspects of the question, in order to facilitate its work.

Mr. HARRY (Australia) suggested that the Secretariat might be requested to study the problems which the preparation of a report such as that proposed by the representative of Singapore might entail. Consideration should also be given to limits other than those mentioned by that representative, in particular the continental margin.

Mr. STAVROPOULOS (Legal Counsel) said that the Secretariat should first study the implications of such a request, as the Australian representative had observed. In that connexion, it would certainly be appropriate to consider first of all data on the question and information provided by the United States delegation or other delegations. It should be noted that the distribution of such information should not involve financial implications.

The CHAIRMAN said that the Secretariat would distribute information furnished to it by any delegation in accordance with established practice. The question might be taken up again at the summer session in Geneva.

He said that Sub-Committee I had completed its work for the current session.

The meeting rose at 4.50 p.m.
