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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 FORTY-EIGHTH TO SIXTY-FIRST MEETINGS

held at the Palais des Nations, Geneva, from
19 July to 15 August 1972

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

The list of representatives appears in documents A/AC.138/INF.7 and Corr.1-3, A/AC.138/INF.7/Add.1 and Corr.1 and 2, A/AC.138/INF.7/Add.2 and Corr.1, and A/AC.138/INF.7/Add.3-5.

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ABBREVIATIONS

GNP	gross national product
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
IMCO	Inter-Governmental Marine Consultative Organization
ITU	International Telecommunication Union
UNCTAD	United Nations Conference on Trade and Development

SUMMARY RECORD OF THE FORTY-EIGHTH MEETING

held on Wednesday, 19 July 1972, at 3.45 p.m.

Chairman: Mr. ENGO Cameroon

ORGANIZATION OF WORK

The CHAIRMAN welcomed the members of Sub-Committee I, which was beginning its second session in 1972. As at the first 1972 session, held in New York, he expressed the hope that the participants would tackle outstanding problems with determination and without recourse to polemics and lengthy statements that were unproductive, and would continue to co-operate with the members of the Bureau with the same sense of responsibility. At the end of the previous session, some delegations had not had an opportunity to make statements and others had wanted to exercise their right of reply, although the latter might have changed their mind with the passage of time. In any case, he intended to encourage informal exchanges of views and to allocate only four meetings to the general debate on the second topic before the Committee, namely the international machinery. He emphasized that the term "general debate" meant the discussion of existing or new proposals relating to the drafting of articles, for the general position of countries had already been stated and could easily be found in the records of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and of the United Nations General Assembly.

He wished to remind participants of the urgency of the task before them, in view of the fact that the Conference on the law of the sea was to be convened in 1973 and that draft articles on the two subjects assigned to the Sub-Committee must be ready in time. For that purpose, the Sub-Committee had an excellent starting point, namely the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, adopted by the General Assembly in its resolution 2749 (XXV).

There was no doubt that current developments, both political and technological, showed every day with greater clarity the importance and urgency of the task. If the industrially developed countries did not restrain their ambitions to exploit the resources of the sea-bed and the ocean floor, they might trigger desires that would diminish the common heritage of mankind. If the Committee missed the opportunity it was given to work out a new international order based on economic and social justice, and thus to strengthen the instrument of peace which the United Nations must be, it would rightly be condemned by future generations. He was convinced that delegations were aware of the historic importance of their task and that, owing to the presence of new representatives at the session, the deliberations would also take a new turn. He wished to thank Mr. Pinto (Sri Lanka), Chairman of Working Group I, who, he hoped, would be able to continue his work with the co-operation of everyone.

He intended to attempt another summing-up of the position at the end of the general debate but it already seemed to him, after the consultations he had had, that it would probably be necessary to set up another working group shortly. He would hold further consultations with a view to determining the group's size, terms of reference and time-table.

STATEMENTS BY THE UNDER-SECRETARY-GENERAL FOR ECONOMIC AND SOCIAL AFFAIRS AND THE SECRETARY-GENERAL OF UNCTAD

Mr. de SEYNES (Under-Secretary-General for Economic and Social Affairs) said that he was glad to have the opportunity of making some general remarks with reference to the report of the Secretary-General entitled "Possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment", 1/ which had been prepared in 1971 in close collaboration with UNCTAD, and the report of the Secretary-General entitled "Additional notes on the possible economic implications of mineral production from the international sea-bed area" (A/AC.138/73).

Much had been said, and was being said, about the squandering of resources and the dangers of industrialization and pollution. Irrespective of the value of the theories put forward, thinking on those lines increased the importance of the Committee's work, for it would be necessary to turn more and more to ocean space in the search for additional biological resources certainly, space resources in some cases, but above all mineral resources. The Committee was certainly one of the most important United Nations bodies, since the work assigned to it would - if successful - lead to the establishment of new structures of international co-operation covering a very large part of the planet. Not only was it called upon to modernize the traditional norms of the law of the sea, but it was also on the way to establishing an entirely new legal order. The work done in earlier years had already led to the adoption of certain decisions which could be described as historic, particularly the Declaration of Principles adopted by the General Assembly at its twenty-fifth session. One corollary to those principles was the concept of the rational management of the common heritage of mankind - in other words, the implicit acceptance by the international community of the need for a rational policy in the utilization of biological and mineral resources, and of the concept of the preservation and conservation of that common heritage.

The preliminary studies by the Secretariat on the development of the mineral resources of the sea-bed clearly indicated the magnitude of those resources and the fact that it would be technically feasible to exploit them in the near future. Research on manganese nodules, for instance, was well advanced and metallurgical processes for extracting the metals contained in them had already reached the operational stage, arousing the interest of large industrial companies. As a result of new methods of location, it was now thought that such nodules covered perhaps 25 per cent of the sea-bed and amounted to about 600,000 million tons; their distribution and mineral content varied from region to region and they had the unique characteristic of continuing to form faster than they could be consumed. What was more, recent research showed that some under-sea areas had metal-bearing muds and hot brines containing considerable quantities of heavy metals. Those discoveries were particularly interesting in the light of modern theories of continental drift and the mobility of ocean tables.

1/ A/AC.138/36. For a summary of this report, see Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421), annex II.1, p.227.

It was possible that most researchers on the consequences and final results of economic growth had not taken into account the unexplored and unexploited resources of the oceans. Rational development, planned at the international level, of that source of supply should help to correct the negative approach all too often adopted. The essential point was not to treat the problem in isolation but to place it in the more global context of development. It would be unthinkable that those resources should benefit certain countries only; on the contrary, their development should in the first instance benefit those countries which had the greatest needs. In that way, the results achieved by the Committee would constitute an important element in the International Development Strategy for the Second United Nations Development Decade.

Of course, one must not disregard the, as it were, paradoxical aspect of any development of new resources: the pressure which a new source of supply exerted on market prices in the short term contrasted with the long-term need to exploit rationally all the resources which could be made available to mankind. That ambivalence called for a vision of the needs of the world economy not only in the next few years but also over a longer period. The Committee was thus at a crucial moment in its history, when it had to elaborate international rules and it had, of necessity, to base its deliberations on a number of underlying concepts without losing sight of the work being done elsewhere on the development of natural resources.

First, it was important to aim at a rational management of the world's resources in their entirety, in other words to try to devise methods leading to an optimum use of those resources with a minimum of organization and planning. Account must be taken of the interdependence of primary commodity markets, and the possible interaction between the new resources of the sea-bed and the same resources traditionally exploited on the emerged continents must not be ignored. That was what the authors of the report before the Committee tried to illustrate, in starting from a theoretical assumption concerning the exploitation of polymetallic nodules. Special attention would have to be paid to the interests of land producers, particularly developing countries. It was the risks of unregulated production that the international machinery to be designed by Sub-Committee I had to help to eliminate.

Secondly, very careful study was needed of the question of the methods to be adopted to prevent the production of under-sea minerals from adversely affecting traditional producer countries. It was possible to envisage either preventive measures designed to regulate the production of under-sea minerals to a given level, or compensatory measures designed to indemnify producer countries for any losses they might incur. It was also possible to conceive of a series of measures combining the preventive and compensatory aspects, of which some illustrations had been given in the report. All that could be said at the present stage was that the studies needed to be intensified, especially as most of the parameters being used might well be modified by market changes, new discoveries and technological developments. It was essential in that connexion that the collaboration which had been established between the Department of Economic and Social Affairs of the United Nations Secretariat and UNCTAD, to which the presence of the Secretary-General of UNCTAD at the present meeting bore witness, should be closely maintained.

Another point which must be thought about was how the benefits expected from the development of sea-bed resources might be shared. It had become evident, there again, that it was extremely difficult to make any forecast about the magnitude of those benefits or about possible schemes for sharing them. The problem would nevertheless become increasingly important as the development of those resources became a reality, and it was advisable to begin giving some thought to an international régime and to

machinery which would make it possible to constitute with the funds collected a source of financing whose size would grow pari passu with the progress achieved in the development of the marine potential.

Lastly, an element which could not be dissociated from any rational policy for developing the resources of ocean space was the notion of conserving and preserving the marine environment as a whole, since it was the very life cycle on earth which was in question and man could no longer permit himself to develop its resources without taking the environmental effects of development into account.

Those various factors would have a decisive influence on the choice of an international régime and machinery for the sea-bed and the exploitation of its resources, which might range from an institution with limited powers to an institution whose competence and powers would approach those of a world oceans organization. Regardless of the final form of such an institution and régime, the problems to be settled would remain the same, but the international community was in the present case in a particularly favourable position, since its task was to create an entire legal order for an area and for resources which had hitherto not been subject to any order whatsoever; thus, it was not a question of replacing or of modifying, but of creating, of designing a new system of international relations, permitting a rational, multi-disciplinary and planned development that should prove beneficial to the countries of the third world and to mankind as a whole, and so fulfil the fundamental mission of the United Nations.

Mr. PEREZ GUERRERO (Secretary-General of UNCTAD) said that his presence bore witness to the "active" co-operation between the Department of Economic and Social Affairs of the United Nations Secretariat and the UNCTAD secretariat, referred to by the Under-Secretary-General for Economic and Social Affairs, and also to the importance that UNCTAD attached to the problem of the sea-bed. It was a long-standing problem that could be solved only after detailed discussions such as those taking place at the present time, which UNCTAD was following with great interest. The problem had been mentioned many times in the various UNCTAD bodies, and UNCTAD's point of view was expressed in the report in which it had co-operated, already referred to by the Under-Secretary-General for Economic and Social Affairs.

If the exploitation of the sea-bed was to benefit the whole of mankind, and the developing countries in particular, it was necessary to ensure that it did not have the effect of undermining the bases of international commodity trade, already not particularly favourable to producer developing countries. To that end, not only must preventive measures be taken, but, as the Under-Secretary-General for Economic and Social Affairs had said, an effort must be made to rationalize the exploitation of resources so as to guarantee that it would evolve in a way that would be beneficial to the whole of mankind.

Mr. JEANNEL (France) said that his delegation had listened with keen interest to the statement by the Under-Secretary-General for Economic and Social Affairs. He thanked the Secretariat for its effort to give an indication of new developments in the sphere of the exploitation of the sea since the 1971 report of the Secretary-General,[2/] many of whose conclusions were still valid.

2/ A/AC.138/36.

His delegation noted that there was still a large gap between certain technological possibilities referred to in the new report of the Secretary-General (A/AC.138/73) and the economic viability of sea-bed exploitation; once a resource had been discovered and a method of extraction developed, it remained to be determined whether production could attain commercial dimensions and be economically justified, and how long it would take. His delegation did not believe that exploitation in commercial quantities would be feasible as soon as appeared to be expected according to some paragraphs in the report.

For example, the undeniable technical progress made in deep-water oil-drilling did not mean that production costs were not still prohibitive, or that the use of the new methods described was not subject to economic or other considerations. Interest in metal-bearing muds was still in the initial stages of exploration and extraction could not be contemplated at the present time. The exploration of manganese nodules referred to in paragraph 10 of the report was merely the very first test of the continuous-line bucket system, the so-called Masuda system, conducted under the auspices of the international consortium referred to in paragraph 16. There was still a very large number of unknown factors concerning the metallurgical processing of manganese nodules, and a large measure of uncertainty to be bridged before their exploitation became an economic proposition. It would, therefore, be futile to imagine that Governments or industrial firms would commit vast capital sums on the basis of such doubtful data, as was rightly emphasized in paragraph 47 of the report. It was therefore important in the interests of all that research should be continued, or started, to reduce that measure of uncertainty.

The considerations set forth in part III of the report were of great interest and would have to be examined by the Sub-Committee. His delegation had already emphasized at the first 1972 session of the Committee (46th meeting of Sub-Committee I) the need to ensure a harmonious management of the sea-bed that would avoid, by the co-ordinated and rational planning of its resources, a wastage that mankind could ill afford in view of its growing requirements for raw materials. His delegation equally understood the legitimate desire of States producing raw materials to prevent the exploitation of those new resources from having too great an impact on world market prices, and believed that a balance could and should be found between the two imperatives. Several formulas would undoubtedly have to be considered and France had already put forward the general lines of solutions designed to safeguard the interests of the developing countries.

Lastly, with regard to paragraph 42 of the report, his delegation was convinced of the need to establish oceanographic data banks, a need that had been recognized by the United Nations Conference on the Human Environment. France had established, in its oceanographic centre in Brittany, a National Office of Ocean Data, which could serve as a regional centre and could make the data it possessed available to all who might need them.

Mr. ZEGERS (Chile) thanked the Under-Secretary-General for Economic and Social Affairs and the Secretary-General of UNCTAD for their statements and requested that the text of both statements should be circulated as documents of Sub-Committee I. His delegation also proposed that the Sub-Committee should devote some time to considering the two statements under sub-paragraphs (c) (The equitable sharing in the benefits to be derived from the area, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked) and (d) (The economic considerations and implications relating to the exploitation of the resources of the area, including their processing and marketing) of item 2 of the programme of

work adopted at the first 1972 session (33rd meeting). Thirdly, his delegation wished to point out that the United Nations Conference on Trade and Development, at its third session at Santiago, had examined the question of the sea-bed and the law of the sea, and that a number of documents had been circulated on that occasion. They included, in particular, the declaration of principles relating to the steps to achieve a greater measure of agreement on principles governing international trade relations and trade policies conducive to development, contained in Conference resolution 46 (III), two resolutions proposed by the First Committee and adopted by the Conference, namely resolutions 51 (III) and 52 (III) entitled "The exploitation, for commercial purposes, of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction", and the report of the First Committee. 3/ The Secretariat would be able to prepare a list of documents of the Conference relating to the sea and have them circulated to delegations in all the working languages.

Lastly, his delegation wished to make a few comments on the report of the Secretary-General, and in particular on the consequences of the exploitation of sea-bed resources for raw-material producing countries and the protective measures envisaged (see A/AC.138/73, part IV). He considered that the complaints his delegation had made at the Committee's first 1972 session regarding exploitation in the area beyond national jurisdiction were amply confirmed by the report. On the question of the adverse economic consequences of that exploitation, he was in favour of the preventive approach, i.e. the control of exploitation already under way. In general, his delegation attached very great importance to the question of the economic consequences and benefits of exploitation of the sea-bed beyond the limits of national jurisdiction.

The CHAIRMAN invited the Sub-Committee to consider the proposals made by the Chilean delegation. The first proposal was that the statements by the Under-Secretary-General for Economic and Social Affairs and the Secretary-General of UNCTAD should be circulated as documents of the Sub-Committee. If there were no objections, he would take it that the Sub-Committee approved that proposal.

It was so decided. 4/

The CHAIRMAN suggested that the Sub-Committee should approve, in principle, the proposal by the Chilean delegation that specific consideration should be given to the questions raised at the present meeting in the statements by the Secretary-General of UNCTAD and the Under-Secretary-General for Economic and Social Affairs. The Chair would specify at a later date exactly when the Sub-Committee could discuss the statements in question in the presence of their authors. If there were no objections, he would take it that the Sub-Committee approved that proposal in principle.

It was so decided.

3/ See Proceedings of the United Nations Conference on Trade and Development, Third Session, vol.I, Report and Annexes (to be issued as a United Nations publication), annex VI A.

4/ The statement by the Under-Secretary-General for Economic and Social Affairs was subsequently circulated under the symbol A/AC.138/SC.I/L.12, and that by the Secretary-General of UNCTAD under the symbol A/AC.138/SC.I/L.13.

The CHAIRMAN asked the Sub-Committee to take a decision on the third Chilean proposal, that the Secretariat be requested to draw up a list of the documents of the third session of the United Nations Conference on Trade and Development relating to the law of the sea and to have them circulated to delegations. If there were no objections, he would take it that the Sub-Committee approved that proposal.

It was so decided.5/

Sir Roger JACKLING (United Kingdom) thanked the Under-Secretary-General for Economic and Social Affairs for his interesting statement and congratulated the Secretariat on its additional notes on the possible economic implications of mineral production from the international sea-bed area, a report which, like the similar report issued in 1971, provided a useful basis for the Sub-Committee's discussions.

The Secretary-General had rightly emphasized in the 1972 report the uncertainties attached to the discussion of the possible economic implications of the production of minerals from the sea-bed, relating to the technical and economic problems that had to be resolved before exploitation could be regarded as economically feasible. While recognizing the difficulties faced by the Secretariat, under those conditions, in studying the economic implications of mineral production, his delegation felt bound to point out that it did not share all the views expressed in the report. Part I, for example, might give the impression that, because several international organizations were undertaking experimental work, production on a sufficiently large scale to have a significant influence on traditional land-based sources of supply was imminent. The report concluded that there were strong indications that manganese nodule exploitation could commence within five years (see A/AC.138/73, para.23). But a distinction should be drawn between commercially successful ventures and technically possible procedures (ibid., para.17), as the French representative had pointed out.

The report appeared to be based on the assumption that it would already be accepted that an exploitation policy, which included, inter alia, a regulatory function, was essential. His delegation was not convinced that the need for such a policy had been established, particularly in view of the uncertainties on the time horizon for nodule exploitability in relation to future demand and the availability of land-based resources.

His delegation was prepared to consider new arrangements for any commodities whenever the need for them could be demonstrated. But any such arrangements should surely apply to that commodity as a whole and not to supplies from the sea-bed alone. In that connexion, he welcomed the fact that the Under-Secretary-General for Economic and Social Affairs had emphasized the global aspect of the problem.

Although no United Kingdom enterprises were involved in deep-sea mining, the United Kingdom as a major consumer was wholly dependent on imports and had a substantial interest in the matter. His delegation therefore reserved the right to make a further statement if there was to be a substantive debate on the question in the Sub-Committee.

The meeting rose at 5.45 p.m.

5/ The list was subsequently circulated under the symbol A/AC.138/SC.I/L.14.

SUMMARY RECORD OF THE FORTY-NINTH MEETING

held on Tuesday, 25 July 1972, at 3.20 p.m.

Chairman: Mr. ENGO Cameroon

STATEMENT BY THE CHAIRMAN OF WORKING GROUP I

Mr. PINTO (Sri Lanka), Chairman of Working Group I, said that to date the Group had held six meetings, two in New York on 28 and 29 March 1972 and four in Geneva on 17, 18, 24 and 25 July 1972.

At the two meetings held in New York in the spring of 1972, several members had noted that the Declaration of Principles contained in General Assembly resolution 2749 (XXV) had envisaged the establishment of an international régime applying to the area. The Group had therefore considered that the Declaration should serve as a base for the drafting of treaty articles on that régime. Consequently, a working paper had been prepared to assist the work of the Group. It had taken the form of a table setting out in one column the several paragraphs of the Declaration, and in the adjoining column, against each of those paragraphs, suggested amendments or changes. The second part of the working paper had also contained various additional proposals made during the debate. The working paper had been sent to the members of the Working Group about 20 April 1972 and had been the background of a first preliminary survey of the future work.

At the meetings in New York, several members had urged that the Working Group should meet as often as possible before the beginning of the Committee's summer session. That proposal had not, however, been approved by the Group as a whole, which had decided to hold its first working meeting at Geneva on 17 July 1972. At that meeting, the prevailing view had been that members had had sufficient time to study the working paper in the two past months and would undoubtedly wish to move on to a new stage of their work. A second working paper had therefore been prepared to show in a series of 21 draft-texts the areas of agreement and disagreement on the main principles to be dealt with in the ensuing stages of the work. It had been circulated to members of the Group in all the working languages between 19 and 21 July and had been given a first reading at the meeting on 24 July, so as to ensure that the texts took accurate account of all the major comments. During that first reading, some members had proposed changes or corrections; the view was also put forward that some of the texts dealt with questions that should not be treated as general principles and which consequently were outside the Group's terms of reference.

The Group had agreed on a method of work which allowed the texts to reflect the differing points of view. It had noted that the discussion of any particular text in the working paper would not prejudice at all its inclusion or position in a future treaty. A revised version of the working paper including the amendments made at the first reading would be circulated as soon as possible. As soon as the first reading was concluded, the Group would hold a text-by-text discussion of the working paper.

He expressed his appreciation to all members of the Working Group for their assistance and collaboration, which augured well for the future of their work. It would not be exaggerating to say that at present, in the light of the discussions that had been held, the Working Group could adopt an attitude of cautious optimism. In order to bring its task to a successful conclusion as soon as possible, it must hold as many meetings as possible. More precisely, he requested facilities (including interpretation) for one meeting daily during the current week, to enable the Group to report to the Sub-Committee at the beginning of the following week.

POSSIBLE ECONOMIC IMPLICATIONS OF MINERAL PRODUCTION FROM THE INTERNATIONAL SEA-BED AREA (A/AC.138/73, A/AC.138/SC.I/L.12, A/AC.138/SC.I/L.13)

The CHAIRMAN reminded the Sub-Committee that it had decided at its 48th meeting to devote part of its discussions to the statements made at that same meeting by the Under-Secretary-General for Economic and Social Affairs (A/AC.138/SC.I/L.12), and by the Secretary-General of UNCTAD (A/AC.138/SC.I/L.13), on the possible economic implications of mineral production from the international sea-bed area. The Bureau had decided that the Sub-Committee should devote two meetings to those statements, beginning with the present meeting. He therefore invited delegations to comment on the two statements and on the report of the Secretary-General on the same subject entitled "Additional notes on the possible economic implications of mineral production from the international sea-bed area" (A/AC.138/73).

Mr. PRIETO (Chile) referred to certain aspects of the Secretary-General's report. He recalled that at the Committee's first 1972 session the Chilean delegation among others had requested the Secretariat (35th and 43rd meetings of Sub-Committee I) to study from the largest possible quantity of data the activities of syndicates and undertakings which were beginning to exploit the international sea-bed area, the methods of exploitation used, and the like.

The first point to note was that there was practically no depth limit to the exploration of the sea-bed, and that the statement in the report of the Secretary-General that "the steady progress in all areas of deep water petroleum technology - exploration, production, storage and transport - indicates that eventually oil production may be feasible in the outer continental shelf and upper slope" (see A/AC.138/73, para.5) also applied to prospecting for all other resources. The Chilean delegation noted, moreover, that the report confirmed all its accusations concerning the economic exploitation of resources in the international area. Paragraph 10 concerning manganese nodules, for example, described the activities of various enterprises from Western industrial nations and from Japan, which were exploring and beginning to exploit nodule deposits, particularly in the Pacific.

At the 1972 spring session (35th meeting of Sub-Committee I), and again at the Committee's meeting the day before (79th plenary meeting), the Chilean delegation had drawn attention to bill S.2801, which had been submitted to the United States Congress by a number of senators and would enable the Government of that country to issue licences to operate in the international sea-bed area to its own nationals and, on a reciprocal basis, to nationals of other States engaged in similar operations. The United States Government had not yet taken a decision on that bill, but its approval and the conclusion of agreements between the United States of America and other developed countries would establish a system from which the developing countries would be excluded, and would in fact mean the end of the concept of the "common heritage of mankind" enunciated in United Nations General Assembly resolutions.

The bill was already before the United States Congress, while near Samoa in the Pacific trials were being conducted on the "continuous-line bucket system" developed by Commander Masuda of Japan (see A/AC.138/73, paras. 13-16). In addition the firm Deep-Sea Ventures, a subsidiary of Kennecott, was proposing to use commercially in 1973 a new process it had already tested.

Those facts, which had been verified, could not be ignored by the Committee when it came to draft its conclusions. He recalled resolution 52 (III) adopted by the United Nations Conference on Trade and Development at its third session at Santiago, on the exploitation, for commercial purposes, of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, in which the Conference reaffirmed its view that "prior to the establishment of the international régime, no legal claims on any part of the area or its resources based on past, present or future activities would be recognized".6/ That resolution of the Conference recalled the provisions of General Assembly resolution 2749 (XXV).

It had been submitted by Mr. Khanashed, representative of Kuwait, who was unfortunately not attending the present session. The Kuwait delegation, moreover, had submitted a very similar draft resolution7/ to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor at its first 1972 session, which the Committee had not had time to consider. The Chilean delegation therefore requested that, at its present session, the Committee should give that draft resolution priority consideration. The Committee could not remain indifferent to the violation of the essential concept which had emerged during its work, namely that of "the common heritage of mankind", any more than it could remain unmoved at the violation of the principles proclaimed by the General Assembly concerning the international sea-bed area and its resources. By authorizing the continuance of the exploration and exploitation of mineral resources of the sea-bed and the ocean floor, which had already begun, the international community flouted the "common heritage" principle and ended developing countries' hopes of progress. The Chilean delegation appealed there and then to the countries which were thinking of authorizing the exploitation of sea-bed resources to invite their nationals to exercise moderation and not to encourage them in their activities. It urged them to respect the United Nations General Assembly resolutions on which the Committee's work was founded.

The second important feature of the report of the Secretary-General, dealt with in part IV, concerned the economic consequences which the exploitation of mineral resources from the sea-bed in the international area might have on the market prices of raw materials produced by the developing countries from land deposits. Those raw materials, apart from petroleum, were the copper, nickel, cobalt and manganese contained in the manganese nodules. That part of the report had been drawn up in co-operation with UNCTAD secretariat and the Trade and Development Board's Committee on Commodities, which distinguished between the general consequences, the consequences

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6/ See Proceedings of the United Nations Conference on Trade and Development, Third Session, vol.I, Report and Annexes (to be issued as a United Nations publication), annex I, resolution 52 (III), para. 2.

7/ A/AC.138/L.11

for consuming countries, and the consequences for producers of mineral resources on land. He quoted paragraphs 84 and 85 of the report, and paragraph 87, which drew the conclusion that "the total earnings of land producers from the minerals concerned would decline or would grow less rapidly than they would have done otherwise - in ny event, they would be smaller than in the absence of production from the sea-bed. The severity of the impact would vary among countries and producing enterprises according to relative efficiencies, patterns of trade and market structures".

It was, of course, very difficult to measure the economic repercussions of the future exploitation of sea-bed mineral resources, to measure technological progress and the volume of future capital investments, but they would doubtless appreciably affect the cost of extracting sea-bed minerals. If, for example, a sufficient concentration of manganese nodules of the right size and with a sufficiently rich mineral content to make their extraction profitable was found in a given area, the cost of working might be reduced quite unexpectedly.

In any event, technological developments in that field and the probable volume of investments suggested that the question should be kept under constant review not only by the Secretariat of the United Nations and by the UNCTAD secretariat but also by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor and by UNCTAD bodies.

What was already known, and indeed common logic, left no doubt about one point: if new mineral production arrived on the market, the law of supply and demand would lead to a fall of prices, unless the market were expanding or demand was increasing more rapidly than supply. Even so, the probable increase in the supply of minerals from land deposits coupled with mineral production from the sea-bed would inevitably tend to lower prices. The Chilean delegation did not, however, propose to demand that the idea of exploiting the sea-bed in the international area, which constituted the common heritage of mankind, should be abandoned, but simply that it should be exploited under conditions such that the disadvantages should not outweigh the advantages entailed for the developing countries. In fact, the countries which produced minerals which were also to be found in the sea-bed and were listed in the Secretary-General's report were developing countries, most of which - nearly all the developing countries represented on the Committee - were interested in the matter in one way or another.

Consequently, if it were decided to exploit the sea-bed for the benefit of mankind, means must also be provided to ensure that the harm done to the developing countries should not outweigh the benefits they received. The report submitted by the Secretary-General proposed two solutions: a preventive approach (ibid., paras. 93 and 94) and a compensatory approach (ibid., paras. 95 - 98). The Chilean delegation was strongly in favour of the preventive method, which seemed to be the position of most if not all of the developing countries which had spoken on the subject in the Committee. The compensatory approach involved great difficulties, like those raised by the agreements on agricultural commodities, which had been concluded or amended after long and difficult negotiations. It would be logical and normal for the sea-bed control system and the authorities responsible for operating it to be endowed with sufficient powers to control and regulate future production.

In his delegation's view, exploitation should be entrusted directly to an undertaking under contract or, better still, to mixed companies working under the guidance of an undertaking associated with international institutions. If that were done, the authority responsible for the sea-bed would control output and could fairly easily prevent or mitigate the harm which the exploitation of sea-bed minerals might do to the economies of developing countries.

Finally, the Chilean delegation stressed the need for further study of the question and for reaffirming the provisions of General Assembly resolution 2749 (XXV). The report submitted by the Secretary-General of the United Nations in collaboration with the UNCTAD secretariat should be regarded as an interim report to be followed by others. The Committee should further agree, as a unanimously recognized principle, that the international body responsible for policy on sea-bed exploitation should be given powers of control and regulation enabling it to prevent or mitigate the unfavourable effects that the economies of the developing countries would unquestionably suffer.

The Committee should also request the Secretary-General to inform it in a further study of the economic implications of the new developments which had occurred in the meantime in the exploration and exploitation of the sea-bed in the international area. Such progress reports should be made as frequently as possible.

In asking the Committee to reaffirm the terms of General Assembly resolution 2749 (XXV), the Chilean delegation was not recommending the adoption of a new prohibitory resolution but simply trying to remind the international community of the obligations it had voluntarily undertaken. It wished to warn world public opinion of the facts which threatened to stultify the Declaration of Principles, according to which the sea-bed and its resources were the common heritage of mankind.

Mr. OKAWA (Japan) wished first of all to associate himself with the expressions of gratitude which had been addressed to the Chairman of Working Group I.

The Japanese delegation had studied with interest the report of the Secretary-General introduced by the Under-Secretary-General for Economic and Social Affairs at the 48th meeting of the Sub-Committee. Like the previous reports, it was a source of valuable information for which the Secretariat deserved thanks. He wished to make a few brief comments on the report, particularly on the sections relating to manganese nodules.

There was no denying that the rapid progress made in recent years strengthened the optimism aroused by the prospect of profitable mineral production from the sea-bed. It was, however, very hard to make an accurate evaluation or a precise estimate of the economic impact of sea-bed mineral production, for they must depend on numerous factors, including the rate of progress in technology, the volume of demand for the various minerals contained in the manganese nodules and the cost advantage of land-based over sea-bed minerals - factors to which an element of uncertainty attached. It must be said, therefore, that any estimate in that area could only be purely hypothetical; it was on that basis that the Japanese delegation assessed the estimates given by the Secretariat in its report.

From parts I and II of the report, the possible impact of sea-bed mining on the world mineral markets did not seem likely to be very great. With regard to nickel, for example, expected to be "the mainstay of the nodule industry" (ibid., para. 31), the report stated that "it does not appear probable that sea-bed mining would have a serious adverse impact on nickel markets" (ibid.) With regard to manganese, it stated that "it is by no means certain that the extraction of manganese will prove to be commercially attractive" (ibid., para. 28). With regard to copper, it stated that "production of copper is likely to have the least immediate impact" (ibid., para. 33), for various reasons. Even with regard to cobalt, the market for which might be the first to be affected by sea-bed production, the authors of the report suggested that the possible impact had to be considered in relation to the elasticity of demand, which might improve with lower prices (ibid., para. 25). In the light of those statements, the Secretariat's conclusion that "it is quite possible that commercial manganese nodule exploitation could start within five years" (ibid., para. 23) might be at once rather too optimistic and too alarmist.

The rational management of sea-bed resources and measures to minimize the adverse effects of sea-bed mineral exploitation were mentioned in part III of the report, in which a proposal was made for a possible strategy consisting of the co-ordinated use of an exploitation policy with fiscal and compensatory action by the international machinery. The Japanese delegation would not review that strategy in detail, but would simply suggest the approach to the problem which should, in its opinion, be adopted. In studying strategies to control the impact of sea-bed mining, it believed that greater attention should be given to the possible effects of such measures on the sea-bed mining industry itself. Paragraph 51 of the report stressed the need to reconcile the possible adverse economic effects of such production with the objectives of generating the maximum revenues for the international machinery and actively promoting the expansion of the world resource base. The Japanese delegation felt that those were fundamental objectives of the utmost importance, on which the establishment of an international régime and machinery should be based, and hoped that they would be less often relegated to the background and would be given the attention they deserved. Any analysis which neglected that aspect of the contemplated strategy could only be negative and display some disregard for realities. Measures for controlling the impact which would discourage mining ventures from embarking upon the development of sea-bed mineral resources at all would certainly harm the whole international community. That was one of the principal reasons why Japan advocated a commodity-by-commodity approach. In other words, the problem should be taken up for each mineral whenever any particular adverse economic effect arose, in a world-wide approach encompassing both sea-bed and land-based production. The Japanese delegation noted with satisfaction a brief reference to such an approach in paragraph 52 of the report.

Lastly, the Japanese delegation wished to make a few corrections to the information - on the whole very useful - supplied by the Secretariat with regard to the recent development of technology and experimental work on the mining of hydrocarbons and hard minerals in the sea-bed, particularly the experiment to be conducted during the summer with the continuous-line bucket system mentioned by the Under-Secretary-General for Economic and Social Affairs in his introductory statement (48th meeting). Though that experiment had been initiated by private firms and no Government was participating in it, the Japanese Government felt that it might be useful to give the Sub-Committee certain information which had come to its knowledge.

Some of those firms had drawn its attention to an inaccurate statement in paragraph 16, sub-paragraph 5, of the report: that one of the main objectives of the test would be "to secure about 3,000 tons of nodules from at least three separate deposits, for distribution to participants in the test". According to those firms, the volume of nodules expected to be secured for distribution to the participants would amount at the most to 50 or 60 tons for the whole of the three-week test period. Further, in paragraph 14 of the report it was stated that "the results of the 1970 tests seem to indicate that filling efficiency could be maintained at over 50 per cent of bucket capacity with appropriate operational practice". The firms mentioned were at a loss to see how such an unrealistic figure could have been advanced, and stated that, according to the results of the 1970 test, they expected at best to maintain filling efficiency at 10 per cent in the forthcoming tests. Incidentally, in the forthcoming experiment the buckets would be undetachable, so that the results were uncertain, as that new system had not been tested even on land.

Paragraph 15 indicated that the forthcoming test would use 16,000 metres of polypropylene rope with a 150-ton breaking strength, and that such cables with a rated breaking strength of 500 tons were already being manufactured in Japan. Those figures too, were exaggerated; Japan was not manufacturing cables with such a high breaking strength.

The Japanese delegation had given those figures simply for the sake of accuracy. It hoped that the forthcoming tests would be viewed in their true light. The somewhat exaggerated figures quoted in the report were certainly attributable not to any fault of the Secretariat but to the particular source it had used. The wholly experimental nature of the tests to be carried out in August should be stressed, since, as the report stated in paragraph 16, sub-paragraph 1, their main objective was "to test the continuous-line bucket system at sea in varying operating conditions on actual deposits of nodules that it would be considered economic to mine". The tests were also designed to obtain engineering data concerning all operating aspects of the system. The Japanese delegation believed that such experiments should be continued, for the whole international community would benefit from economically-viable technology available when the international régime and machinery were ready to operate. Accordingly, the Japanese delegation wholeheartedly endorsed the Secretary-General's concluding comment in paragraph 101 of his report that "very considerable additional work will have to be carried out in order to explore the various approaches which could conceivably be applied to the problems under study".

Mr. PHILLIPS (United States of America) offered a brief comment in reply to some remarks by the Chilean representative. That representative had twice (on the previous day at the 79th plenary meeting of the Committee and at the present meeting) referred to bill S 2801 tabled with the United States Senate and in connexion with that bill had attributed to the United States Government certain views which were not wholly consonant with the truth. He thought, therefore, that the following correction would interest the Chilean delegation: that the United States Executive had been asked to send comments on that bill to the relevant Congressional Committees. To allay any apprehension in the minds of delegations interested in the matter, the United States delegation intended to distribute next day a paper reproducing those comments.

Mr. ZEGERS (Chile) said that the representative of Japan had referred to information given in the Secretary-General's report on the continuous-line bucket system. He had happened to read an article in the technical journal Ocean Industry by Mr. Mero, Mr. Masuda's associate as co-chairman or co-director of the syndicate Ocean Resources Incorporated, on the current experiments in the Pacific. It mentioned mining 3,000 tons of nodules. At the first 1971 session, after a statement by the Chilean delegation on the same topic, the Sub-Committee had decided to ask the Governments concerned, through its Chairman, to send the Secretariat the necessary information. If the Secretariat had had earlier the very useful information supplied by the Japanese representative at the present meeting, Mr. Mero's statements could probably have been corrected.

Reverting to the remarks just made by the United States representative, he confirmed his statement at the Committee's 79th meeting, which he had repeated at the present meeting, that a bill numbered 2801 had been tabled with the United States Senate and that the United States Government had not yet decided either for or against it. Evidence was to be found, first, in a statement made in March 1972 by Mr. McKernan, and secondly in the note submitted to the Senate by Mr. Stevenson, of which he had learnt and which, the United States delegation had just announced, would be circulated to the members of the Sub-Committee. When delegations had seen it, they would be able to judge for themselves whether the Chilean delegation was right or not in saying that the United States Government had not yet decided either for or against the bill.

Mr. VALDIVIESO (Peru) said that he intended to make a more detailed statement later on the subject, but would like at that point to express his complete agreement with the arguments put forward by the Chilean representative for the need to reaffirm the moratorium on the exploration and exploitation of the resources of the sea-bed and the ocean floor and to suspend the current or imminent work and experiments of certain companies in an area recognized to be the common heritage of mankind. No country had the right on any pretext to issue patents or grant facilities for exploration or exploitation of the resources of the sea-bed after agreeing to respect the principles in General Assembly resolution 2749 (XXV) concerning the future régime to govern the exploration and exploitation of those resources.

Mr. AL-SABAH (Kuwait) thanked the Chilean representative for his reference to the draft resolution previously submitted by the Kuwaiti delegation. The Kuwaiti delegation was well aware of the importance of the decision to be taken and the difficulties likely to be encountered in securing a unanimous decision. It therefore hoped to be given more time to consult with the co-sponsors of the draft resolution, in order to decide upon a procedure likely to forward that decision.

The meeting rose at 4.45 p.m.

SUMMARY RECORD OF THE FIFTIETH MEETING

held on Wednesday, 26 July 1972, at 3.25 p.m.

Chairman: Mr. ENGO Cameroon

POSSIBLE ECONOMIC IMPLICATIONS OF MINERAL PRODUCTION FROM THE INTERNATIONAL SEA-BED AREA (concluded)(A/AC.138/73, A/AC.138/SC.I/L.12, A/AC.138/SC.I/L.13)

The CHAIRMAN drew attention to a text which the United States delegation had proposed (49th meeting) to submit to the Sub-Committee and which had just been distributed, namely the letter from the President of the Interagency Law of the Sea Task Force to the Chairman of the United States Senate Committee on Foreign Relations.

Mr. ARCHER (United Kingdom) referred to the differing views which had emerged in the course of the debate in connexion with certain facts and their interpretation. For example, there were discrepancies between the conclusions reached in the two prepared by the Secretary-General in 1971 and 1972, entitled respectively "Possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: preliminary assessment" 8/ and "Additional notes on the possible economic implications of mineral production from the international sea-bed area" (A/AC.138/73). He noted with satisfaction that the sources of the information given in those documents had been indicated and that the Chilean representative had also mentioned the sources of the information quoted in his statement (49th meeting). However, great caution must be exercised when evaluating statements made about the prospects for marine mining, for that was an entirely new field of human endeavour, and no one had any practical experience of its commercial possibilities. One well-known author had nevertheless gone so far as to say that the cost of recovering copper from manganese nodules would be half that of producing the metal from land deposits. However, with the exception of that particular author, geologists were unanimously of the opposite opinion.

Manganese nodules had also been referred to as renewable resources. However, while it was perfectly true that such nodules were growing, it would take one thousand to one million years for one millimetre to be deposited. Although that might not seem long to a geologist, it was a very long time for the Sub-Committee and for the problems with which it was concerned.

So far as his delegation was aware, no United Kingdom company was at present engaged on developing techniques which might eventually be used to mine manganese nodules from the sea-bed and to recover the metals they contained. Manganese nodules and other mineral resources of the sea-bed beyond the continental shelf would undoubtedly be recovered one day, but it would only be possible to exploit those resources commercially when the cost of extracting the metals became competitive with the cost of land-based mining.

Several delegations had said that the exploitation of the mineral resources of the sea-bed had already begun. But according to the information available to his delegation, the United Kingdom, which was closely interested in the question as a consumer, had noted that the practical work carried out so far had related to

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8/ A/AC.138/36.

prospecting and research, with a view to developing mining systems and mineral-processing techniques. Without that preliminary work, the mineral resources of the sea-bed could never be exploited. However, many years would elapse before economically-viable systems were developed. Moreover, the exploitation of the sea-bed would entail heavy capital expenditure, and the limited financial resources available would have to be distributed between the discovery and development of land deposits and experimental work on marine resources. It was conceivable that nodules would be commercially exploited one day, but it was difficult to estimate when.

It was perhaps worth pointing out that manganese nodules did not constitute the only mineral wealth on the sea-bed. It had even been suggested that the recovery of deep sea clays might prove to be an economic source of aluminium, despite the vast resources of aluminium ores on land.

The Chilean representative had referred to paragraphs 84, 85 and 87 of the Secretary-General's 1972 report. Paragraph 84 stated that the presumed lower marginal costs associated with the production of minerals from the sea-bed would bring direct benefits to the consumers of the minerals concerned, who were, by and large, the mineral-using industries in developed countries. His delegation was not convinced of the soundness of that statement. It seemed rather that unless considerable technological progress was made - which could also be of advantage to land-based producers - the recovery of minerals from the sea-bed was likely to be commercially feasible only if the prices of the metals concerned did not fall significantly below present values. Similarly, it had been proved, for example in the case of phosphorite, that the optimistic predictions concerning the cost of exploiting other minerals from the sea-bed were ill-founded.

New mineral deposits continued to be discovered on land, so that it was unlikely that there would be any pronounced upward swing in metal prices due to scarcity. Thus it was difficult to conceive of a situation in which metals recovered from nodules would do more than help to meet the increasing world demand. It followed that his delegation agreed with the views expressed in the conclusions of the 1971 report according to which, with the doubtful exception of cobalt, the exploitation of manganese nodules on the sea-bed was unlikely to depress the price of metals, and would thus have no adverse effect on existing land producers. The same conclusion was reached, moreover, in paragraphs 25 to 36 of the 1972 report.

The Secretary-General's 1972 report containing his additional notes appeared to be based on the assumption that the régime to be agreed for the exploitation of the mineral resources in the area beyond the limits of national jurisdiction would provide for the regulation of production. In his delegation's view, such regulation could only be effective if it applied to both marine and land-based resources. His Government, moreover, was always ready to consider the conclusion of world commodity agreements.

When the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, which had preceded the present Committee, had been established, some delegations had expressed the view that the development of the mineral resources of the sea-bed would bring substantial benefits to the developing countries. Now, however, some delegations were maintaining that, in order to protect the interests of those countries, very strict controls must be imposed on the exploitation of those resources. His delegation was convinced that it would be possible to adopt an attitude somewhere between those two extreme positions.

Mr. FERGO (Denmark) said that he had studied with great interest the 1972 report of the Secretary-General and would like to submit a few general comments in that connexion.

With regard to the development of sea-bed resources, his delegation agreed with the general guidelines formulated in paragraph 44 of that report. However, with reference to the third guideline, that the development policy should provide for the orderly, efficient, balanced development and use of living and non-living marine resources, principle 5 of the Declaration of the United Nations Conference on the Human Environment should not be overlooked, in particular the statement that "the non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion ...".9/ Since the resources of the sea-bed constituted the last stock of natural resources on our planet, they must be husbanded, so as to ensure the rational management of the common heritage of mankind. That policy would doubtless have to be applied, even though, as the Under-Secretary-General for Economic and Social Affairs had said, manganese nodules had the "unique characteristic of continuing to form more quickly than they could be consumed" (see A/AC.138/SC.I/L.12, seventh paragraph). In that connexion, his delegation would be glad if the Secretary-General could give further information, for instance in a supplementary report, on that particular characteristic of manganese nodules.

His delegation had noted the fact that no commercial exploitation of the mineral resources of the sea-bed, in particular of manganese nodules, was taking place at the present time. Strict rules would have to be elaborated before such production developed, in order to ensure that it did not harm the interests of developing producing countries. The preventive measures designed to protect the interests of those countries, dealt with in the report (see A/AC.138/73, paras. 93 and 94), seemed to present certain advantages, but before expressing any definite opinion his delegation would like to study more thoroughly the price stablization problems raised by the production of minerals from the sea-bed.

His delegation agreed with the Japanese delegation (49th meeting) on the need to ensure that measures taken to protect the interests of land producers did not have any adverse effects on the development of sea-bed mining in the future. So as not to discourage legitimate sea-bed activities, it would be advisable to envisage a global approach that would take account of the production of land-based, as well as sea-based, resources.

Mr. PHILLIPS (United States of America) said he appreciated the difficulties of rapidly assembling information on such a complex subject as mineral production from the sea-bed area; that subject was a new one and the sources of information were often conflicting and erroneous. He therefore congratulated the Secretary-General on having succeeded in assembling so much useful information in his two reports.

The statements made at the 49th meeting by the representatives of Chile and of Japan showed that the 1972 report of the Secretary-General raised some problems of interpretation and that it was difficult to find trustworthy data for such studies. Because of those difficulties, his delegation would like to suggest that, in future studies, data from reliable sources should be clearly distinguished from the more speculative data which must, of course, be included where such a new field was involved. Similarly, the interpretation of data should be clearly separated from the data themselves.

9/ See "Report of the United Nations Conference on the Human Environemnt, held at Stockholm from 5 to 16 June 1972" (A/CONF.48/14)(to be issued as a United Nations publication), part I, chap.I, part II of the Declaration.

He had found the statement made by the representative of Japan at the 49th meeting particularly illuminating, and he agreed that any estimate of the economic implications of the production of minerals from the sea-bed could only be of a purely hypothetical nature and that the imposition of restrictive controls might discourage sea-bed mining, to the detriment of the international community as a whole. He also concurred with the Japanese representative's statement regarding the experimental nature of the continuous-line bucket system tests. He also agreed with the views expressed by the representative of the United Kingdom.

A study of the 1972 report of the Secretary-General revealed a number of areas where additional data would be useful or where corrections of information appeared necessary. That applied for instance to paragraphs 17, 18, 19 and 20, which suggested that the problem of metallurgical processing had been solved. Although it was true that many laboratories had been set up, and that tests had been carried out, no commercially proven process had been found. In fact, some processes such as those described in paragraph 19 were clearly economically unsatisfactory.

The question of the relative costs of production of sea-bed as compared with land-based minerals was a fundamental one in the discussions of the Sub-Committee. In that connexion, paragraph 84 contained a passage reading: "It follows from the foregoing that the greater availabilities and presumed lower marginal costs associated with the production of minerals from the sea-bed ...". He pointed out that both "greater availabilities" and "presumed lower marginal costs" were assumptions and not facts. It had not yet been proved that ocean minerals could compete at present price levels. The development problems of ocean mining and processing of nodules had not yet been solved and there was not even a demonstration-scale plant which would enable costs to be ascertained. The cost structure was therefore unknown and estimates so far made were suitable only for the justification of prospecting and research and development activities. It was well known that creative technical men were often optimistic in their predictions of costs. Care should therefore be taken to avoid creating serious economic and political problems by a false view of the economics of ocean mining.

Realistic estimates recognized the high cost of ocean mining and the complex metallurgical processing required; they indicated that it was unlikely that investments in a nodule project could be justified at less than present prices for copper and nickel, and perhaps even higher prices would be required. It was therefore quite improbable that nodule minerals would displace present production. With regard to manganese and cobalt, it did not appear that the production costs of those metals would be particularly low. The marginal cost of recovering manganese was very high and such manganese could not compete with the low-cost land-based supplies used in almost all applications. Cobalt mining appeared more practicable than manganese, but it was costly and the marginal costs of cobalt production were not such as to provide an incentive to mine cobalt from nodules.

The implied assumption that sea-bed minerals would be cheaper than existing land supplies was therefore questionable. A long-term trend was that minerals from all sources would become harder to find, become lower in grade, and more expensive to mine and process. At the same time, the demand for minerals was increasing exponentially. It therefore seemed likely that costs of production and prices would rise gradually. When the cost curve rose to a point permitting the exploitation of more expensive mineral sources, then those resources would be exploited, provided that the balance of demand and supply made it possible. Thus, it was highly unlikely that the production of ocean minerals would affect current production and it seemed that such production would only slowly have any effect on the development of future mineral supplies in a way which seemed beneficial to the world.

If sea-bed minerals were to be produced for the benefit of mankind, a long period of development free from excessive restrictions might be necessary. Restrictive controls on production in the early stages of a new technology might prove to be counter-productive. All those factors and their interdependence should therefore be taken into account and a régime established which would enable those minerals to be exploited for the benefit of the whole world.

Mr. ZEGERS (Chile) disagreed with the opinion of the United Kingdom representative on the exploration and exploitation of the sea-bed. A rapid survey of investments would disclose whether the economic exploitation of sea-bed resources had really started or was actually in progress. For instance, it was stated in the Secretary-General's report that the Hughes Tool Company had committed substantial funds, perhaps exceeding $50 million, to develop a manganese nodule mining system, based on advanced pumping technology (see A/AC.138/73, para. 12). That company had ordered three ships specially designed to mine manganese nodules, at a cost of about $60 million.

The Chemical Copper Company had invested $60 million in developing a nodule mining and processing system, not on land, but on board ship. Another company, Deepsea Ventures, was operating a manganese processing plant in Georgia, which separated the various minerals contained in the manganese nodules; it had invested $30 million in that separation process.

In addition to the North American companies he had just mentioned, he noted that Metallgesellschaft and Le Nickel were also engaged in exploration surveys for manganese nodules in various parts of the world and that a European Oceanographic Association (Eurocean), led by Commandant Cousteau, had been formed for that purpose. The tests of the continuous-line bucket system, carried out in the summer in the Pacific and financed by a consortium of more than 20 companies, should secure about 3,000 tons of nodules, although the delegation of Japan had quoted lower figures.

Considerable sums of money had therefore been invested in exploring the mineral resources of the sea-bed. As for the question whether the mining and processing of nodules formed part only of an economic exploration process, or whether exploitation had actually begun, the distinction was difficult to draw. In any case, some circles seemed to believe that it would not be long before exploitation started, if it had not already begun, and the fact that the United States Congress had before it a bill on the exploitation of the sea-bed seemed to bear that out.

His delegation considered that the facts which had just been outlined amply proved that the stage of exploitation had begun. It was obvious that enquiries should be continued into activities relating to the exploration and exploitation of the sea-bed, so as to clarify the extent of exploitation, if any, and the areas in which it was taking place.

Secondly, with regard to the economic implications of sea-bed mineral production, it had been said that the additional supplies would not have any adverse impact on prices. He thought that elementary logic led to the conclusion that if the demand for minerals was maintained in accordance with forecasts, and the supply increased, prices would necessarily fall. Thus, the question whether sea-bed mineral production would have an adverse effect on the markets for land-based supplies did not arise; the extent of the inevitable fall in prices was the only factor to be measured. It was obvious that, with technical progress and sufficient investments, what was at present high-cost mining

could be made profitable. Just when costs of production would be at an economic level, making large-scale mining possible, was the only unknown factor. Consequently, his delegation believed that further study of that question was necessary and that the Governments concerned should be asked to supply fuller information than had been available to the Secretary-General when he compiled his report.

Miss MARTIN SANE (France) said there was a world of difference between simple exploration and rational commercial exploitation of sea-bed mineral resources. She would also like to draw the attention of the representative of Chile to the fact that the association "Eurocéan" was a non-profit making partnership of industrialists whose object was to foster oceanographic industries in Europe, and that it did not engage in operational activities. As far as her delegation was aware, Commandant Cousteau had never concerned himself with manganese nodules.

Mr. VALDIVIESO (Peru) requested the representative of France, the United Kingdom and the United States to circulate the texts of their statements at previous meetings on the matter under consideration.

Mr. MANDERSON-JONES (Jamaica) asked the representative of the United Kingdom, as well as all the other representatives who were in favour of a general commodity agreement on sea-bed and land-based minerals, if they could not put into writing the sort of agreement they had in mind. Such a document could provide a general framework for the discussions which would take place in other bodies on such agreements.

Mr. ZEGERS (Chile), referring to the statement by the representative of France, said that "Eurocéan" was a body which not only carried out scientific investigations of the ocean floor, but was also engaged in studying the economic aspects of its operating activities, that latter point being provided for in its articles of association. He would present further observations after reading those articles of association again.

Mr. BEESLEY (Canada) referred to the document entitled "International sea-bed régime and machinery: working paper submitted by the delegation of Canada (A/AC.138/59)",10/ submitted by Canada at the 26th meeting of the Committee during its second 1971 session, in which his delegation had outlined the measures which could be taken in anticipation of the establishment of an international sea-bed régime and machinery. His delegation had not pressed for the support of the Sub-Committee and was not unaware of the concern felt by some delegations at the prospect of an international sea-bed régime being set up. Canada shared the concern of the countries which produced land-based minerals and considered that the delegation of Chile had performed a useful service to the Committee in drawing attention to the problem.

As a leading producer of nickel, Canada had a direct interest in the possible economic impact of the exploitation of the sea-bed beyond the limits of national jurisdiction. It was difficult to obtain information about the mineral resources of the sea-bed, their value and their quantity, and the Canadian authorities were not sure about the statement that in the 1972 report of the Secretary-General that it did not appear probable that sea-bed mining would have serious adverse impact on nickel markets (See A/AC.138/73, para. 31). As far as current exploration for sea-bed mineral

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10/ See the 1971 report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421)), para.53 (j), p.22, and annex I, 17, p.205.

resources was concerned, several Canadian mining companies had subscribed $50,000 each to obtain information on the results of an experimental programme involving the testing of a continuous-line bucket system for recovering manganese nodules.

A number of delegations had rightly pointed out that it was difficult to determine just when the exploratory phase strictly speaking ended and exploitation began; manganese nodules recovered in the course of such activities would be retained. Those activities also raised legal problems. For instance, it was by no means clear that there were any existing statutes Canada could invoke, other than the possible use of criminal law powers (a rather diaconian measure), under which it could tell Canadian companies to cease such operations. The situation was further complicated by the fact that the limits of international jurisdiction had not yet been determined.

With regard to the question of the international régime to be established for the exploitation of the sea-bed resources, he noted that while some supported the multi-lateral method others favoured the unilateral method. His delegation strongly supported the multilateral concept and the establishment of an international régime under which it would be possible in certain cases even to prohibit operations. The Sub-Committee had unfortunately not made much progress in its consideration of the question of an international sea-bed régime.

Lastly, his delegation wished to point out that, if it had not provided much information to the Secretariat for the drafting of the report on the economic implications of sea-bed mining, it was because there was little information available on the subject. As a mineral producer, Canada was one of the countries which were trying to determine to the maximum extent possible the future of markets for minerals.

Mr. THOMPSON-FLORES (Brazil) said that the development of the mineral resources of the sea-bed would be technically feasible in the foreseeable future and raised the question of establishing an interim régime for the sea-bed. However, his delegation would caution the Sub-Committee against establishing such a régime before the question had been really thrashed out, because its adoption might pre-judge the international régime to be established subsequently. An interim régime would impose a set of pre-established rules, so to speak, pending the establishment of the definitive régime. He had the impression that some delegations were trying to present the others with a fait accompli.

His country, for its part, was opposed to the adoption of an interim régime. It supported the terms of General Assembly resolution 2749 (XXV) and the draft resolution submitted by Kuwait at the Committee's first 1972 session. 11/ Lastly, his delegation endorsed the suggestion that countries in which large companies engaged in the exploration of marine resources were registered should supply the Sub-Committee with information enabling it to evaluate the situation.

Mr. BEESLEY (Canada) said that he fully appreciated the Brazilian point of view on the possible danger of an "interim régime", to which, moreover, he subscribed, but there had never been any question in his mind of an interim régime, still less of a national interim régime. What his delegation was proposing was a transitional international régime and machinery. The best way of illustrating the Canadian viewpoint was to refer to the working paper submitted by his delegation, which he had already

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11/ A/AC.138/L.11.

cited. It was important to realize that the Sub-Committee's work was not proceeding in a vacuum, but was based on the extremely sound directives contained in the Declaration of Principles. In that connexion, his delegation had already given its views, some 18 months previously, on how the Declaration might be reflected in a future treaty. That problem must be faced, even if some people preferred not to concern themselves today with what Canada had stated yesterday about those things which would inevitably be necessary tomorrow. Referring to the critical units of the machinery required to meet the present situation, mentioned in the penultimate paragraph of the working paper submitted by Canada and reproduced in the Committee's 1971 report, 12/ he said that the policy his delegation was advocating was definitely not one of laissez-faire. The proposed machinery would have strong executive functions, namely, those listed in sub-paragraphs (a) - (j) in the same paragraph of the working paper. 13/ Sub-paragraph (f) of the English text clearly envisaged two possibilities ("to approve or disapprove applications...").

Of course, his delegation fully understood that that was only one proposal and that other solutions were possible, either in action, or by adopting the draft resolution mentioned. All it wished to stress was the need, when studying the available options, to think seriously of the possibility of doing something to give the United Nations the power of regulating what, in any event, was already happening in the high seas. In that connexion, his delegation wished to point out once again that Canada was not among those countries whose individuals or corporations operated in the area. Moreover, most of the companies concerned, so far as it understood, had simply purchased a right to obtain information and had not contributed direct to the cost of the exercise.

Mr. PHILLIPS (United States of America) said that, according to one delegation's statement, an attempt had been made to present the international community with a fait accompli. His Government took the view that it was the unilateral decision of certain coastal States to extend their jurisdiction to areas which had formerly been regarded as belonging to the high seas and consequently to the common heritage of mankind which represented the attempt to present other countries with a fait accompli.

Mr. ZEGERS (Chile) recalled that the first unilateral declaration of jurisdiction in that field had emanated from President Truman.

Mr. THOMPSON-FLORES (Brazil) expressed anxiety lest the fact that companies were at present purchasing the right to obtain information concerning the exploitation of the sea-bed area might mean that countries which did not have that possibility would likewise not have the possibility of obtaining information.

The CHAIRMAN said that, in the light of the particularly useful and constructive exchange of views which had just taken place, it was clear that the appeal he had made to Governments the previous year, asking them to co-operate in the preparation of reports by the Secretariat, had gone unheeded. Such co-operation was absolutely essential if the Secretariat was to be able to draft really useful and balanced documents which no one could accuse of failing to give a true picture of the situation.

12/ See Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421), annex I.17, p.223.

13/ Ibid., pp.224 and 225.

He therefore renewed that appeal, and expressed the hope that all States would do their utmost to supply faithful and accurate information, so as to enable the work to proceed on the basis of substantiated documentation. He also hoped that, with regard to the proposed new studies, the Secretariat, as an independent body staffed with competent and dedicated experts, would be able to count on the goodwill of members of the international community and that it would receive the necessary data in writing and in good time.

Mr. de SEYNES (Under-Secretary-General for Economic and Social Affairs) said he wished to clarify an observation contained in his statement at the 48th meeting which might lead to confusion. By "a vast area of the sea" (see A/AC.138/SC.I/L.12, fourth paragraph), he had, of course, meant only the sea-bed, not the waters superjacent to the biological or vegetable resources it might contain.

Speaking in more general terms, he wished to stress that the debate which had taken place in Sub-Committee I had been extremely instructive, both for the Department of Economic and Social Affairs and for UNCTAD. The two secretariats had followed it with growing interest and were ready to derive every possible lesson from it. They would have learnt a good deal from the statements made, in particular, by the representatives of the United Kingdom, the United States, France, Denmark and other countries. Nevertheless, they would still be just as perplexed about the bases of their work. They were extremely sorry that certain information supplied had been deemed incomplete or suspect, but did not see how they could resolve that complex problem unless Governments made a real effort to help them. He was therefore particularly grateful to the Chairman for appealing to delegations to supply information. He noted that the Canadian Government, for example, had not been in possession of all the necessary information concerning the activities of companies operating under its jurisdiction, but, as he had said, no headway would be made unless Governments made a serious effort to help the United Nations Secretariat to sort out its ideas. The latter traditionally had access to reliable statistical sources, and although the question under consideration related to a much newer field, the Secretariat should not be forced into a situation where it had to include indiscriminately in its documents all the information which might come to hand, merely to provoke a denial with a view to obtaining the correct information.

On the other hand, the provision of information was not everything - there was also the question of the conclusions of analyses derived from it. But there one entered the realm of conjecture, involving technological forecasting and the economic projections based on it. In that area, particularly serious difficulties were encountered which emphasized the need to develop the disciplines of technological and economic forecasting. For some months, moreover, long-term forecasts had constituted a major preoccupation of the international community, and the Secretariat had had occasion to note just how ill-equipped it still was in that field.

The analysis by the United States representative, which had led to the conclusion that no immediate shortage was likely in the short term but that, in the longer term, certain indicators suggested the possible exhaustion of traditional resources, came close to reality. Efforts to reconcile the short-term and medium-term interests should therefore rapidly become a kind of reflex action by the international community.

Another noteworthy fact was that, with regard to the problems under consideration, the alignments of countries differed considerably from the classical alignments. In particular, there was one category of countries which had not been mentioned very much in the Sub-Committee and which might benefit from a redistribution of resources rendered

possible by an international régime that would authorize the granting of certain exploitation rights, as had been suggested by the Canadian representative. On the other hand, the greatest possible account would have to be taken of the conflicting interests of consumer countries and producer countries, which might create problems even among developing countries, and the utmost caution would be called for when any judgements in that respect were formulated. For example, it was not yet known how many developing countries would be affected by the exploitation of nodules.

He did not think that the shortcomings of the report submitted by the Secretariat robbed it of all value. Its authors cautiously took note of the progress made in the field of technology and the possibilities of exploiting resources, and could not expressly omit the understandable eagerness with which certain countries wished to carry out experiments in that new field. There was no doubt that the future reports issued by the Secretariat would likewise be the subject of controversy, for differences of opinion could clearly arise even in secretariats, as for example between the Department of Economic and Social Affairs and UNCTAD. Even if those two secretariats worked together in perfect harmony, it did not follow that they must adopt a monolithic position and invariably reach similar conclusions. Any analysis was tainted by subjectivity and coloured by the course taken by the debates in the various intergovernmental bodies, on which secretariats must base their conclusions - and that course, moreover, was not always the same in the different United Nations bodies. Actually, any disparity there might appear to be between the views of the Department of Economic and Social Affairs and those of UNCTAD had a positive and salutary aspect.

In view of all those uncertainties, it was absolutely imperative to make rapid progress in establishing an international régime and machinery. True, it had been said that it would be difficult to conceive of such a régime without having experimented in greater detail, but there again, an effort should be made to reconcile opposing objectives which might otherwise engender tensions or even conflicts.

Mr. BEESLEY (Canada) noted that the Under-Secretary-General for Economic and Social Affairs had not mentioned his own delegation when he referred to delegations which had made statements, although he had implied that it might, perhaps, have communicated more information. He therefore wished to make it clear that no Canadian company was participating in an operation on the high seas; his delegation could not say anything about what other companies in other countries were doing; all it knew was that five Canadian companies had each paid $50,000 to obtain information about activities which had not yet taken place. Those companies did not participate in any way in any kind of exploration or exploitation of the resources of the deep sea bed. Thus, his Government was not withholding any information; there simply was none, beyond what had already been communicated to the Secretary-General.

Mr. ZEGERS (Chile) recalled that under the terms of the resolutions adopted by the United Nations General Assembly and by the Committee, the Secretariat was invited to carry out both studies and appraisals. Although his delegation, too, had not been mentioned among those which had made useful statements, he would point out to the Under-Secretary-General for Economic and Social Affairs that the Japanese delegation was the only one which had made corrections to the content of the reports. No other facts had been contested. With regard to the evaluation or appraisal which the Department of Economic and Social Affairs and the UNCTAD secretariat had been invited

to make of possible implications, the conclusions reached in the 1972 report of the Secretary-General seemed perfectly valid, even though certain delegations could not subscribe to them. The United Nations Conference on Trade and Development had endorsed them at its third session, and it was obvious that the analysis was extremely useful and should be supplemented by further studies, for which all that was required was more fruitful co-operation by States.

Mr. de SEYNES (Under-Secretary-General for Economic and Social Affairs) said he was grateful to the Canadian representative for his explanations. In general, the Secretariat would simply like to see a little more active co-operation on the part of States.

The CHAIRMAN thanked the Under-Secretary-General for Economic and Social Affairs and said that the Sub-Committee was also grateful to the Secretary-General of UNCTAD, who had been unable to attend the present meeting. He thanked all members of the Sub-Committee for their co-operation, which had led to a very fruitful debate, in which it had been possible to make a start on seeking a solution to a problem of historic significance and to work for the establishment of a just order for future generations.

The meeting rose at 5 p.m.

SUMMARY RECORD OF THE FIFTY-FIRST MEETING

held on Thursday, 27 July 1972, at 3.10 p.m.

Chairman: Mr. ENGO Cameroon

STATUS, SCOPE AND BASIC PROVISIONS OF THE RÉGIME BASED ON THE DECLARATION OF PRINCIPLES (GENERAL ASSEMBLY RESOLUTION 2749 (XXV)) (item 1 of the programme of work of the Sub-Committee)

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (item 2 of the programme of work)

Mr. HSIA (China) said that the present meeting was the first at which his delegation had the opportunity of expressing its views on the draft document concerning an international régime governing the exploitation of the resources of the sea-bed. Representatives of most countries had considered that the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil thereof, beyond the Limits of National Jurisdiction, adopted by the General Assembly in its resolution 2749 (XXV) should be taken as the basis. When the Declaration had been adopted, the People's Republic of China had not yet recovered its seat in the United Nations; his delegation would therefore like to make a few comments on that Declaration.

The sea-bed area situated beyond the limits of national jurisdiction, and its resources, should in principle be commonly owned by all the peoples of the world. In other words, no Power might exercise any hegemony over the high seas or seize the area beyond the limits of national jurisdiction and plunder its resources. The Declaration of Principles expressly stated, in paragraph 2, that no State or person should appropriate any part of that area, exercise sovereignty over it or claim any rights incompatible with the international régime to be established. In the past, the colonialists had often used the so-called "right of prescription" to indulge in plunder and aggression. The super-Powers still more frequently distorted and misused the "freedom of the high seas" to secure hegemony over them.

The Declaration also provided, in paragraph 9, that an international régime applying to the sea-bed area not under national jurisdiction and including appropriate international machinery should be established. That régime and machinery must ensure that the area was under rational management, free from manipulation and monopolization by the super-Powers, so that all the countries of the world might share in its benefits. Particular attention should be paid to the interests and needs of all developing countries, whether land-locked or coastal. A number of other provisions of the Declaration were designed to ensure that the sea-bed area was used for peaceful purposes, to protect the marine environment, to safeguard the lawful rights and interests of the coastal States and of all other countries concerned, and to empower coastal States to take steps to prevent or eliminate pollution and other hazards. Those provisions were also reasonable.

His delegation considered that those provisions conformed basically with the interests of the peoples of all countries. It therefore agreed in principle that an international régime should be established to govern the sea-bed area on the basis of those provisions.

The Declaration of Principles, however, also contained provisions which were not explicit enough. His delegation, for instance, would like to know whether living resources were included in the resources to be controlled by the international régime. His delegation thought that, in accordance with the spirit of the principle stated in paragraph 9 of the Declaration on expanding opportunities in the use of the area and its resources, living resources should be included in the scope of the international regime's control. Another unresolved controversial question was whether the role of the international régime was to be confined to the exploration of the area and the exploitation of its resources. The Declaration did not make sufficient provision for that point. His delegation felt that, in accordance with the spirit of paragraph 9 of the Declaration, the function of the international régime should not be limited to the exploration of the area and the exploitation of its resources. A number of representatives had tried to reduce as much as possible the range of activities which would be subject to the international régime, since the more that range were restricted the more easily could the super-Powers use the so-called "traditional international law" to maintain their vested rights and interests. To limit the application of the international régime to the exploitation of sea-bed mineral resources would run counter to the interests of the developing countries and the concept of the common heritage of mankind.

The international sea-bed area should be used exclusively for peaceful purposes, and to ensure the realization of those purposes all the countries of the world should jointly work out an appropriate and effective international régime. Now some speakers were trying to include in the international régime the question of the prohibition of nuclear tests and the emplacement of nuclear weapons in the sea-bed area. There was no need to remind anyone that both super-Powers, which possessed vast quantities of nuclear weapons, had not only manufactured and stockpiled them in profusion in their own territories but had also set up nuclear bases in other countries. Equipped with nuclear weapons, their warships were plying the oceans of the world and their aircraft were flying over other countries. In those circumstances, to advocate the prohibition of nuclear tests in the international sea-bed area meant in fact to allow the two super-Powers to maintain their monopoly of nuclear weapons, to control other countries, and completely to deprive the peace-loving countries of any freedom of action.

China could not accept that situation. Its Government had advocated the complete prohibition and total destruction of nuclear weapons, and had on many occasions declared that in no circumstances would it be the first to use nuclear weapons. The super-Powers, however, still obstinately refused to commit themselves not to be the first to use those weapons, thus revealing their true intentions. What should be done first of all was to prohibit the activities of all nuclear-powered submarines in the international sea-bed area and in national waters; the warships of the super-Powers, brandishing their nuclear weapons, were cruising on all the high seas and calling at ports everywhere. It was not enough merely to prohibit the emplacement of nuclear weapons and nuclear testing in the international sea-bed area, since the prohibition of nuclear tests in that area was of little practical significance; on the contrary it would create a false sense of security.

His delegation therefore proposed that the two last paragraphs of section XI of the working document No. 2 of Working Group I should be deleted and replaced by the following text:

> "The activities of all nuclear-powered submarines in the international sea-bed area and in the sea-bed area of other States shall be prohibited. The emplacement of nuclear weapons and all other weapons in the international sea-bed area and in the sea-bed area of other States shall be prohibited."

His delegation, which had not been taking part in the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction for very long, had not yet been able to consider all the problems thoroughly, and the views it had just expressed were only preliminary. It was ready to continue its exchange of views on the subject with other delegations, so that the international régime could play an effective part and truly protect the rights and interests of the developing countries.

ORGANIZATION OF WORK

The CHAIRMAN asked delegations to forward to him their suggestions on the questions which they would like to discuss when the Sub-Committee had completed its consideration of the international régime and machinery. He invited them to do so at the meeting which the Sub-Committee was holding on the Thursday of the following week. The Sub-Committee had only two weeks left to complete its work and report to the full Committee.

The meeting rose at 3.40 p.m.

SUMMARY RECORD OF THE FIFTY-SECOND MEETING

held on Monday, 31 July 1972, at 3.20 p.m.

Chairman: Mr. ENGO Cameroon

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

STATEMENT BY THE CHAIRMAN

The CHAIRMAN said that he was occupying the Chair in place of Mr. Engo, who had been the victim of a road accident and was in hospital. On behalf of the Bureau and delegations, he wished Mr. Engo a quick recovery and hoped that he would be able to resume his duties very soon. In his absence, the Vice-Chairmen would take the Chair in turn.

TATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (item 2 of the programme of work)(continued)(A/AC.138/SC.I/L.14)

Mr. VIEYTE (Uruguay) said that the General Assembly, in deciding to convene a conference on the law of the sea, had based its action on the fundamental principle that the resources of the sea-bed should benefit mankind as a whole, without any discrimination, so that that common asset of mankind, exploited in a spirit of international co-operation, might be used to alleviate the difficult - not to say wretched - conditions of many of the peoples of the world, and might contribute to the maintenance of world peace. That General Assembly decision had engendered a feeling of "co-ownership" among all peoples, in particular the most disadvantaged ones, which now cherished the hope of well-being. But the task of translating that principle into reality was immense.

The various questions which Sub-Committee I had been asked to study and to solve first should be arranged in a certain order of priority. The problems to be onsidered first of all were those relatin to the period of transition before the will of the majority of States, as expressed in the legal instrument now being prepared, was given practical effect. Pending the establishment of an international régime, the most urgent task was to impose an effective moratorium on the study, exploration and exploitation of the sea-bed and ocean floor, as advocated in General Assembly resolution 2574 D (XXIV), which provided that "States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction" and that "no claim to any part of that area or its resources shall be recognized".

At the present session, as at earlier sessions, various delegations - in particular, those of Chile, Brazil, Canada, Mexico and Uruguay - had displayed a keen interest in that question and had expressed their concern that anarchic activities by private enterprises which disregarded the General Assembly resolution should not, in the absence of a legal instrument to regulate and control such activities, result in the appropriation, pollution, depredation or spoliation of an asset belonging to the whole international community.

A few days previously the Chilean delegation had made precise charges, based on specific information, concerning enterprises which had invested capital in sea-bed activities, in defiance of the General Assembly's decision, and were not being subjected to any pressure to make them respect that expression of the will of the majority of States Members of the world Organization.

His Government wished once again to affirm its position, which was that the general interest should be protected from the mercenary spirit of private enterprise. At the 79th plenary meeting of the Committee, held on 24 July, Mr. Gros Espiell, head of the Uruguayan delegation, had made a detailed analysis of resolution 52 (III), adopted by a large majority at the third session of the United Nations Conference on Trade and Development, which invited all States "to cease and desist from all activities aiming at commercial exploitation in the sea-bed area ... directly or through their nationals".

Furthermore, the Latin American countries had unanimously expressed the wish that the exploration and exploitation of the resources of the international area for peaceful purposes should be entrusted to an international authority administering an international sea-bed enterprise. That would ensure that the part of mankind which needed them most would not be deprived of the riches of the sea-bed. That approach to the exploration and exploitation of the sea-bed implied the strict application of General Assembly resolution 2574 D (XXIV) concerning the prohibition of all activities in the international area, pending the conclusion of an international instrument governing such activities. In asking States to refrain from all activities, pursuant to the General Assembly resolution, the Latin American countries were giving the interests of developing countries prior consideration over the technical might of the highly developed countries.

It was therefore imperative to overcome the difficulties which were preventing the realization of a plan which would benefit the entire world, without exception, and to consider, in all good faith, the related aspects of the question of machinery, and particularly the idea of a moratorium. That question could not any longer be left undecided; the time had come to put an end to distrust and the exploitation of the many by the few, by establishing machinery to prohibit activities that were contrary to the general interest.

Mr. ZAFERA (Madagascar) pointed out that his delegation had already expressed its views on the status, scope, functions and powers of the international machinery at the Sub-Committee's second 1971 session, and that his country was in favour of tripartite machinery, composed of an assembly of all States, a council and a permanent secretariat. That machinery should be given sufficiently wide powers to enable it to regulate effectively scientific research, the prevention of the pollution of the marine environment and the exploration and exploitation of the international area, having regard to the special interests and needs of the developing countries.

However, there were two specific points which his delegation had not discussed in detail on that occasion, and which it would now like to enlarge upon namely the voting procedure in the council and the settlement of disputes. With regard to voting, one proposal which had been submitted to the Sub-Committee would enable any group of three of the most advanced countries to block, or veto, the council's decisions. But such a procedure ran counter to the principle of the sovereign equality of States, as stated in the Charter of the United Nations, and was incompatible with the idea of the common heritage of mankind as expressed in the relevant General Assembly resolutions.

Other representatives had proposed that the council's decisions on questions of substance should be made by consensus, in view of the universal nature of the régime. But such a course might impede the council's work in cases where a consensus could not be reached quickly. His delegation was not strongly opposed to that solution, but preferred the practice adopted in the General Assembly, i.e., that decisions on important questions should be made by a two-thirds majority of the members present and voting, and that decisions on other questions - in particular, procedural matters - should be made by a simple majority.

Two proposals had been put forward concerning the settlement of disputes: recourse to the International Court of Justice, on the one hand, and the establishment of a special tribunal, with the possibility of recourse to the International Court of Justice on purely legal matters, on the other. With regard to the first proposal, his delegation wished to point out that the principle of the universality of the régime advocated by the majority of States could not be accommodated under the existing Statute of the Court, since recourse to the Court was open only to States Members of the United Nations or to States parties to the Statute. Moreover, the operation of the international régime and machinery would involve not only States, but also private companies, which could not appear before the Court. Consequently, proposals that any disputes which might arise should be referred to the Court could not be adopted unless the existing Statute of the Court was amended.

His own delegation favoured the second proposal, i.e. the establishment of a special tribunal. Such a tribunal would be called upon to interpret the treaty and to settle disputes between the machinery and a State or between two or more States, or between the machinery and physical or juridical persons. Consultation of the Court on purely legal matters was subject to a number of conditions - in particular, authorization by the United Nations General Assembly. Also, the Court might refuse to give an opinion, and that might delay the settlement of disputes referred to the tribunal. To avoid that, the tribunal should be composed of eminent jurists, specialists on international law and the law of the sea, and judges selected on the basis of their special skill in dealing with maritime issues. Lastly, the tribunal's rules of procedure should be simplified in order to ensure the quick settlement of disputes.

The meeting rose at 3.45 p.m.

SUMMARY RECORD OF THE FIFTY-THIRD MEETING

held on Tuesday, 1 August 1972, at 10.45 a.m.

Chairman: Mr. ENGO Cameroon

In the absence of the Chairman, Mr. Guerreiro (Brazil), Vice-Chairman, took the Chair.

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (item 2 of the programme of work) (continued) (A/AC.138/SC.I/L.14)

Mr. FERGO (Denmark) said that he wished to supplement his delegation's earlier statements on the status, scope and powers of the international machinery. His delegation's position, however, remained flexible and it was ready to take account of the views of other delegations.

Paragraph 9 of the Declaration of Principles contained in General Assembly resolution 2749 (XXV) could be said to constitute the legal basis for the international machinery to be established, but, as that paragraph contained only very general guide-lines, Sub-Committee I had a rather broad mandate with respect to the elaboration of appropriate machinery. As a starting point, his delegation felt that the structure of the international machinery should allow for the establishment of an effective international agency or organization possessing rather wide powers with regard to matters coming within its purview.

On the other hand, it was inclined to agree with those who favoured the view that the scope of the international sea-bed resources authority should be rather limited. It agreed that the international régime should cover the whole of the international sea-bed area. However, the fact that the régime laid down legal rules relating to the whole area did not necessarily imply that the machinery should have powers to regulate every kind of activity in the area. Such powers should be limited to the sphere of the exploration and exploitation of the natural resources of the area and related activities, whereas other activities such as scientific sea-bed research, which might well be covered by the régime, should not be regulated by the machinery.

In that context, his delegation shared the concern expressed by various delegations, including the delegations of Canada and the United Kingdom, with regard to the question whether the international machinery itself should have the power to exploit the resources of the sea-bed. Conclusive administrative and financial reasons had been put forward against the granting of such powers to the international authority at the initial stage. However, the possibility of its engaging in exploitation in competition with States and private companies should be left open, for instance by the inclusion of an article in the convention to be drafted to the effect that a decision on that question should be taken by the legislative body of the authority on the recommendation of the executive body. The authority should not undertake exploitation activities until it had acquired the necessary economic and technological background and tested its capabilities by managing less complicated activities, such as surveys of submarine deposits. The information acquired through such operations would also enable the international authority to make its own assessment of the areas and resources for which States would be applying for licences and hence place it in a stronger position to negotiate fees and royalties.

As stated in the Secretary-General's report entitled "Additional notes on the possible economic implications of mineral production from the international sea-bed area", the crucial question was how to make the exploitation policy instrumental in attaining effective management of sea-bed mineral production, so as to obtain the minimum disturbance of mineral market prices (see A/AC.138/73, para.59), and to do that in a manner involving a minimum of organizing and planning. According to the information currently available, the main sea-bed resources that seemed to lend themselves to commercial exploitation within the foreseeable future were manganese nodules and, at a later stage, petroleum and natural gas. Such ocean mining activity as well as any other resource exploitation, should be carried out on the basis of licences issued by the international authority directly to member States or groups of member States and not to private persons, since it seemed apparent that only States could fulfil the obligations of a licensee under the international sea-bed régime. However, a member State should not be precluded from issuing sub-licences to its nationals.

The appropriate exploitation policy should be worked out with such a licensing system in mind. As stated in the Secretary-General's report, there seemed to be at least two main issues involved in any exploitation policy, namely the method of the allocation of production permits, and the actual number and size of mining undertakings which would start operations each year (ibid., para.57). His delegation had studied with interest the proposals concerning sea-bed development systems submitted to the Sub-Committee. In many respects, it could endorse the views expressed by the United Kingdom delegation in the document entitled "International sea-bed régime: United Kingdom proposals for elements of a convention (A/AC.138/46)" 14/ and elaborated in subsequent statements. The proposal for a phased distribution of exploitation licences seemed not only to take into account the principle of the economical exploitation of sea-bed resources but also to give countries, including developing countries which did not have the necessary sea-bed technological expertise, time to develop their capacities in that respect. Licences should be issued in accordance with a quota system which ensured an equitable allocation among member States. It might also be important to take into account the size and number of mining rigs to be used within the licensed area in order to ensure a desirable level of production.

He agreed with most other delegations that exploitation licences should be exclusive, in order to make ocean mining as economically safe and attractive as possible. Licences should specify the area and category of minerals covered. The size of the area could depend, inter alia, on the nature of the mineral and its density.

14/ See the 1971 report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421)), para.53 (b) annex 1.6, p.83.

With regard to sea-bed activities other than exploitation, his delegation wished to draw attention to the problems involved in the proper delimitation of the various kinds of operations, for instance with respect to the question of licences and their exclusiveness. Moreover, the amount of any fees and other charges would depend on whether the licence was or was not exclusive. All delegations which had spoken on the subject seemed to be in favour of extending the licensing system to exploration and most of them had suggested that the licences in that case should not be exclusive, although one delegation had proposed a system with exclusive exploration licences.

One matter on which a decision had to be taken was how exploration should be defined in relation to exploitation, on the one hand, and to scientific research, on the other. If exploitation was defined in a restricted sense, as, for instance, in paragraph 19 (3) of the "Outline of a convention on the international sea-bed régime and machinery" contained in the Japanese working paper 15/, as covering only the acquisition of sea-bed resources for the purpose of commercial exploitation, then the exploration phase would be very extensive and would include costly prospecting activities such as drilling and dredging, which were closely connected with exploitation. The purpose of exclusiveness was to create a safe and attractive investment climate and to protect the legitimate economic interests of the licensee. There was no doubt that the investments and activities involved in an advanced phase of exploration should be protected, and that would seem to call for the imposition of higher fees. The initial stages of prospecting did not necessarily require the more extensive protection afforded by an exclusive licence. Such operations would comprise broadly based surveys, generally of large areas, designed progressively to determine the location of mineral deposits of possible economic importance and would not involve close physical contact with the sea-bed. The fees for such non-exclusive licences might, as a corollary, be quite small, having regard to the principle of "what the traffic would bear". On the other hand, his delegation was well aware of the difficulties involved in distinguishing between that kind of preliminary exploration and purely scientific research.

As the representative of Spain had said at the 19th meeting of Sub-Committee III, the real distinction should be drawn between oceanic research, whatever its aim and no matter how it might be carried out, on the one hand, and the exploitation of marine resources, on the other hand. His delegation considered, however, that it should be possible to find criteria to distinguish between sea-bed exploration for commercial purposes, carried out on the basis of licences, and purely scientific sea-bed research conducted in accordance with the principle of freedom of oceanic research.

15/ Transmitted to the United Nations Secretariat by a note verbale dated 22 November 1971, under the symbol A/AC.138/63.

In the light of the foregoing considerations, his delegation wished tentatively to suggest a system consisting of four phases of activity:

(a) Purely scientific research conducted in accordance with the principle of freedom of oceanic research.

(b) Prospecting, which was the introductory phase of the search for minerals over rather large areas and comprised mapping and other related activities that did not involve a close or comparatively long contact with the ocean floor. There should be a time limit on the prospecting licence but it should be renewable. It should be non-exclusive and should not carry with it any preferential right in applying for exploration or exploitation licences. The licence fee should, therefore, be very small.

(c) Exploration, comprising the more advanced phase of the search for minerals, including sampling of sea-bed minerals, drilling and dredging. An exploration licence should be exclusive with respect to the area and the category of minerals specified in it. It should have a longer but limited and renewable period of validity and include a preferential right to apply for an exploitation licence within its period of validity. A licence fee and probably other fees should be levied.

(d) Exploitation, defined as the acquisition of sea-bed minerals for the purpose of commercial exploitation. An exclusive exploitation licence should be issued for a sufficiently long period, to enable the operator to obtain an adequate return from the mineral production. A fixed licence fee and a royalty, determined as a percentage of the profit or as a levy per ton, should be charged in accordance with specified regulations.

With respect to functions of the international authority other than that of issuing licences, his delegation was of the opinion that the short and precise formulation in the Japanese working paper could be taken as a starting-point for further elaboration. One of the first tasks would probably be to organize the necessary information network to supply the data needed to orient the decision-making process.

As in the case of other international organizations, the functions and powers assigned to the authority would probably determine the nature and composition of its organs, especially its executive organ. Like many other delegations, his delegation considered that its main organs should be an assembly, a council, a secretariat and a tribunal.

Each member State party to the international sea-bed convention should have one seat in the assembly, which should be the supreme organ and should be competent to discuss any matter within its terms of reference and to lay down policy guidelines. It should elect the members of the council and approve its budget and reports. Each member State should have one vote and decisions should, as a general rule, be taken by a simple majority. However, particularly important policy decisions might require a qualified majority.

The council would be the executive body of the authority and for reasons of efficiency its membership should not exceed 25. It seemed inevitable that its composition should reflect the existing technological realities, so that part of the membership would be permanent and comprise those countries which were most advanced in sea-bed technology. However, a permanent seat did not necessarily imply a predominant influence. That would depend on the voting rules. With regard to the distribution of the remaining seats, his delegation felt that the traditional geographical group system did not by itself ensure an equitable composition reflecting the diverse interests of States. In addition to the principle of equitable geographical distribution, the distribution system should also reflect the special interests of developing States, coastal States with long coastlines, and land-locked and "shelf-locked" States. The council should have only those functions and powers expressly conferred on it by the convention or the assembly. Its most important function would be to administer the licence system. In addition, it should promulgate rules and regulations concerning such subjects as were listed in article 29 of the text entitled "Draft statute for an international sea-bed authority, submitted by the United Republic of Tanzania (A/AC.138/33)" 16/ or in paragraph 36 of the outline of a convention given in the Japanese working paper.

With regard to voting in the Council, decisions should be taken by a simple majority as far as procedural matters were concerned. As regards matters of substance, his delegation had considered carefully how the interests of one or several small groups of countries could be protected without impairing the efficient implementation of council decisions. In many respects it was sympathetic to the Soviet proposal in article 23 of the text entitled "Union of Soviet Socialist Republics: provisional draft articles of a treaty on the use of the sea-bed for peaceful purposes (A/AC.138/43)" 17/that decisions of the council in respect of matters of substance should be made by consensus, since, in view of the special character of the international sea-bed organization, the council's responsibility would be to safeguard the interests of all countries. His delegation therefore considered that there should be a provision calling upon the members of the council to endeavour to reach decisions by consensus, leaving decisions by a two-thirds majority for exceptional cases to be specified in the convention. Alternatively, a two-thirds majority vote could be the normal requirement with respect to matters of substance, the requirement of consensus in decision-making being limited to matters of vital importance specified in the convention.

16/ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421), annex I.1, pp.59 and 60.

17/ Ibid., annex I.3, p.74

The secretariat should be headed by a secretary-general elected by the assembly on the recommendation of the council. He should perform the functions entrusted to him by the council.

The tribunal should decide any dispute referred to it between member States or between a member State and the authority concerning the interpretation and application of the convention. His delegation considered the Japanese proposal concerning the membership of the tribunal very helpful. Finally, membership in the authority should be open to all States, and States which were not contracting parties should be able to accede to the convention at any time and acquire full membership.

The meeting rose at 11.5 a.m.

SUMMARY RECORD OF THE FIFTY-FOURTH MEETING

held on Wednesday, 2 August 1972, at 3.15 p.m.

Chairman: Mr. ENGO Cameroon

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

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (item 2 of the programme of work) (continued) (A/AC.138/SC.I/L.14-16)

Mr. UPADHYAY (Nepal) said that he would like to amplify the views which his delegation had outlined in 1971 on some aspects of the international machinery, including the composition of the organs, the procedures to be adopted and the settlement of disputes. His delegation wished first to express its surprise that the question of the precise definition of the area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction had not yet really been tackled. That issue, which did not seem to be any more controversial than some others, would have to be settled at some time or another if progress was to be made. His delegation had always attached great importance to it, because in its view any international régime presupposed the existence of a precise and meaningful area to which it would apply. By "meaningful area", his delegation meant an area which could be exploited as soon as the régime was established and the machinery had begun to operate. According to the modest information it had been able to collect, it understood that the bulk of the mineral wealth of the sea-bed lay near the coast, while the areas far from the coast were still at the exploration stage, without any possibility of exploitation in the foreseeable future. His delegation would therefore like to state once again that in its view the definition of the area should be considered before the question of machinery, since no machinery could operate in a vacuum and the organs to be set up and their composition could not be decided without first ascertaining the scope of their activities.

His country, which was one of the least advanced of the developing countries, had entertained high hopes for the future following the adoption by the international community of the principle that the exploitation of the sea-bed and the ocean floor should make a substantial contribution to the economic development of those countries. The area considered to be the common heritage of mankind should therefore be as large as possible, in accordance with the spirit of the Declaration of Principles contained in General Assembly resolution 2749 (XXV). His delegation had stated its views on the limits and status of the international area in the document entitled "Preliminary working paper submitted by Afghanistan, Austria, Belgium, Hungary, Nepal, the Netherlands and Singapore (A/AC.138/55)". 18/ It considered that all States should be represented on a footing of equality in the future assembly, whatever their size, stage of development, or geographical situation. Considering how big the assembly would be, it seemed desirable that it should meet only at reasonably long intervals. The council, to function effectively, should have a fairly limited membership, adequately representing the various interests; there should be no permanent members and the term

18/ Ibid., annex I.13, p.194.

of office should be the same for all. All members should have equal powers, with regard to both the Council's procedure and its functions. Decisions should normally be taken by a simple majority.

With regard to the powers and authority of the international machinery, his delegation, as it had already said, was of the opinion that its powers should be very wide, covering the exploration, exploitation and management of resources. The machinery should consequently be able to exploit resources directly. Until adequate arrangements were made for that purpose, the machinery could secure the co-operation of specialized agencies or grant licences to Governments, firms and individuals. The machinery should be authorized to fix prices, to sell the products and to dispose of the proceeds according to principles which it would lay down from time to time. The machinery should also be able to undertake refining and other industrial operations itself, or have the power to grant licences for such activities. In short, the machinery should be the supreme authority in the area of its competence.

With regard to the question of the equitable sharing of benefits, to which his delegation naturally attached the highest importance, it was necessary to define "the interests and needs" of the least advanced among the developing countries, referred to in General Assembly resolution 2749 (XXV). In Nepal, for instance, international trade was hampered not only by the high costs and amount of time involved in the transit of goods to the sea, but also by internal transport difficulties due to the geographical features of the country. In those conditions, development was an uphill task and any exploration or exploitation of new resources raised formidable problems. That was why countries which were in that position believed that their interests and needs should be taken into consideration, as required by resolution 2749 (XXV); to that end, they should be given preference in the choice of the areas of the sea-bed and ocean floor, so that they might exploit areas of immediate economic value. They should also be provided with the coastal facilities necessary for exploitation and refining, as well as the widest transit facilities. Their share of the profits and benefits, moreover, should be fixed on the basis of their own needs. They should be able to obtain the fuel and power necessary for industrial and other purposes (oil, gas, etc.) at reduced prices and they should be allowed to pay for those products in their own currency.

As for the procedures for the settlement of disputes, which were bound to arise because of the complexity of the machinery and the range of resources to be exploited, his delegation considered that a two-stage procedure should be adopted; attempts at conciliation in the first stage, and if they should fail, arbitration in the second. Conciliation seemed obviously to be the most desirable solution in the modern world. It was advocated in Article 33 of the United Nations Charter and the use of that procedure had often succeeded in reducing tensions and misunderstandings between States considerably. Its effectiveness, however, depended in the final analysis on the good-will of the parties to the dispute. A standing panel of conciliators should be set up, the members of which would be appointed by the assembly on the recommendation of the council. Should a dispute arise, the council would nominate three members of the panel to form a conciliation tribunal, which would try to bring about a settlement. If that could not be done within six months, the dispute would go to arbitration. A standing board of arbitrators should therefore also be set up; its members, appointed by the assembly on the recommendation of the council, would comprise in equal numbers lawyers and experts in marine sciences of international repute. Such a membership seemed justified by the special nature of the problems to be solved. The arbitration tribunal to be set up for each dispute should also consist of equal numbers of technical experts and lawyers, specially chosen by the council.

Mr. RIPHAGEN (Netherlands) said that the international machinery and the international régime were two closely linked questions. With regard to the organs of the machinery, a consensus seemed to have emerged in favour of an "assembly" in which all the member States of the organization would be represented, in accordance with normal practice in international organizations. It should, however, be pointed out that the body referred to as the "assembly" could not take all the decisions required under the international régime to be established and that the decision-making process within any organ representing the full membership of the organization could not be one of consensus in all cases. Consequently, any proposal concerning the decision-making procedure should be based on the need to facilitate the actual adoption of decisions.

Since the aim was to replace the system of freedom of the seas, which had been in force until now, at least with regard to some uses and some sea areas, by a system of international management, it was essential to devise ways of making such management possible and ensuring that the decisions taken would not be too timid, or taken too late, or - worst of all - not taken at all.

Consensus was in itself an ideal solution, provided that it could be achieved in time, so that decisions were not taken too late, and were based on something more than the "lowest common denominator".

Nearly all the written proposals before the Sub-Committee provided for the establishment of another organ (the council), which would consist of a limited number of member States of the organization. Such a step was essential to facilitate the decision-making process, but it also raised the question of how the membership of that inner circle would be chosen. Was the emphasis to be placed on the representation of the full membership of the organization or on the organ's managerial task? The answer would depend on the exact functions to be entrusted to that organ under the international régime, which was still under discussion.

With regard to the question of the representation of member countries in the limited-membership organ, he referred to the seven-Power working paper mentioned by the representative of Nepal, of which his country was a sponsor. Saying that only his delegation was committed by his observations, he stated that, first of all, his delegation shared the view expressed by the Canadian delegation in paragraph 15 (b) of the document entitled "International sea-bed régime and machinery: working paper submitted by the delegation of Canada (A/AC.138/59)," 19/ which said that the ranges of national interests cut clear across traditional groupings, and that it was the proper balance of those national interests which must be taken into account in fixing the membership of the council. His delegation, however, drew from that statement somewhat different conclusions from those drawn by Canada.

A quick look at the map of the world showed that the geographical positions of States in respect of the marine environment or ocean space differed widely. First of all, there were the land-locked States, for which the notion of "the rights of coastal States" had no meaning; they numbered about 30, including non-members of the

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19/ Ibid., annex I.17, pp. 219 and 220.

United Nations. Secondly, there were States which had a coast-line, but which, owing to their geographical position in relation to States which had a coast-line opposite or adjacent to theirs, could not possibly benefit from any extension of the rights of coastal States beyond the limits already universally recognized at present; those were the so-called "shelf-locked" States, numbering about 18. Thirdly, there were States which could possibly benefit from some extension seawards of the rights of coastal States, but which, if those rights were extended more than 20, 30 or 40 miles, for instance, would have to take into account similar rights that could be claimed by other States situated next to or opposite them; there were about 30 of such coastal States, for which a zone 200 miles wide would mean nothing. Fourthly, there were a number of States, which, even if the extension of their jurisdiction was not limited by the presence of States adjacent to or opposite them, could not nevertheless derive much benefit from such an extension, because their coast-line was not very long in relation to the total land area under their sovereignty. Adding up those four categories would give a sizeable number of States which could be called "primarily non-coastal States", in contrast to the "primarily coastal States". All that only tended to illustrate the fact that by and large there were two groups of States in the world: those which stood to gain by the apparent general tendency to enlarge and extend the rights - preferential or exclusive - of coastal States over adjacent seas, and those which, by reason of their geographical situation, did not stand to gain anything. His delegation considered that the distinction was clearly relevant to the question of the composition of any organ having a limited membership. Of course, the limits of the area to which the exclusive or preferential rights of coastal States would be extended were not yet known, but it was already established that in all cases a substantial number of States would not benefit or would benefit only to a very limited extent from any extension of national jurisdiction. It would therefore be fair and equitable to recognize the special interests of those States in the management of what was left as a truly international area, by allocating to them half the seats in any organ with a limited membership. There were obviously a number of other considerations which should not be overlooked; for instance, the developing countries should be adequately represented in each of the two groups.

There were other aspects of the international machinery which deserved study. For instance, unlike most if not all existing international organizations, that machinery would have a "management" function. The term "management" covered a wide range of decisions, ranging from the establishment of general standards of conduct, to decisions concerning the actual exploitation of the resources of the sea-bed and its subsoil, including concrete decisions relating to particular conduct. It seemed obvious, as was indeed recognized in most of the proposals submitted, that neither the assembly nor the council would be in a position to take all those decisions itself. In other words, there would have to be in any case a "delegation of powers", either to some sort of "supranational" organ or to a particular national Government, which in turn would only supervise the actual operations carried out by some public or private undertaking. It seemed premature to discuss in detail the question of the relationships between the various intergovernmental and supranational organs of the international machinery, national Governments, and public or private undertakings. Indeed, in the opinion of his delegation, there was no reason to fix beforehand any particular type of relationship for all circumstances and for all parts of the international area; a certain amount of flexibility seemed to be indicated, if only in view of the many different and unknown factors which could affect the actual possibility of exploiting the resources of the area. There was, however, one point which should constantly be kept in mind: the

inevitable complexity of the international machinery should not have the result of rendering the exploitation of resources virtually impossible. The principle to be followed was that the exploitation of the resources would be beneficial, and even, in the long term, essential for the world as a whole, and that what had to be done was simply to prevent, by suitable measures, any undesirable side-effects of such exploitation; the whole decision-making procedure must be designed to achieve that purpose.

In conclusion, his delegation wished to refer to the question of the settlement of disputes. Whatever choices were made and whatever priorities were established, the international régime and the machinery to be set up to manage that régime were bound to be rather complicated, since they would be the result of a careful balance between the powers of the general membership of the organization, those of other more or less independent organs, those delegated to individual States, and the rights of the undertakings which would actually carry on the business of exploitation itself. Furthermore, all those "entities" would be acting in relation to an area which was not under any national sovereignty. Those two considerations showed that an independent and impartial judicial organ was absolutely necessary to settle disputes which might arise between those various entities, since such disputes could not remain unsettled without endangering the whole system of international management. Nor could it be accepted that any of the entities involved should be "supreme" in relation to the others. The only supremacy should be that of the law governing their relationships and that should be reflected in a system of compulsory judicial settlement.

Mr. SMOQUINA (Italy), noting that there were still some profound differences of opinion between the various delegations with regard to the international machinery to be established, said that he fervently hoped that the work of the Sub-Committee would make it possible to reach a consensus, which was the only way of providing a solid foundation for the establishment of the new authority. Although general agreement had been reached on its tripartite structure, there were still a number of problems with regard to the functions and powers and the composition of the council, which was the most important organ of the authority, and his delegation had considered itself obliged to prepare a working paper on that subject entitled "Institutional problems concerning the sea-bed authority: the council" (A/AC.138/SC.I/L.15).

The question of the functions and powers of the council did not really seem ripe for consideration, because they would necessarily depend on those of the authority itself, the scope of which remained to be determined. That was a fundamental problem of a clearly political nature, and not just a question of institutional arrangements.

It nevertheless seemed that the composition of the council could and should be decided upon at the present time. Two tendencies had so far emerged. Some delegations considered that the entire membership of the council should be elected by the assembly and that equitable geographical distribution should be the only criterion used, while others were of the opinion that such a criterion was not sufficient to ensure a suitable composition for the consultative organ, and that it was essential to ensure the presence in the council of certain States whose contributions would seem necessary for the viability of the entire machinery, namely, States which possessed the technological capacity and the resources necessary for its establishment and operation, and which were also willing to make them available for the benefit of the developing countries. His delegation, which shared the latter opinion, supported the view of delegations which

had stressed the need to have two categories of members in the council: members elected by the assembly in accordance with the criterion of geographical distribution, and members designated in accordance with certain other objective criteria. It felt, however, that it was important to avoid creating two antagonistic groups and granting a right of veto to a kind of directorate of three members.

In order to reconcile the different interests involved, it proposed that the council should be composed of 35 members, 20 of them elected by the assembly and 15 of them designated in accordance with the following criteria. 10 of them would be chosen on the basis of the GNP scale, thus ensuring the presence of all countries possessing the technological and other resources necessary for the efficient operation of the machinery, and the other 5 would be designated on the basis of their particular role as coastal States; the countries designated on the basis of the first criterion would, of course, be excluded from selection on the basis of the second one. The 15 designated members would thus include a considerable proportion of developing countries, which would ensure a balanced and equitable composition for the council and prevent any discrimination. In addition, the first group of designated members would include 8 of the 10 countries with the largest population in the world and 7 of the 10 countries possessing the largest merchant fleets. The 20 members elected by the assembly might be chosen from the following groups of States, each having the right to a number of seats which remained to be determined: Africa, North America, Latin America, Asia, the land-locked States, Western Europe, Eastern Europe, Oceania. Under that system, the representation of an adequate number of land-locked countries would be guaranteed at all times.

With regard to the system of voting, it would be advisable to specify that a two-thirds majority of the members present and voting would be required for substantive decisions, while a simple majority would be sufficient for questions of procedure. It would also be necessary to determine at the outset how large a majority was required for deciding whether a question was substantive or procedural.

His delegation would be happy to know the reactions of other delegations to the compromise solution it was proposing, which it considered to be half-way between sweeping innovation and rigid conservatism. It might at a later stage submit its proposals in the form of draft articles.

Mr. KOPAL (Czechoslovakia) said that, although so many delegations had already spoken in the discussion on the international machinery, his delegation, which represented a smaller, relatively developed land-locked country, interested in a reasonable solution of the problems involved that would be based on a mutual accommodation with respect to differing views and would reflect the common interests of all nations, did not consider it inappropriate to express its views at a time when the discussion was approaching its final stage. Everyone agreed on the need to establish a responsible authority, but opinions differed with regard to its nature, powers and functions.

In general terms, his delegation was of the opinion that, at least during the first stage of its existence, the proposed machinery should be limited in size, so as to ensure efficiency. It should be truly international, or, in other words, open to all States in the world; it should be given the legal capacity necessary for the exercise of its functions; and it should, of course, co-operate closely with the United Nations and the

other organizations at the global or regional level which dealt with the numerous problems of the sea. Its main task should be to promote international co-operation in the exploration of the area and the exploitation of its resources for peaceful purposes. The machinery to be established should perform the functions of a regulatory and supervisory body, leaving the exploration and exploitation activities to States, or to persons acting under their authority and responsibility. At a later stage, it could assume a more ambitious role, particularly with regard to the issuing of licences to States or enterprises. Its regulatory function should be limited to exploration and exploitation activities, since, in his delegation's opinion, scientific research should remain, in principle, outside the scope of the sea-bed régime and its machinery, althoug it might, as was rightly stated in paragraph 6 (e) of the outline of a convention on the international sea-bed régime and machinery, submitted by Japan, 20/ encourage such research and promote international co-operation in that field.

At least in its initial stage, the structure of the machinery might be simple. It should consist only of an assembly, an executive council and a secretariat. Subsequently, the establishment of subsidiary bodies could be envisaged as needed, in order to solve economic, technical and legal problems which might arise. At a later stage, the structure of the machinery might develop in accordance with its functions, but it should always remain within reasonable limits.

The various proposals made by delegations had been very well tabulated by the Secretariat in its comparative table of drafts, treaties, working papers and draft articles. 21/ That document would serve as an excellent basis for the work of the working group to be established. In his delegation's opinion, the working group should follow two main guidelines. First, the structure of the authority should reflect the need for the active participation of all countries in the world, without any discrimination, and should allow for the diversity of their interests and positions. Secondly, the powers of the principal organs should be well balanced and their functions should be well defined. In particular, the composition of the council should be carefull studied. His delegation felt that it should ensure both an equitable balance between the six groups of States defined in article 21 of the draft entitled "Union of Soviet Socialist Republics: provisional draft articles of a treaty on the use of the sea-bed for peaceful purposes (A/AC.138/43)," 22/ and between States having an advanced sea-bed technology and other States, including, in particular, developing countries, and that it should also ensure the satisfactory representation of land-locked and "shelf-locked" States, both developing and developed, whose views were expressed in the seven-Power working paper already referred to at the present meeting. Without prejudice to the conclusions which might be drawn from the consideration of all aspects of the problem, it seemed that the powers of the council should, during the initial stage, be limited to the supervision of the implementation of the principles governing the régime of the sea-bed and the co-ordination of the activities of States in that field. To that end, it could adopt regulations, in the preparation of which the experience of organizations

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20/ See A/AC.138/63.

21/ A/AC.138/L.10.

22/ See Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421), annex I.3, p.73.

such as ICAO, ITU, IMCO and IAEA would be of great value; at a later stage, it might have the authority to issue licences and distribute revenues. With regard to the system of voting, on which detailed proposals had been submitted, his delegation merely wished to stress that the principle of mechanical majority decisions could not ensure that the solutions adopted would reflect the diversity of interests and needs. Difficult though it was to apply, only an appropriate formula based on the principle of consensus could ensure true progress in international co-operation.

Mr. ZOTIADES (Greece) said that, first of all, a precise definition of the legal status of the international sea-bed authority seemed essential. The authority should have the status of a United Nations organization or agency and conduct its activities within the framework of the Charter of the United Nations. The new organization should be given the necessary legal capacity for the exercise of its functions, which would, in many respects, differ from the traditional functions of an international organization. Despite its somewhat special situation, the authority should co-operate with other organizations, whether part of the United Nations system or not, with a view to strengthening international co-operation, but it should not assume functions already entrusted to other bodies.

Secondly, the machinery of the authority should be established on the basis of the Declaration of Principles and in accordance with the principle that revenue accruing to the authority should be divided equitably among all States. Thirdly, the establishment of an international machinery with comprehensive powers and broad functions relating to the exploration and exploitation of the resources of the sea-bed area should not necessarily lead to the creation of a complicated international organization which would impose a heavy financial burden on States. The authority could derive the maximum benefit from being simple and efficient.

According to the various proposals submitted to the Sub-Committee, the authority would be composed of an assembly, a council, a secretariat and a tribunal. There was no significant difference of opinion with regard to the composition and operation of the assembly, but its executive body, the council, gave rise to divergent views. The council would execute the decisions of the assembly and issue licences for the exploitation and exploration of the international area. It was the voting system in the council which had caused some controversy. Greece thought that substantive decisions should be taken by a two-thirds majority and that procedural decisions should be taken by a simple majority. In its opinion, the possibility of a veto in the council would hamper its work. Therefore, no privileged position should be encouraged, either in the form of a veto system or in the form of a weighted vote. The concept of the common heritage of mankind and the principle of equality among States called for decisions by a majority vote. The members of the council should be elected by the assembly on the basis of the interests of all regional groups. For reasons of efficiency, the council should not have more than 35 members.

The secretariat of the authority should not be too large in number, so that it would not absorb too large a part of the organization's resources.

With regard to the settlement of disputes, his delegation did not consider it advisable to establish a separate tribunal. Disputes could be settled in accordance with Article 33 of the Charter or brought before the International Court of Justice if the matter related to international law. In the case of non-legal disputes, ad hoc arbitration committees could be set up.

His delegation was of the opinion that the powers and functions which would be assigned to the international machinery should enable it to manage and control all aspects of sea-bed operations, irrespective of whether the authority exploited the international area by a system of joint ventures or by a system of licences. There was, however, one specific point which his delegation wished to stress and on which it would submit specific proposals, namely, the protection of the archaeological and historical treasures of the sea-bed and the ocean floor beyond the limits of national jurisdiction. His delegation had prepared a draft on that subject (A/AC.138/SC.I/L.16), which he introduced.

The meeting rose at 4.35 p.m.

SUMMARY RECORD OF THE FIFTY-FIFTH MEETING

held on Friday, 4 August 1972, at 11 a.m.

Chairman: Mr. ENGO Cameroon

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

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (item 2 of the programme of work) (continued) (A/AC.138/SC.I/L.14-16)

Mr. PERIŠIĆ (Yugoslavia) noted that, in establishing a working group to deal with the international régime and in preparing to set up a working group on the machinery, the Committee was entering the final stage of its work. His delegation believed that the Declaration of Principles adopted by the General Assembly in its resolution 2749 (XXV) was the essential basis for the formulation of an agreement on an international régime and also that the majority of delegations felt that the most important principle should find an appropriate place in the convention that the Committee was endeavouring to draw up. Any departure from that basic premise would inevitably make it much more difficult to achieve progress in the codification of the régime.

The first principle was the concept of the common heritage of mankind, which implied a new approach to property and ownership. In the view of his delegation, it was pointless to attempt to reconcile the new approach with the classical formulas relating to exclusive individual or State ownership. The new concept should reflect the relationship between the world community and the world's resources rather than the power to appropriate, and the best way of putting such a concept into practice was by establishing an international authority with responsibility for resources in the international area.

The second principle should be a clear formulation of the rights of all States to participate in decision-making and operations. It was important that the convention should exclude the danger of bureaucratization and monopolization of the major institutional bodies in the international authority. That could be done by introducing the principle of rotation and excluding subsequent re-election.

Although the principle of sharing had found its place in all drafts, it was of the utmost importance that the special interests of the developing countries should be reflected in the convention to be drafted, which should provide full opportunities for sharing in the eventual benefits of research and industrial exploration now being undertaken, as well as in exploitation - and not only in the distribution of profits. Only by such an approach would it be possible to bridge the gap between development and underdevelopment and make it possible for the developing countries to participate on an equal footing in the new international machinery.

Turning to the institutional and operational aspects of the future international machinery, he expressed his delegation's view that exclusive jurisdiction over the international area and the administration of its resources should be vested in an international body which should under no circumstances be allowed to become merely a registration bureau of permits or licences. The international body should act on behalf of the international community and should be empowered to direct operations, pass decisions and participate in all activities involving exploration, exploitation and decision-making with regard to income distribution and profits.

The international body should have an assembly, a council and a secretariat to carry out the policy-making, operative and executive functions, respectively. In addition, it should have a bureau for the promotion of exploration and exploitation and a bureau for the transfer of technology and technical assistance to the developing countries.

The assembly would be the supreme organ of the authority and would be composed of all member States. It would adopt regulations, consider and approve the reports of the council, the secretariat and the bureaux; it should decide on over-all policy in exploration and exploitation and decide how income should be distributed in accordance with the principles established in the régime.

Each country should have one vote in the assembly, which would meet once yearly for regular sessions, and in extraordinary session if so requested by the council or one fourth of the member States.

The council should have sufficient members to ensure adequate geographical distribution, as well as the satisfactory representation of developing coastal countries, highly developed coastal countries, and land-locked and "shelf-locked" countries. Its decisions would require a two-thirds majority and there would be neither permanent members based on economic wealth or technical development nor a right of veto. The council, one third of whose members would be newly elected at the expiry of an agreed period, would hold regular meetings every six months and extraordinary meetings on the request of one fourth of its members. The principle of rotation would also apply to the election of the chairman and vice-chairmen. The responsibility of the council would be to prepare and propose to the assembly rules and regulations concerning the necessary activities and procedures the authority should undertake in relation to the exploration and exploitation of the area, the distribution of profits and all other related issues, the prevention of pollution, technical assistance, the transfer of technology, etc.

With regard to the secretariat, which should generally follow the pattern of the secretariats of most United Nations organizations, he suggested that the council should have the right to propose the election of a new secretary-general before the expiry of the term of office of the elected one.

In conclusion, he stressed that the ideas put forward by his delegation were of a provisional nature and would require further scrutiny. He assured the Sub-Committee that his delegation would be ready to take an active part in drafting articles on the future machinery and would be prepared to submit a number of specific proposals with a view to achieving the Committee's objectives.

Sir Roger JACKLING (United Kingdom) said that his delegation believed that the most appropriate system for achieving the purposes of the Committee would be a licensing system available to all States. States would then issue sub-licences to operators. It also believed that at first only a proportion of the international area should be made available for exploitation and that all States should have a fair share of that area.

Widely differing views had been expressed in the Committee on how the future régime and machinery should function, and it was therefore essential that a continuing dialogue should ensue, with a view to reaching compromises. That was why he welcomed the explanation given by the representative of Colombia at the 45th meeting of

Sub-Committee I of the plan for the sea-bed contained in the document entitled "Working paper on the régime for the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (A/AC.138/49)" 23/ and accepted by 13 Latin American States. Under that plan, the international authority would participate directly in the exploitation of the sea-bed by means of joint ventures with corporations. The idea was that the initial risk-capital would be found by the corporations and would subsequently be supplemented by a contribution from the authority derived from income from royalties. His delegation was doubtful whether such a scheme would generate the necessary investment funds. It also felt that it had two disadvantages for the developing countries: first, it would mean that a long period - while the authority contributed its share to the joint venture - would elapse before the developing countries received any revenue, and secondly it would prevent them from participating actively in new technology.

A hypothetical example given by the representative of Colombia related to the petroleum industry. However, the petroleum industry was almost unique, in that exploratory bore-holes could subsequently be used for production purposes. Unfortunately, he same advantage did not apply to the exploitation of minerals, for which substantial further investment would be required. Another feature of the Latin American plan was that the authority would need a highly qualified staff in order to be able to participate in joint ventures, etc. That would inevitably lead to heavy overheads and would consequently reduce dividends.

He therefore commended his own delegation's proposal in the document entitled "International sea-bed régime: United Kingdom proposals for elements of a convention (A/AC.138/46)" 24/ to the Sub-Committee, since it avoided the disadvantages he had referred to.

The CHAIRMAN made a statement giving a summary of the discussion that had taken place on item 2 of the work programme of the Sub-Committee.

Mr. ZEGERS (Chile), supported by Mr. VALDIVIESO (Peru), asked that the statement which the Chairman had just made should be issued as a document of the Sub-Committee.

The CHAIRMAN said that the financial implications of that request would be of the order of $1,000. However, as the summary which he had made at the 40th meeting of the Sub-Committee of the discussions on item 1 of the programme of work had been issued as a document of the Sub-Committee, 25/ if he heard no objection, the summary of the discussions on item 2 would also be issued as a Sub-Committee document.

Mr. YANKOV (Bulgaria) said that he appreciated the efforts which had been made to prepare the extensive summary of the discussions on item 2 just read out by the Chairman. He had no objection to the statement being issued as an official document of the Sub-Committee, as that had been the practice followed in the past, provided it was made quite clear that it should be considered, in any future discussions, only as the statement of the Chairman and not as reflecting the views of the Sub-Committee as a whole.

23/ Ibid., annex I.8, p. 93.

24/ Ibid., annex I.6, p. 83.

25/ A/AC.138/SC.I/L.10.

The CHAIRMAN pointed out that he had already stated that the summary had not been presented by himself personally but by the Bureau as a whole and it was on that basis that it would be issued. It was intended to serve as a guideline for future work on item 2 of the Sub-Committee's programme of work and was not a document which required the Sub-Committee's approval.

He noted that the Sub-Committee would hold five more meetings at its current session and asked the Rapporteur to inform the Sub-Committee of his plans for the preparation of its report to the plenary Committee.

Mr. MOTT (Australia), Rapporteur, said that consultations had taken place both in and outside the Bureau on the form and content of the report. It should be completed by 15, or at the latest 16, August.

It seemed desirable that the report should be fairly comprehensive, in order to reflect the range of views which had been expressed on items 1 and 2 of the Sub-Committee's work. If, however, there was a general preference in the Sub-Committee for a shorter report, that would present no difficulties.

For purposes of consideration in the Sub-Committee, the report could conveniently be divided into three parts. The first part would consist of the formal introduction and a summary of the discussion at the first 1972 session in New York of item 1 of the programme of work, leading to the establishment of the Working Group. The second part would consist of a summary of the discussion at the two 1972 sessions in New York and at Geneva of item 2, together with an account of any further action taken on item 2, and a summary of the separate discussion held at the 49th and 50th meetings on the subject of mining in the deep sea-bed. The third part would cover the activities of the Working Group and any additional matters, such as annexes.

The Working Group would inform the Sub-Committee of the progress which it had made in its work, and he would ask delegations to consult with him to ensure that their views were adequately reflected in the first two parts of the draft report.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that he would like to know to what extent the statement read out by the Chairman would be used in the preparation of the report, since it was his understanding that it represented the Chairman's and the Vice-Chairman's assessment of the various ideas which had been expressed concerning the possible functions and powers of the international machinery, including powers in the field of scientific research. He hoped that the report would include the view expressed by his delegation at the Committee's first 1972 session that the international machinery should have no powers in the field of scientific research and that the convention should not cover that subject.

On that understanding, he had no objection to the Chairman's statement being issued as a Sub-Committee document. He endorsed the observations made by the representative of Bulgaria in that connexion.

The CHAIRMAN said that it was quite correct that the summary which he had just read out was not a record of the discussions and was merely designed to facilitate the Sub-Committee's future work by indicating areas in which, in the Bureau's view, there was agreement and areas in which there was no agreement. With regard to the

question of scientific research, he had said that many delegations had been of the opinion that scientific research should be included in the international machinery's mandate but not that there had been a consensus. The views of the Soviet delegation would be reflected in the report.

Mr. PARDO (Malta) said that the summary which the Chairman had read out did not reflect the views which the Maltese delegation had expressed at the Sub-Committee's first 1972 session in many respects. That summary should not be regarded as in any way official. He would consult the Rapporteur concerning the report.

The CHAIRMAN said that it was on the understanding that the views expressed in the summary were those of the Bureau that the statement would be issued as an official document of the Sub-Committee.

It was so decided.[26]

The meeting rose at 12.30 p.m.

26/ The full text of the Chairman's statement was subsequently circulated under the symbol A/AC.138/SC.I/L.17.

SUMMARY RECORD OF THE FIFTY-SIXTH MEETING

held on Wednesday, 9 August 1972, at 10.50 a.m.

Chairman: Mr. EKGO Cameroon

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

DRAFT REPORT OF SUB-COMMITTEE I (A/AC.138/SC.I/L.18 and Add.1)

First part (A/AC.138/SC.I/L.18)

Mr. MOTT (Australia), Rapporteur, introducing the first part of the report of Sub-Committee I (A/AC.138/SC.I/L.18), thanked the delegations which had responded to his request for suggestions concerning the text. He thought that paragraphs 1 to 7 of the draft report, which seemed to be factual and non-controversial, might be considered together.

It was so agreed.

Paragraphs 1 to 7

Mr. HSIA (China) said that, since the members of the Committee were not listed in paragraph 2, it seemed unnecessary to enumerate the observers who had attended the Sub-Committee's meetings. In particular, one of the countries mentioned was the Khmer Republic, which was not recognized by China.

Mr. LEVY (Secretary of the Sub-Committee) observed that the reports of the three Sub-Committees would be incorporated in the plenary Committee's report to the General Assembly and that the Chinese representative's views might therefore be discussed substantively in the Committee, although they would of course be reported in the summary record of the current meeting.

Mr. MIRCEA TUDOR (Romania) said he could not agree that the problem raised by the Chinese delegation should merely be reported in the summary record, since exception had been taken to a passage of the Sub-Committee's draft report. His country also did not recognize the Khmer Republic and considered that a decision on the matter should be taken in the Sub-Committee.

Mr. MASSINI EZCURRA (Argentina) said that there seemed to be two possibilities, either to delete all reference to participants, or to leave the paragraph as it stood. The question of bilateral relations between States should not be raised in connexion with the Sub-Committee's report; for example, Argentina had no diplomatic relations with Cuba, bud did not object to a reference to that country in the report. Moreover, all the countries concerned were Members of the United Nations.

Mr. OXMAN (United States of America) said that paragraph 2 contained statements of fact which did not raise any questions of recognition or bilateral relations. His delegation considered it useful for readers of the report to know which countries had sent observers and he therefore wished the paragraph to remain as it stood.

Mr. HSIA (China) said he could see no reason why the observer countries should be enumerated, when the members of the Committee were not listed. The two categories of countries should be treated in the same way.

Mr. GAUCI (Malta) said that the paragraph adhered to the long-established practice of listing the countries members of the Committee in the main Committee's report and mentioning the additional countries which had sent observers.

Mr. MASSINI EZCURRA (Argentina) suggested that the report should simply state that certain countries had sent observers and that the final decision should be left to the plenary Committee, to which the observers were accredited.

Mr. HSIA (China) supported that suggestion.

Mr. OXMAN (United States of America) said he could not agree to the Argentine suggestion. The membership of the Committee was already a matter of public record in a note appended to General Assembly resolution 2750 (XXV), and the purpose of the reference in paragraph 2 of the draft report was to create such a record in respect of the countries which had sent observers.

Mr. TRAORE (Ivory Coast) suggested that, since certain members of the Committee were not represented at the current series of meetings, both the members attending and the observers might be listed in paragraph 2.

Mr. SHITTA-BEY (Nigeria) suggested that the paragraph should be left unchanged, but that a foot-note should be added, reflecting the view of some delegations that it was unnecessary to list the countries which had sent observers.

Mr. MIRCEA TUDOR (Romania) said that that solution was unacceptable to his delegation; the Sub-Committee's report, once adopted, would be incorporated unchanged in the report of the Committee. He supported the Argentine suggestion.

Miss MARTIN SANE (France) also supported that suggestion, emphasizing the desirability of avoiding similar debates in the other Sub-Committees.

Mr. SHITTA-BEY (Nigeria) said he failed to understand why the proper forum for the decision should be the plenary Committee. A number of observers had attended the Sub-Committee's meetings, and paragraph 2 reflected that fact. Moreover, the Committee would have no basis for discussing the question unless the report indicated the differences of opinion in the Sub-Committee.

Mr. ELHONSALI (Morocco) and Mr. KIKIĆ (Yugoslavia) said they agreed with the Argentine and French representatives, particularly since no observer had objected to the Argentine suggestion.

Mr. VAZQUEZ (Observer for Cuba), speaking at the invitation of the Chairman, said that he had attended all Committee and Sub-Committee meetings as an observer for his country and saw no reason why Cuba should not be mentioned in the Sub-Committee's report.

Mr. ZAFERA (Madagascar) considered that reference to both members and observers should be deleted from the Sub-Committee's report and should appear only in the report of the Committee.

Mr. PHAN BUOY HAK (Observer for the Khmer Republic), speaking at the invitation of the Chairman, said he agreed with speakers who had expressed the view that all States Members of the United Nations could be referred to in United Nations documents. In particular, he supported the solution suggested by the Nigerian representative.

In reply to questions by Mr. MANNER (Finland) and Mr. MASSINI EZCURRA (Agrentina), Mr. MOTT (Australia), Rapporteur, said that in the introduction to the Committee's report for 1971 States members and observers were listed, 27/ whereas in part II, relating to the work of Sub-Committee I, only the observers were given. 28/ Parts III and IV, dealing with the work of Sub-Committees II and III respectively, contained no such lists.

Mr. BALLAH (Trinidad and Tobago) pointed out that the wording of the first part of the sentence at issue (the third sentence of paragraph 2) was in any case ambiguous. It would be wise to clarify the sentence and to follow the solution suggested by the Nigerian representative.

Mr. OKAWA (Japan) said that, in the light of the precedent of the Committee's 1971 report, it might be advisable to delete the sentence entirely.

Mr. OXMAN (United States of America) said that the precedent to be followed was that of Sub-Committee I, not those of the other Sub-Committees, although the latter served to refute the argument that the same discussion was likely to take place in all organs of the main Committee.

Mr. HSIA (China) reiterated his support of the Argentine suggestion. Since observers had not been listed in the reports of all the Sub-Committees on their deliberations in 1971, it seemed unnecessary to go further than to mention that some countries had sent observers.

Mr. THOMPSON-FLORES (Brazil) said that a dangerous and most unfortunate precedent would be created if Member States were to object to all references in United Nations documents to countries, Governments or régimes which they did not recognize. The place for such political discussions was the United Nations General Assembly.

Mr. LIVERMORE (Australia), referring to the statements of the representatives of Trinidad and Tobago and Nigeria, proposed that the opening words of the third sentence of paragraph 2 should be amended to read: "Representatives of the States members of the Committee and observers for States accredited to the Committee 1/ attended these meetings" and that the foot-note should read: "1/ Accredited observer States were: ...", followed by the list of countries.

27/ See Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421), paras. 12 and 13.

28/ Ibid., para. 50

Mr. MIRCEA TUDOR (Romania) said that the use of the word "accredited" raised the very political issues that the Brazilian representative had objected to. The best solution would be to follow the Argentine suggestion.

Mr. THOMPSON-FLORES (Brazil) said that in fact observers were accredited, not to the Committee, but to the United Nations through the Secretary-General. In any case, that political question could not be settled in the Sub-Committee, and certainly not by eliminating the reference to observers.

Mr. SHITTA-BEY (Nigeria) suggested that, since the only objection to the Australian proposal seemed to be the use of the word "accredited", that proposal might be amended to read: "Representatives of the States members of the Committee and observers 1/ attended these meetings", with the foot-note reading "1/ The observers were: ...", followed by the list of countries.

The Australian amendment to paragraph 2, with the sub-amendment proposed by the Nigerian representative, was adopted.

Paragraphs 1 to 7, as amended, were adopted.

Paragraph 8

Paragraph 8 was adopted.

Paragraph 9

Mr. ROMANOV (Union of Soviet Socialist Republics) said that, during the Sub-Committee's discussion of the question of the universality of an agreement on the sea-bed, the view had been expressed that any treaty on the subject should be open to participation by all States. No objection to that view had been raised. Consequently, the words "Some delegations expressed the view ..." in the last sentence did not reflect the situation in the Sub-Committee and should be replaced by the words "The general view was ...".

Mr. STEEL (United Kingdom) said that the USSR amendment would have the effect of attributing to the Sub-Committee a view which had been expressed by the USSR and other delegations, but which could not be represented as the view of the Sub-Committee as a whole. His delegation deprecated such attempts to foist on the Sub-Committee as a whole the views of certain members of it. It would be wiser to follow the time-honoured practice of using the words "Some delegations" to introduce a view favoured only by a certain number of the members of the Sub-Committee.

Miss MARTIN SANE (France) said that her delegation supported the observation of the United Kingdom representative. The present text should not be changed.

Mr. ROMANOV (Union of Soviet Socialist Republics) said it was quite clear that some delegations opposed the opening of the treaty to participation by all States. However, the words "Some delegations" in the last sentence did not reflect what had actually occurred in the Sub-Committee, since virtually all delegations had expressed support for the Declaration of Principles contained in General Assembly resolution 2749 (XXV), paragraph 9 of which required that the treaty should be of a universal character. His delegation regarded that as support for the principle of universality. If any delegations now objected to that principle, they should propose an amendment reflecting their views. Universality was a question to which his delegation attached prime importance.

Mr. ZEGERS (Chile) pointed out that the words "Some delegations" were used twice in the paragraph. In the fourth sentence the words were used correctly, but in the fifth sentence they should be amended, because no delegation had raised an objection to the view expressed in it.

Mr. BALLAH (Trinidad and Tobago) supported the view of the Chilean representative.

Mr. STEEL (United Kingdom), referring to the question of universality, said that his delegation had not expressed the view that the treaty should be open to participation by all States, simply because the words "all States" had acquired special political connotations. Their use in the present context constituted a reference to a political situation which was of no concern to the Sub-Committee. It would be regrettable if the useful work done by the Sub-Committee was to be impeded by a question of that sort.

His delegation had supported the view described in the second sentence of paragraph 9. It would have no objection to a proposal to replace the view expressed in the last sentence of the paragraph by words similar to those used in the second sentence. It would, however, object to the use of such words as "general view" in the last sentence as worded at the present time.

Mr. OXMAN (United States of America) supported the observations made by the United Kingdom and French representatives. His delegation deeply regretted that a controversial political issue had been introduced into the Sub-Committee's debate as a result of the USSR proposal. In the opinion of his delegation, it would have been preferable if the report had contained no reference to that issue, but his delegation could support the second sentence of paragraph 9 as it stood.

Mr. MIRCEA TUDOR (Romania) said that the wording of the last sentence of paragraph 9 was unacceptable to his delegation. Not only had the principle of universality been supported in the Sub-Committee, but 56 delegations sponsoring items for the list of subjects and issues relating to the law of the sea, to be submitted to the Conference on the law of the sea (A/AC.138/66 and Corr. 2), had supported the idea of endeavouring to ensure the participation of all States. What was more, the words "Some delegations expressed the view" were inconsistent with the general statements which had been made both in the Sub-Committee and in the plenary Committee. His delegation supported the USSR proposal, which would reflect the situation more accurately.

Mr. ROMANOV (Union of Soviet Socialist Republics) said it was illogical to use the words "many speakers noted" in the second sentence and the words "Some delegations expressed the view" in the last sentence, since the words "of a universal character, generally agreed upon" in the second sentence were synonymous with "participation by all States" in the last. If some delegations considered that the treaty should not be open to participation by all States, his delegation would not insist on the formula "the general view was that". However, the report of the Sub-Committee should in that case state that there were in the Sub-Committee some delegations which opposed participation by all States or which had not adopted a final position on the question.

Mr. ZEGERS (Chile) said the most important point was that the law of the sea must be applicable to all States without exception. Consequently, the principle of universality must be stressed in the report, as it had been in paragraph 9 of the Declaration of Principles. His delegation agreed with that of the Soviet Union that the paragraph as drafted was inconsistent. Suport for the principle of universality must be adequately reflected in the report and, to that end, his delegation suggested that an informal drafting group should be established to decide on an appropriate text.

Mr. THOMPSON-FLORES (Brazil) said that a debate on the question of universality would be inappropriate in the Sub-Committee. The words "general view" obviously could not be used in the last sentence, because of the objections of certain members to the use of the words "all States" - objections which his delegation shared. It therefore suggested that the last sentence should be introduced by the words "A number of delegations".

Mr. MIRCEA TUDOR (Romania) said that since the last sentence was closely related to the second sentence, it should be placed in a more appropriate position, i.e. linked with the third sentence.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) supported the suggestion of the Romanian representative.

Mr. GAUCI (Malta) said that, although many delegations had referred to the need for a treaty of a universal character, an equally large number of delegations had not mentioned that point. A sentence to that effect could appropriately be included in the report.

Mr. STEEL (United Kingdom) agreed with the observation made by the Maltese representative, and pointed out that the Romanian suggestion to link the third and last sentences would again have the effect of attributing to some delegations a view which they had not expressed or did not hold.

His delegation had no difficulty with the Brazilian suggestion, which would dispose of the matter in an equitable manner.

Mr. LIVERMORE (Australia) said that in general he shared the views expressed by the United Kingdom, French and United States representatives. He opposed the Romanian suggestion, for the reasons given by the United Kingdom representative, and supported the suggestion made by the Brazilian representative.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that his delegation could not support the Brazilian suggestion, which would distort even more seriously the actual situation in the Sub-Committee.

Mr. MOTT (Australia), Rapporteur, suggested that the difficulty might be overcome by deleting the last three sentences and replacing the words "noted that paragraph 9 of the Declaration of Principles required" in the second sentence by the words "drawing upon paragraph 9 of the Declaration of Principles, agreed".

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that there was another possibility open to the Sub-Committee. First, the paragraph could state in detail the views which had been expressed on the question of the principle of universality, as pointed out by the Romanian delegation. Secondly, the views expressed by the United Kingdom, French and United States delegations could be reflected in a separate paragraph in order to achieve a proper balance.

In connexion with the amendment suggested by the Rapporteur, he pointed out that his delegation had not only referred to paragraph 9 of the Declaration of Principles but had also expressed the view that the treaty must be open to participation by all States. That fact should be stated explicitly in the report.

Mr. GAUCI (Malta) suggested that, in the last sentence, the word "some" should be replaced by the word "many", and that the words "but many other delegations did not refer to the question of participation at this stage" should be added at the end of the sentence.

Mr. OXMAN (United States of America) said that the points raised by the USSR delegation had important implications for the work of the Sub-Committee. His delegation had not felt compelled to respond to certain political issues when they had been raised in the Sub-Committee, since it believed that delegations would be fully aware of those issues and his delegation's views on them. It had not wished to repeat those views in the present forum, which was inappropriate for such political discussion. The Soviet Union's proposed wording would in effect penalize his delegation for its restraint, whereas the Sub-Committee should not encourage undesirable political disputes of that nature.

Mr. MIRCEA TUDOR (Romania) pointed out that at a previous meeting the United States representative had requested that each delegation should have the right to state its views. He now appeared to be asking that such requests should no longer be countenanced and to oppose the concept of a treaty of a universal character. Nevertheless, efforts to achieve a mutually acceptable solution should be continued and every delegation should have the right to record its views.

Mr. STEEL (United Kingdom) expressed his delegation's regret at the political turn which the present debate had taken. It would be prepared to support any wording which would allow the question at issue to be discussed in a more appropriate forum.

The difficulty with the Ukrainian suggestion was that two opposing views had not been expressed in the Sub-Committee. One view had in fact been expressed, but those delegations which held an opposing view had refrained from expressing it because they had thought that the Sub-Committee was not a proper forum for a debate on such a question. The Ukrainian proposal therefore could not be applied. Some progress might, however, be made on the basis of the Maltese suggestion, if it was amended slightly. He therefore suggested that the clause to be added to the last sentence of paragraph 9 should be worded on the following lines: "but many other delegations considered that this raised political questions which were not for the main Committee or Sub-Committee I to consider and therefore did not think it proper to discuss the question". It was regrettable that words of that nature might be forced into the report, since they related to a political question extraneous to the Sub-Committee's proper task.

Mr. MASSINI EZCURRA (Argentina) suggested that a small drafting group might be established to work out a text on the basis of the Maltese proposal.

Mr. MIRCEA TUDOR (Romania) said that there was some merit in the Maltese suggestion. Nevertheless, the use of the words "many delegations" and "many other delegations" in the same sentence would imply that many delegations had participated in the debate. It would be preferable to leave the words "many delegations", as proposed by the Soviet Union and to use the words "some" or "a number of" delegations to introduce the opposing view.

Mr. KOPAL (Czechoslovakia) said he could not agree that the question was purely political. It was in its substance a legal question with serious political implications, and it had to be settled as a legal issue. The Sub-Committee had to deal with it, because it was one of the principles set out in the General Assembly's Declaration of Principles in resolution 2749 (XXV), which constituted the basis for its work.

Mr. OXMAN (United States of America) said he considered the United Kingdom suggestion more than generous. The Sub-Committee's report would have to distinguish between States that favoured establishing a treaty of a universal character generally agreed upon and States that had asserted that it should be open to participation by all States, which was a political issue which many delegations, including his own, did not consider should be discussed by the Sub-Committee. In endorsing the view that the treaty should be of a universal character, his delegation had certainly not intended to endorse the political "all States" concept.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that, in the latest United Kingdom suggestion for the amendment of the text of paragraph 9, only two lines were devoted to the view of those delegations which had spoken in favour of the treaty being open to participation by all States. There was no indication of their motivation. In contrast, detailed motivation was provided for the views of the United Kingdom and some other delegations. That did not constitute a balanced reflection of the situation in the Sub-Committee. Further thought on paragraph 9 was clearly necessary, and he suggested that the Sub-Committee should proceed to consider other paragraphs of the draft report and revert to paragraph 9 later.

Mr. STEEL (United Kingdom) said that it was perfectly true that his amendment set out the reasons for which his delegation had adopted the attitude referred to. He had not considered it right to attribute motives to others; moreover, he had thought that the USSR's motive was obvious to all. He had no objection, however, to the addition of wording drafted by the USSR representative to describe his country's motives, provided that it was no longer than that describing his own country's motives.

Mr. SHITTA-BEY (Nigeria) thought that the text should be redrafted to make it clear that nearly all delegations which had actually spoken on the subject of universality had agreed that the treaty should be open to all but that many others did not hold that view.

Mr. MIRCEA TUDOR (Romania) said he did not find the United Kingdom representative's proposal at all generous. It was making a statement about something which had not occurred, and explaining his position in a sentence which began with the words "Many other delegations". That did not reflect the facts at all.

The CHAIRMAN suggested that the delegations concerned should meet during the lunch interval to try to work out an agreed wording before the afternoon meeting.

It was so decided.

STATUS, SCOPE, FUNCTIONS AND POWERS OF THE INTERNATIONAL MACHINERY (item 2 of the programme of work) (concluded) (A/AC.138/SC.I/L.14-16)

Mr. ESPINOSA VALDERRAMA (Colombia), exercising the right of reply, said that the United Kingdom representative had devoted his entire statement at the 55th meeting to the statement which he (the representative of Colombia) had made in the Sub-Committee at the 45th meeting on 28 March 1972. The dialogue between them had been very useful, in that it had resulted in the clarification of certain ideas and had brought out in some detail the differences in their positions, which would require careful analysis by the Sub-Committee in its further discussions and when it was preparing the draft articles for the convention.

The United Kingdom representative had argued that the scheme outlined by the Colombian delegation was not likely to generate the necessary investment funds for the joint ventures of the international authority with corporate bodies of various nationalities. He had reached that conclusion by inferring from the Colombian statement that the international authority would make its capital contributions to the joint ventures with funds derived from royalties on production. The Colombian statement had not referred to royalties but to dividends, i.e. a share in the profits of the joint ventures, which the international authority would receive in accordance with distribution ratios previously agreed upon. That was quite a different matter.

Turning to the four objections raised by the United Kingdom representative to the text entitled "Working paper on the régime for the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (A/AC.138/49)", submitted by the 13 Latin American States, he said that the first was that it would be a very long time before the developing countries received any revenue, since the international authority would have to use the funds which it received to pay its contributions to the joint ventures.

In his statement of 28 March 1972, he had already dealt with that objection by saying that the developing countries would willingly make the sacrifice of deferring the distribution of revenue in order to strengthen the common heritage in which they had the major share. It was only through such a sacrifice that the developing countries could ensure that the strong did not continue to appropriate for themselves what belonged to all. While they were prepared to make sacrifices in order to establish and increase a collective capital fund, they were not prepared to wait patiently for decades in order to benefit from a unilateral licensing scheme, which was not in accordance with the principles set out in the General Assembly's Declaration of Principles.

To clarify the position further, he would add that in fact the developing countries would not be postponing the receipt of their profits but would be reinvesting them. Reinvestment of profits had been the source of strength of the world's greatest enterprises. In the case of joint ventures for the exploitation of the common heritage of mankind, it would be a truly excellent reinvestment, since, as a result, the developing countries would be able to set in motion the exploitation of resources of which they were part owners under conditions of equality with the strong, who hitherto had taken the lion's share for themselves.

The second point which the United Kingdom representative had made was that the Latin American proposal would tend to prevent the developing countries from participating actively in new technology. The United Kingdom representative had allowed himself to succumb to the paternalistic complex which unfortunately still prevailed in relations between industrialized and barely developing countries. The developing countries were quite capable of defending their interests and did not need to be told how to do so by the ex-colonialist Powers. They were logically mistrustful of such insistence. The draft proposal of the 13 Latin American States ensured the developing countries' participation in, or association with, new technology as a full right and not as a concession or gift from the powerful to a few countries of the third world. In the licensing system proposed by the United Kingdom, the peoples of the developing countries would be at the mercy of the exploiting enterprises and those peoples knew only too well from centuries of experience how such enterprises behaved. On the contrary, in the Latin American proposal, the developing countries would not be in a position of inferiority vis-à-vis the developed countries, but would act from positions of equality in the bodies governing the international authority. It was the Latin American proposal and not the United Kingdom proposal which afforded the developing world guarantees of participation in new technology.

The United Kingdom representative had said that the delegation of Colombia had referred to the petroleum industry as a hypothetical example and that the petroleum industry was almost unique in that the costly exploratory bore-holes could subsequently be used for production purposes. He had added that that advantage did not apply to the exploitation of other sea-bed minerals, for which substantial further capital investment would be required. To that objection, he would say that the example of the petroleum industry had not been merely a hypothesis, since it was based on various joint ventures which had been extremely successful in developing countries. The only difference as far as petroleum in the sea-bed was concerned would be in the investments required for activities in the superjacent waters.

As to other minerals, the United Kingdom objection did not apply, since bore-holes would be necessary only in the case of petroleum; everyone was aware that exploration for other minerals for decades to come would be on the surface of the sea-bed and not in the subsoil thereof.

The United Kingdom representative's fourth criticism had been that the international authority would require highly qualified management staff in order to participate in the joint ventures and that that would lead to heavy overhead costs. He fully agreed that the international authority would require such personnel, as did private enterprise, for the management of joint ventures, otherwise the international authority would run the greatest risks. It was obvious that mankind could not attempt to administer its common heritage without highly qualified staff. There must have been some awareness of that fact behind the proposal to establish only a small office for purposes of registration and the granting of licences. In such a case, the enterprises would continue to be masters of the situation, as if General Assembly

resolution 2749 (XXV) had never been adopted. He also agreed that the highly qualified staff would have to be well paid, but that was equally true of highly qualified staff in private enterprise, so that criticism too was unjustified. At least the international authority would be acting quite openly and imposing effective control over expenditure, especially luxury expenditure, for which, in the case of private enterprise, it was the poorest who paid.

He hoped the United Kingdom representative would appreciate the reasons for which the developing countries were so anxious to achieve the equality and justice that had been denied them for so many centuries. That understanding would make it possible to harmonize their differing views.

Mr. STEEL (United Kingdom) said that it was through exchanges of view such as those taking place between the delegation of Colombia and his own that progress could be made towards establishing an appropriate régime for the sea-bed. He would consider the statement which he had just heard with as much attention as the representative of Colombia had obviously devoted to the United Kingdom statement.

The meeting rose at 1.20 p.m.

SUMMARY RECORD OF THE FIFTY-SEVENTH MEETING

held on Wednesday, 9 August 1972, at 3.20 p.m.

Chairman: Mr. ENGO Cameroon

In the absence of the Chairman, Mr. Ranganathan (India), Vice-Chairman, took the chair.

DRAFT REPORT OF SUB-COMMITTEE I (continued) (A/AC.138/SC.I/L.18 and Add.1)

First part (continued) (A/AC.138/SC.I/L.18)

Paragraph 9 (continued)

The CHAIRMAN noted that the delegations concerned were engaged in drafting a new text for paragraph 9 of the draft report of Sub-Committee I. Pending its availability he invited the Sub-Committee to consider paragraph 10.

Paragraph 10

Mr. VALDIVIESO (Peru) thought that the wording of paragraph 10 did not give a balanced picture of the different opinions expressed by the delegations, since they were represented as expressing only opposition to conferring sovereignty or even jurisdiction on the international machinery. He therefore proposed that paragraph 10 should begin as follows:

> "With regard to the power that should be conferred by the treaty on the international authority over the area created beyond the limits of national jurisdiction there was a divergence of opinion. Some delegations supported the view that the international authority should exercise sovereignty over the area and its resources on behalf of the international community and as a consequence of the fact that the area was the common heritage of mankind. Other delegations expressed the view that ...".

The remainder of the paragraph would continue unchanged.

Mr. PALACIOS TREVINO (Mexico) supported the proposal of the Peruvian representative.

The CHAIRMAN read out the proposed text in English, and invited the Sub-Committee to take a decision on the Peruvian amendment.

The Peruvian amendment was adopted.

Paragraph 10, as amended, was adopted.

Paragraph 11

Mr. ZEGERS (Chile) pointed out that a number of delegations, including his own, had said that the Declaration of Principles, on which the international régime was to be based, was equivalent to a declaration of general principles of law within the meaning of Article 38 of the Statute of the International Court of Justice. He therefore considered that reference should be made in paragraph 11, or elsewhere in the report, to the view that, while all States might not be parties to the treaty, they must observe the principles of international law in force. Although speaking in relation to paragraph 11 he had no firm opinion as to exactly where that point of view should be mentioned.

Mr. KANIARU (Kenya), referring to the second sentence of paragraph 11, said that the view had also been expressed that the provisions of the treaty were binding not only on the States parties to it but on the other States as well, by virture of the common heritage principle, which was applicable to all of them.

Mr. RATTRAY (Jamaica) was of the same opinion, and suggested that the first sentence of paragraph 11 should be replaced by the following text:

> "Some speakers considered it essential to devise means of ensuring that States not parties to the instrument establishing the régime nevertheless respected the provisions of the treaty, in view of the objective character which they attributed to the common heritage concept".

The second sentence of the paragraph would then follow.

Mr. BALLAH (Trinidad and Tobago) supported the proposal of the Jamaican representative. The concept of a common heretage of mankind was part of normative law; moreover, the Charter of the United Nations itself made provision for cases in which States not parties to a treaty were bound by its provisions.

Mr. RATINER (United States of America) agreed with the first part of the Jamaican proposal up to the words "provisions of the treaty", but asked that the second view expressed in the proposal, namely that concerning the "objective character" of the common heritage concept, should not be attributed to the same speakers. He suggested that the Jamaican proposal should be divided into two sentences, the first ending with the words "nevertheless respected the provisions of the treaty" and the second beginning with the words "Other speakers said that that was necessary in view of the objective character...". That would allow the distinction to be kept between the holders of the first opinion, including his own delegation, and those who shared the second, which his delegation did not.

Mr. HARRY (Australia) suggested that the first sentence of the Jamaican proposal, as amended, by the United States, should begin by the words "Many speakers" and the second by "Several of those speakers". He also suggested the inclusion in paragraph 11 of the following sentence: "It was also noted that proposals were before the Committee under which contracting parties would agree not to recognize any claim inconsistent with the treaty".

Mr. ZEGERS (Chile) suggested tnat the new sentence which the Australian delegation had just proposed should be amended so as to include the words "based on the above-mentioned Declaration of Principles" between the word "proposals" and the words "were before".

Mr. RATTRAY (Jamaica) said that he would prefer a more neutral formula which did not specify whether the principle prohibiting the recognition of any claim inconsistent with the treaty applied to the States parties, because the sentence, as it stood, implied that there had been two kinds of proposals. His delegation therefore proposed the following wording: "It was also noted that proposals, based on the Declaration of Principles mentioned above were before the Committee under which claims inconsistent with the treaty would not be recognized".

Mr. ZEGERS (Chile) accepted that wording.

The Jamaican amendment to paragraph 11, as amended by the United States of America and Australia and the Australian amendment, as amended by Chile and Jamaica, were adopted.

Paragraph 11, as amended, was adopted.

Paragraph 12

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that the Russian version of the paragraph did not seem to be a faithful translation of the English original.

Mr. VALDIVIESO (Peru) was not so sure that the Spanish version was a faithful translation of the English either. With respect to sub-paragraph (a), he had understood that the divergences which had been revealed related not to the area to be covered by the régime but to the application of the régime to that area.

The CHAIRMAN assured members that the Secretariat would see to it that the versions of the paragraph in the various languages were in accord.

Paragraph 12 was adopted.

Paragraph 13

Mr. ZEGERS (Chile) said that he had found the wording of the paragraph to be somewhat ill-balanced, since it failed to say what the problem of the delimitation of the area of the sea-bed beyond the limits of national jurisdiction could not be dealt with independently of the work of Sub-Committee II. He proposed that the last two sentences should be amended as follows:

> "Other delegations emphasized the link that existed between the boundary of the sea-bed and the nature of the régime to be established, and the need to deal with the two questions together, as the Committee had agreed when organizing its work. They also stressed the link existing between all boundaries and all the régimes in ocean space".

Mr. OXMAN (United States of America) said that he would prefer to keep the wording "that a ... link existed". It also seemed to him more correct to say, at the end of the first sentence proposed by the Chilean delegation, "having regard to the decision taken by the Committee concerning the organization of its work".

Mr. VALDIVIESO (Peru) supported the proposal of the Chilean delegation.

Mr. ZEGERS (Chile) asked the United States representative not to press his amendment to the Chilean proposal.

Mr. OXMAN (United States of America) withdrew his amendment.

Mr. CHAO (Singapore) said he was not sure that the wording "as the Committee had agreed to do when organizing its work" was quite accurate. Nothing in the text which the Chairman had read out on 12 March 1971 (45th meeting of the Committee) indicated any recognition of the need to study the two questions together.

Mr. ZEGERS (Chile) read out the third paragraph of the "Agreement on the organization of work", in which it was stated that the "treatment and allocation of all outstanding subjects /on which there is no common agreement/ ... shall be left for determination by the Committee"[29]. As the question of boundaries had been entrusted to Sub-Committee II, the Committee's decisions would have to be taken in the light of that Sub-Committee's conclusions.

Mr. LIVERMORE (Australia) observed that not all the delegations which had linked the nature of the régime to be established to the fixing of boundaries had given their views on the extent of the international area. It would therefore be more exact to divide the third sentence, and to say: "Some delegations argued that a close link existed between the boundary that would eventually be drawn and the nature of the régime to be established. Some delegations felt that the international area should be as extensive as possible."

Mr. GAUCI (Malta) said that he would prefer the following wording:

> "The view was held that a close link existed between the boundary that would eventually be drawn and the nature of the general régime to be established, that the international area should be as extensive as possible, and that the matter of sea-bed boundaries should be considered at an early date."

Mr. LIVEMORE (Australia) said that he was afraid it might be inferred from that wording that there had been unanimity. He suggested the words: "The view was put that...", the remainder being left unchanged.

Mr. GAUCI (Malta) pointed out that the view expressed was not a new one.

It might be better to say: "It was restated that ...".

Mr. VALDIVIESO (Peru) pointed out that it had also been stated that the sea-bed authority should be vested with broad powers to enable it to achieve its objective.

Mr. CHAO (Singapore) said that, although he had favoured both a wide extension of the area and broad powers for the authority, he had not intended to link the two questions.

Mr. ZEGERS (Chile) thought that the observation by the Peruvian representative was very apposite. He did not think it desirable for the report to reflect the views of every delegation which had taken part in the debate.

Mr. GAUCI (Malta) endorsed the remarks of the representative of Singapore. As the first sentence of paragraph 13 referred to the powers of the régime and paragraph 14 dealt with them again, it seemed pointless to dwell further on them.

Mr. VALDIVIESO (Peru) felt that the representative of Malta's thinking was very much to the point, since he too had said that he favoured linking the two questions. The Committee must avoid an impasse.

Mr. RATINER (United States of America) was of the same opinion as the representatives of Singapore and Malta. It seemed to him neither necessary to link the two questions nor logical to deal with them both in one paragraph.

29/ Ibid., para.19.

Mr. GAUCI (Malta) pointed out that it would nevertheless be desirable to establish the order of priority for considering the questions.

Mr. ZEGERS (Chile) recalled that the Maltese delegation had stated some years before that the question of boundaries should take precedence over that of the régime, as was moreover affirmed in General Assembly resolution 2750 C(XXV). He thought that it was inadvisable to reopen the debate on that point and suggested that the subject of boundaries should be gone into in a separate paragraph.

The CHAIRMAN noted that the Sub-Committee wished its report to mention the fact that some delegations regarded the two questions as being closely linked. The best solution might be to divide the third sentence. He wondered whether the Singapore representative could suggest a text that would satisfy all concerned.

Mr. CHAO (Singapore) stressed the fact that his delegation did not believe it advisable to link the two questions and said that he would only suggest that both views should be faithfully reflected.

Mr. HARRY (Australia) suggested, as a compromise solution, that the last two sentences of the paragraph might be reworded to read:

> "The view was restated that the matter of sea-bed boundaries should be considered at an early date. Other delegations argued that a close link existed between the boundary that would eventually be drawn and the nature of the régime to be established, it being understood that sufficiently broad powers would be conferred on the authority to enable it to attain its objectives."

Mr. ZEGERS (Chile) asked that a third view be reflected concerning the order of priority. A sentence on the following lines might be added: "The view was also restated, in accordance with the seventh preambular paragraph of resolution 2750 C (XXV), that priority should be given to the international régime, and that in its light the question of limits should be examined." That sentence might be inserted between the two parts of the Australian proposal.

Mr. RATINER (United States of America) thought that it would be more accurate to say: "The view was also restated that, in accordance with the seventh preambular paragraph of resolution 2750 C (XXV), priority should be given....", the remainder being left unchanged.

Mr. ZEGERS (Chile) accepted that amendment.

The CHAIRMAN summing up the discussion, suggested that paragraph 13 should be redrafted as follows:

> "Some delegations said that the definition of the area of application of the régime raised two questions. One was the problem of delimiting the area of the sea-bed that lay beyond national jurisdiction. The view was restated that the international area should be as extensive as possible and that the matter of sea-bed boundaries be considered at an early date. The view was also restated that, in accordance with the seventh premabular paragraph of resolution 2750 C (XXV), priority should be given to the international régime and in this light the question of limits should be examined. Some delegations argued that a close link existed between the

boundary that would eventually be drawn and the nature of the régime to be established. These delegations considered that the international area should be as extensive as possible, it being understood that the sufficiently broad powers would be conferred upon the authority to enable it to attain its objectives. Other delegations referred to the relationship that exists between the limits of the sea-bed and the limits in other maritime spaces and the consequent need to deal with them jointly, as was agreed in the Committee when it organized its work; they also highlighted the relationship that exists between all the limits and régimes which are applicable to ocean space".

Paragraph 13, as amended, was adopted.

Paragraph 14

Mr. PALACIOS TREVINO (Mexico), supported by Mr. RATTRAY (Jamaica) thought that the words "and its resources" should be added after the words "to the sea-bed" in the second sentence.

The Mexican amendment was adopted.

Paragraph 14, as amended, was adopted.

Paragraph 15

Mr. GREKOV (Byelorussian Soviet Socialist Republic) said that there were some differences between the Russian and English versions of paragraph 15. The Russian text should be brought into line with the English, and in particular with the words "recognized freedoms", "status" and "above" in the first sentence of the paragraph.

Mr. KANIARU (Kenya) proposed a number of minor amendments. First, it did not seem that the words "in this regard" at the beginning of the paragraph were justified. Secondly, the words "should not affect" in the first sentence should be replaced by the words "should not unduly affect". It did not seem very likely that a State which discovered resources would, without prior consultation, instal equipment for the sole purpose of preventing the exploitation of those resources. Next, the second sentence of the paragraph should be replaced by the following: "They considered that rules of international law in respect of the high seas and the air space above, to the extent unaffected by the treaty to be established, should be preserved". The third sentence should be simply deleted. Lastly, the beginning of the fourth sentence should be amended to read as follows: "Some speakers commented that it would be necessary to find means ...". The amendments he proposed would make the paragraph more neutral and reflect the course of the debate more accurately.

Mr. THOMPSON-FLORES (Brazil) said that the first objection he was going to raise had been dealt with by the second amendment to the first sentence just suggested by the representative of Kenya. To meet his delegation's second objection, he proposed that the end of the first sentence of the paragraph should be amended to read as follows: "... the recognized freedoms of the high seas, where and to the extent that they may apply, or the status as high seas of the waters above the area beyond national jurisdiction, where this qualification applies".

Mr. ROMANOV (Union of Soviet Socialist Republics) pointed out that paragraph 15 presented ideas formulated by his delegation during the debate. He was therefore surprised that the delegations of Kenya and Brazil, which had expressed their opposition

to those ideas in earlier discussion, should suggest amendments to a text reflecting his delegation's views. Considering that, if anyone wished to introduce a correction or an addition, he could do so elsewhere in the report, his delegation was totally opposed to the amendments that had just been put forward.

The CHAIRMAN requested the representatives of Kenya and Brazil to come to an agreement on a draft text that could be added to the report.

Mr. KANIARU (Kenya) said that that would be done. In his opinion, however, the draft report as a whole was now being discussed by the Committee.

Mr. YTURRIAGA BARBERAN (Spain) requested that the Spanish version of paragraph 15 should be brought into line with the English and French versions.

Mr. PALACIOS TREVINO (Mexico), supported by MISS MARTIN SANES(France), expressed the view that in the third sentence of paragraph 15, principle 13 (a) should either be cited in its entirety or referred to simply by its number.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that the first sentence of the paragraph had been drafted in a manner which exactly reflected what his delegation had stated in the course of the debate. He thought that the Sub-Committee was greatly indebted to the Rapporteur, who managed to express highly complex ideas so succinctly.

The CHAIRMAN said that the Sub-Committee could take up at its next meeting the text that would be submitted by the delegations of Kenya and Brazil.

Paragraph 16

Mr. RATTRAY (Jamaica) noted that the paragraph dealt with the delicate problem of natural resources. He wondered whether the common ground referred to at the beginning of the paragraph had emerged so clearly from the discussions. Although some delegations had agreed that the régime should cover only non-living resources, others felt that the living and non-living resources should be regarded as an invisible whole. What was more, if a dividing-line between the two categories of resources had been recognized, it was still rather thin. His delegation therefore felt that the substances of the debate would be better reported if the beginning of the paragraph were amended to read:

> "A number of delegations felt that the régime should cover both living and non-living resources of the sea-bed. Some delegations felt, however, that it should only apply to the non-living resources. Several speakers referred to the definition of natural resources contained in article 2 (4) of the Convention on the Continental Shelf as deserving consideration."

Mr. YTURRIAGA BARBERAN (Spain) said that a number of drafting changes were required in the Spanish version of the paragraph, particularly with regard to the sequence of tenses.

The Jamaican amendment was adopted.

Paragraph 16, as amended, was adopted.

Paragraph 17

Mr. RATTRAY (Jamaica) proposed that the end of the first sentence of the paragraph should be amended so as to reproduce the precise wording of paragraph 4 of the Declaration of Principles.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) said that certain errors in the Russian text of the paragraph, particularly at the end of the first sentence, should be corrected.

Paragraph 17, as amended, was adopted.

Paragraph 18

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) said that the second sentence of the paragraph set forth the opinion expressed by certain delegations, whereas the view held by others, including that of the Soviet Union, was set forth in the next paragraph. He therefore suggested that the two paragraphs should be combined.

It was so decided.

Paragraphs 18 and 19 (the new paragraph 18)

Mr. KANIARU (Kenya) inquired about the exact meaning of the words "the maintenance of the territorial and jurisdictional integrity and the harmonization of uses of the area" at the end of the first sentence of the paragraph.

Mr. MOTT (Australia), Rapporteur, said that the sentence had been included in the report at the request of a delegation and therefore he could not interpret the meaning.

Mr. KANIARU (Kenya) asked whether the delegation concerned could not supply the necessary explanation.

Mr. GAUCI (Malta) said that the vagueness of the sentence was perhaps due to typing errors and that his delegation would submit a more precise text to the Rapporteur.

Mr. KOVALEVSKY (Union of Soviet Socialist Republics) requested that the following sentence should be inserted between the end of the former paragraph 18 and the beginning of the former paragraph 19: "Furthermore, a number of delegations noted that the activities of the régime should be confined to the sea-bed and should not touch upon the activities of States in the waters covering the sea-bed or in the oceans as a whole".

The USSR amendment was adopted.

Mr. MANDERSON-JONES (Jamaica) felt that the first sentence of the former paragraph 19 would have to be re-drafted so as to eliminate any ambiguity.

Mr. YTURRIAGA BARBERAN (Spain) expressed the view that a number of stylistic changes would also have to be made to the Spanish text.

Mr. KACHURENKO (Ukranian Soviet Socialist Republic) requested that changes should also be made to the Russian text so as not to give the impression that scientific research was subordinate to sea-bed activities.

Subject to those corrections and to the clarification to be submitted by the representative of Malta, the new paragraph 18, as amended, was adopted.

Paragraph 20 (the new paragraph 19)

Mr. van der ESSEN (Belgium) said, that, in the second sentence of the French text of the paragraph, the word "compétente" should be replaced by the word "compétence".

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) wondered whether it was entirely accurate to state that, during the debate, some speakers had expressed the belief that it might be appropriate to give the authority competence as far as arms control activities were concerned.

Mr. HSIA (China) pointed out that the statement he had made at the 51st meeting had received the support of other delegations, but that was not reflected in the wording of paragraph 20 of the draft report. His delegation therefore wished the following text to be inserted after the penultimate sentence of that paragraph, so that the concrete opinions expressed in its statement would be reflected:

> "Some delegations considered that, before the aim of the complete prohibition and thorough destruction of nuclear weapons is realized, the demand for banning nuclear tests will only suit the purpose of consolidating the nuclear monopoly by the big nuclear Powers. At present, the activities of nuclear submarines in the international sea-bed area and in the sea-bed area of other countries should, first of all, be prohibited, and the emplacement of nuclear weapons and of all other weapons in the said sea-bed area should also be prohibited".

Mr. ROMANOV (Union of Soviet Socialist Republics) wondered whether that text, which briefly summarized the position advocated by the Chinese delegation at the last two sessions of the Committee, could not be inserted in a more appropriate place, so that the idea expressed in paragraph 20 would not be broken up into two parts.

Mr. HSIA (China) thought that the text he had just proposed might be made a new paragraph 20, since the paragraph under discussion had become paragraph 19.

It was so decided.

The former paragraph 20 (the new paragraph 19) was adopted.

The new paragraph 20 was adopted.

Paragraph 21

Mr. RATTRAY (Jamaica) said that the wording of paragraph 21 implied that there was a disparity between the Declaration of Principles and the "basic concepts that were acceptable to the international community", whereas item 1 of the programme of work provided for the consideration of an international régime based on the Declaration of Principles. The Declaration, however, was deemed to be a formulation of what were basic concepts that were acceptable to the international community. His delegation therefore proposed that the first sentence of paragraph 21 should be amended by replacing the words "that were acceptable to the international community" by the words "based on the Declaration of Principles". The second sentence would be deleted, since it had become unnecessary. Lastly, it would be necessary to shift the last sentence of paragraph 22 to the end of paragraph 21, because it completed the views expressed in paragraph 21.

Mr. RATINER (United States of America) requested that delegations should be given time to consider the Jamaican amendment.

The CHAIRMAN suggested that the Committee should go on to consider paragraph 23, since the Jamaican amendment related to paragraphs 21 and 22.

Paragraph 23

Mr. THOMPSON-FLORES (Brazil) proposed that the following sentence should be inserted after the third sentence:

"The view was also expressed that to consider an interim règime and machinery before decisions had been taken with respect to certain vital points of the definitive régime and machinery would be inappropriate to the extent that it would tend to prejudge those points."

The Brazilian amendment was adopted.

Paragraph 23, as amended, was adopted.

Paragraph 24

Paragraph 24 was adopted.

Paragraph 25

Paragraph 25 was adopted.

Paragraph 26

Mr. THOMPSON-FLORES (Brazil) proposed that the words "at this stage" in the first sentence should be deleted.

Mr. ROMANOV (Union of Soviet Socialist Republics) was surprised that the representative of Brazil was requesting a change in wording which had been suggested by the Chairman and approved by the Sub-Committee at its first 1972 session. However, his delegation would not formally oppose the deletion of the words in question, provided that it would not affect the previous decision taken with regard to the Working Group and that it would not prejudge any subsequent decision concerning the work of that Group. He requested that his position should be reflected in the summary record, so that it could not later be said that his delegation had approved the deletion of the words "at this stage".

Mr. THOMPSON-FLORES (Brazil) said that, in a way, agreeing to the inclusion of the words "at this stage" also amounted to prejudging the decision which would be taken in connexion with the further work of the Working Group. He assured the representative of the USSR that the deletion of those words would in no way prejudge that decision.

The Brazilian amendment was adopted.

Paragraph 26, as amended, was adopted.

Paragraph 9 (continued)

The CHAIRMAN recalled that three paragraphs had been left pending at the 56th meeting. He believed that a compromise solution had been found for the wording of the third sentence of paragraph 9. He requested the representative of Australia, who had participated in the exchange of views, to read out that wording to the Sub-Committee.

Mr. HARRY (Australia) confirmed that he had reached agreement with a number of representatives, including the representatives of Malta and the United Kingdom, on the following wording:

> "Several delegations expressed the view that, to satisfy the provisions of paragraph 9 of the Declaration of Principles, the treaty should be open to participation by all States, but several other delegations did not consider it appropriate to discuss this question at this state.".

The CHAIRMAN felt that it would be wiser not to take a decision on that compromise wording at the present meeting and to postpone the adoption of paragraph 9 to the following meeting.

The meeting rose at 7.55 p.m.

SUMMARY RECORD OF THE FIFTY-EIGHTH MEETING

held on Friday, 11 August 1972, at 10.20 a.m.

Chairman: Mr. ENGO Cameroon

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

DRAFT REPORT OF SUB-COMMITTEE I (continued) (A/AC.138/SC.I/L.18 and Add.1-3)

First part (continued) (A/AC.138/SC.I/L.18)

The CHAIRMAN, noting that at the 57th meeting the Sub-Committee had decided to postpone consideration of the four paragraphs on which it had been unable to reach agreement, invited members to resume consideration of those paragraphs.

Paragraph 9 (concluded)

The CHAIRMAN said he understood that there was general agreement on the following amendment to the existing text: the fourth and fifth sentences would be replaced by the words "Several delegations expressed the view that, to satisfy the provisions of paragraph 9 of the Declaration of Principles, the treaty should be open to participation by all States, but several other delegations did not consider it appropriate to discuss this question at this stage".

If there were no objection, he would take it that the Sub-Committee wished to adopt paragraph 9 with the amendment which he had just read out.

Paragraph 9, as amended, was adopted.

Paragraph 15 (concluded)

The CHAIRMAN said that a group of delegations had submitted two amendments. Firstly, the first three words of the paragraph would be deleted. Secondly, the following sentence would be inserted after the third sentence:

> "A number of speakers argued that the régime should deal with all necessary aspects of the administration of the sea-bed and ocean floor beyond national jurisdiction and its resources, leaving unaffected, both as regards their substance and area of applicability, those freedoms of the high seas not regulated by the provisions of the future convention".

The last sentence would remain unchanged.

The amendments were adopted.

Mr. PALACIOS TREVIÑO (Mexico) proposed that in the third sentence the words "waters superjacent to the area and that of the air space above those waters" should replace the words "superjacent waters", because, in the opinion of his delegation, paragraph 13 (a) of the Declaration of Principles should be quoted in its entirety.

The Mexican amendment was adopted.

Paragraph 15, as amended, was adopted.

Paragraph 21 (concluded)

The CHAIRMAN said that the following two amendments had been submitted by a number of delegations. The part of the first sentence following the words "identify basic concepts" would be replaced by the words "based on the Declaration of Principles, which could be transformed into treaty articles which would be as widely accepted as possible". The second sentence would be replaced by the last sentence of paragraph 22: "It was considered further that some of the concepts contained in the Declaration of Principles should be expressed with greater clarity and that others should be amplified in certain directions".

The amendments were adopted.

Mr. ROMANOV (Union of Soviet Socialist Republics) said it was not true that there had been general agreement on the point mentioned in the last sentence of paragraph 21. Indeed, it would appear that none of the principles considered by the Working Group could be transformed into treaty language without difficulty. In the Working Group it had, however, been decided not to draft treaty articles, but merely texts. His delegation had agreed to that course with some reluctance, since it had been prepared to accept some provisions contained in the Declaration as treaty texts. The fact that that had not been acceptable to the other delegations was not the fault of the USSR delegation.

The CHAIRMAN pointed out that the statement that there had been general agreement on the point mentioned in the last sentence was qualified by the use of four phrases: "in spite of reservations", "there appeared to be", "some at least", and "treaty language", as opposed to "treaty articles".

Mr. ROMANOV (Union of Soviet Socialist Republics) said that the Sub-Committee should not try to embellish what had actually occurred in the Working Group. There simply had not been "general agreement".

Mr. GAUCI (Malta) proposed that the word "agreement" should be replaced by the word "expectation".

The Maltese amendment was adopted.

Paragraph 21, as amended, was adopted.

Paragraph 22

The CHAIRMAN said that, since the last sentence of the paragraph had been incorporated in paragraph 21, it would be deleted from paragraph 22.

Paragraph 22, as amended, was adopted.

The first part of the draft report of Sub-Committee I (A/AC.138/SC.I/L.18), as amended, was adopted.

Third part (A/AC.138/SC.I/L.18/Add.2)

Mr. PINTO (Sri Lanka), speaking as Chairman of the Working Group on the international régime, introduced the Group's report (A/AC.138/SC.I/L.18/Add.2), which would be annexed to the report of the Sub-Committee.

In a letter dated 29 March 1972 to the head of the delegation of Sri Lanka, the Chairman of the Sub-Committee had outlined the tasks of the Working Group as being, firstly, the preparation of a working paper showing areas of agreement and disagreement, and secondly, the negotiation of points of substance. 30/ On that basis, the Group could be said to have made substantial progress, although much remained to be done. It was to be hoped that, when the Group reconvened, the present mood of moderate optimism would be justified. On the other hand, since the subjects and issues relating to the law of the sea were all closely interconnected, swift progress could not be expected in one sphere when progress in others remained at a very early stage. Consequently, if the Group was to make faster progress, there would have to be substantial progress in other spheres. The Group nevertheless intended to continue its work, in the belief that such progress would soon be forthcoming. He was confident that the spirit of co-operation displayed by the members of the Group would enable it to achieve ultimate success.

The CHAIRMAN, speaking on behalf of the Sub-Committee, thanked the Chairman of the Working Group for the efforts which he and the Group as a whole had made.

He proposed that consideration of the Working Group's report should be postponed, to enable members of the Sub-Committee to study it.

It was so agreed.

Mr. BEESLEY (Canada) suggested that, if possible, the Working Group should hold further meetings at the current session, although he realized that that might create difficulties for the smaller delegations.

The CHAIRMAN said he was sure that the Chairman of the Working Group would hold consultations and that, if he felt it desirable and possible, he would convene a meeting of the Group.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that no decision should be taken on the Canadian representative's suggestion at the present time, especially since the work of the Group must be geared to progress in other spheres.

Mr. RATINER (United States of America) supported the Canadian representative's proposal. His delegation was prepared to participate in the proceedings of the Working Group at any time. Although he sympathized with the Soviet representative's view that not enough progress had been made in other spheres, that was no reason for slowing down the work of Sub-Committee I.

30/ See A/AC.138/SC.I/L.11, fifth paragraph.

The CHAIRMAN suggested that the Chairman of the Working Group should hold consultations with members and with the Secretariat and that, if he thought it possible to convene a meeting of the Working Group during the following week, he should bring the question to the attention of the Sub-Committee at its following meeting.

It was so decided.

Second part (A/AC.138/SC.I/L.18/Add.1)

The CHAIRMAN said that the second part of the draft report (A/AC.138/SC.I/L.18/Add.1) was at present available only in English and Spanish. He suggested that, in order to expedite the Sub-Committee's work, it should be considered on the basis of those versions, each paragraph being read out so that it could be interpreted into the other working languages. If, however, any delegations were not satisfied, a decision on any paragraph should not be taken until the text was available in all the working languages.

It was so agreed.

Paragraphs 27 and 28

Paragraphs 27 and 28 were adopted.

Paragraph 29

Mr. MANDERSON-JONES (Jamaica) said he had some difficulties with paragraph 29. First, he assumed that the word "areas" in the second sentence should read "area"; as the text stood, it suggested that there might be two areas, one to which the régime would apply and another in relation to which the machinery would have authority. In addition, he was not happy about the use of the term "regulatory authority" or the phrase "the resources which would be covered".

Mr. VALDIVIESO (Peru) suggested that the word "regulatory" should be deleted, since it implied that there had been general agreement that the purpose of the machinery established would be merely to regulate. He also suggested that the words "range of" in the last phrase should be deleted, since they implied that the machinery would be given fairly wide powers, and thus prejudged the issue. The expression "resources which would be covered" was not satisfactory either, since the term "resources" had not yet been defined. It seemed to him that it would be well to redraft the whole paragraph.

Mr. STEEL (United Kingdom) said that, while the second sentence in its present form might be prejudicial to the position of Jamaica and some other delegations, it accurately reflected ideas which had been expressed. The difficulty could be overcome by amending the first few words of the sentence to read: "Among the questions mentioned were ...". It would then be clear that there was not a consensus and that the questions mentioned were an example of the common view set out in the first sentence.

Mr. OKAWA (Japan) said that the extent of the machinery's powers and functions was in fact part of the Sub-Committee's terms of reference. The words "range of" should therefore be retained.

Mr. KAZMIN (Union of Soviet Socialist Republics) said that the Jamaican representative's objections might be removed if the words "Some delegations felt that" were inserted at the beginning of the second sentence.

Mr. GAUCI (Malta) could not agree to the insertion of those words. It would be more than odd if only some delegations felt that those questions were basic.

Mr. KANIARU (Kenya) suggested that paragraph 29 could be deleted in its entirety. The points made in it could be inserted in the sections dealing in detail with areas in which more work needed to be done.

Mr. KAZMIN (Union of Soviet Socialist Republics) said that paragraphs 27 to 30 were obviously designed to describe the general position with regard to the discussion of item 2 of the programme of work, while the following paragraphs showed how the debate had developed. It would therefore be wrong to delete paragraph 29.

The CHAIRMAN suggested that the Sub-Committee should postpone further consideration of paragraph 29 and that delegations which had participated in the discussion should meet informally to try to agree upon a text.

It was so agreed.

Paragraph 30

Mr. MANDERSON-JONES (Jamaica) asked whether there was any special significance in the use of the words "limits in relation to the régime and machinery", whereas the wording used in the second sentence of paragraph 29 had been "the area to which the régime would apply and in relation to which the machinery would have ... authority".

Mr. MOTT (Australia), Rapporteur, said that the formulation used in the second sentence of paragraph 29 could be interpreted, if so desired, as covering the position adopted, for example, by Malta. Paragraph 30, on the other hand, referred specifically to the question of sea-bed limits.

Paragraph 30 was adopted.

Paragraph 31

Paragraph 31 was adopted.

Paragraph 32

Mr. KANIARU (Kenya) asked that the following phrase should be inserted at the end of the paragraph: "taking into account the particular interests and needs of the developing countries, whether coastal or land-locked".

The Kenyan amendment was adopted.

Mr. KAZMIN (Union of Soviet Socialist Republics) proposed the insertion of an additional sentence at the end of the paragraph to read: "Other delegations felt that the international machinery should have functions necessary for the regulation of the industrial exploration and exploitation of the sea-bed and its subsoil".

The USSR amendment was adopted.

Paragraph 32, as amended, was adopted.

Paragraph 33

Mr. PALACIOS TREVINO (Mexico) said that, in the Spanish text, the word "acuerdos" (agreements) should be replaced by the word "convenios", to avoid confusion between agreements and contracts.

It was so agreed.

Mr. STEEL (United Kingdom) said that that difficulty also arose in the English text, since there was no technical difference between the words "agreement" and "contract". He assumed that the reference was to international agreements and therefore suggested that the word "international" should be inserted before the word "agreements".

Mr. SHITTA-BEY (Nigeria) said he could not agree with the United Kingdom suggestion, because it would limit the power of the authority; for example, an agreement entered into with the employees of the authority would not be international. Moreover, although all contracts were agreements, not all agreements were contracts.

Mr. GAUCI (Malta) said he agreed with the Nigerian representative. Paragraph 3 of the Declaration of Principles referred to the claim, exercise or acquisition of rights by States or persons, whereas international agreements would be limited to States only.

Mr. STEEL (United Kingdom) said that he would not press his suggestion.

Mr. GAUCI (Malta) suggested that the words "for example" should be replaced by "inter alia".

The Maltese amendment was adopted.

Paragraph 33, as amended, was adopted.

Paragraph 34

The CHAIRMAN suggested that the Sub-Committee should consider the four sections of the paragraph separately.

First section of paragraph 34

The first section of paragraph 34 was adopted.

Second section of paragraph 34

Mr. WARIOBA (United Republic of Tanzania) suggested that the third sentence of the second sub-paragraph of the second section of paragraph 34, beginning with the words "It was argued", should be amended to read: "It was argued that the composition and procedures should be of a weighted or qualified nature".

Mr. KAZMIN (Union of Soviet Socialist Republics) suggested that it would be logical to transfer the sentence referred to by the Tanzanian representative to the end of the first sub-paragraph of the section, which would then relate entirely to the composition of the Council, while the second sub-paragraph would deal only with the voting procedure.

Mr. MANDERSON-JONES (Jamaica) said that the sentence would raise problems for his delegation wherever it was placed. It would be satisfied, however, if the sentence were to begin with the words "The view was expressed that" or "It was argued by very few members that".

Mr. OXMAN (United States of America) said that, if the Sub-Committee wished to change the sentence, he would like the actual views expressed by the United States delegation at the 41st meeting on 21 March 1972 to be inserted and, if necessary, to be ascribed to that delegation.

After a brief procedural discussion, the CHAIRMAN suggested that the United States, Tanzanian and USSR representatives should be asked to submit an agreed text to the next meeting of the Sub-Committee.

It was so agreed.

Third section of paragraph 34

The third section of paragraph 34 was adopted.

Fourth section of paragraph 34

Mr. MASSINI EZCURRA (Argentina) suggested that the phrase "some delegations felt that the Court's rules of procedure should be made more flexible" should be inserted between the words "International Court of Justice;" and the words "still others" in the third sentence.

The Argentine amendment was adopted.

Mr. KOPAL (Czechoslovakia) thought that the word "separate" before the word "tribunal" in the second and third sentences should be replaced by the word "special".

The fourth section of paragraph 34, as amended, was adopted.

Third part (continued) (A/AC.138/SC.I/L.18/Add.2)

The CHAIRMAN invited the Sub-Committee to consider the third part of its draft report, which contained the report of the Working Group on the international régime, introduced earlier in the meeting by the Chairman of the Group.

Mr. ROMANOV (Union of Soviet Socialist Republics) said he could not agree that the Working Group's report should be considered in the same way as the report of the Sub-Committee. The Working Group had adopted its report itself, after discussing and amending it; thus, the contents of the report could not be altered in any way. It was essential to leave the Working Group's report intact, although any comments on it might be reflected in the report of the Sub-Committee.

The CHAIRMAN pointed out that the Working Group had not been appointed directly by the General Assembly, but depended on two superior bodies, Sub-Committee I and the plenary Committee. Since working groups' terms of reference tended to be circumscribed and their membership limited, their views could not properly be transmitted to the Assembly without the endorsement of the Sub-Committee and the Committee.

Mr. MASSINI EZCURRA (Argentina) said that the Sub-Committee could not amend the Working Group's report, since that had already been done by the Group itself. All that the Sub-Committee could do was to express its views on the text and to incorporate it in its own report.

Mr. STEEL (United Kingdom) agreed with the USSR representative that the Sub-Committee should not attempt to alter the Working Group's report in any way. Nevertheless, the Sub-Committee's formal approval of that part of its report was required.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that his delegation could only consent to the inclusion of the text in the Sub-Committee's report on the understanding that it constituted the report of the Working Group. It could not express its agreement or disagreement with the substance of the text in the Sub-Committee, since the text had been finally approved at the most recent meeting of the Working Group. There was absolutely no need for the Sub-Committee to confirm that approval.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) pointed out that the Working Group itself, not the Rapporteur of Sub-Committee I, had submitted the report as a document in final form. The way in which the report was treated would set a precedent for the future examination of working group reports. His delegation believed that the Sub-Committee could not amend such reports, but that delegations could discuss them and that their comments might be included in a subsequent part of the Sub-Committee's report.

The third part of the draft report of Sub-Committee I, containing the report of the Working Group on the international régime (A/AC.138/SC.I/L.18/Add.2), was adopted.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE FIFTH-NINTH MEETING

held on Monday, 14 August 1972 at 6.15 p.m.

Chairman: Mr. ENGO Cameroon

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

DRAFT REPORT OF SUB-COMMITTEE I (continued) (A/AC.138/SC.I/L.18 and Add.1-3)

Second part (continued) (A/AC.138/SC.I/L.18/Add.1)

The CHAIRMAN drew attention to the fact that the Sub-Committee at its 58th meeting had adopted paragraphs 27-34 of the second part of its draft report (A/AC.138/SC.I/L.18/Add.1), with the exception of paragraph 29 and the second section of paragraph 34. With regard to the second section of paragraph 34, a compromise text had been prepared and it would be read out by the Tanzanian representative.

Paragraph 34 (continued)

Mr. WARIOBA (United Republic of Tanzania) said that the compromise solution reached by delegations was as follows: first, the penultimate sentence of the second sub-paragraph of the second section of the paragraph, beginning with the words "A view was also expressed" and ending with the words "matters of substance were concerned" would be placed before the preceding sentence and after the sentence ending with the words "otherwise qualified form of majority"; secondly, the last sentence of the same sub-paragraph would be replaced by the following sentence: "Other views were expressed to the contrary, on the ground that such a composition and procedure were likely to frustrate or impede the working of the Council".

The amendments were adopted.

Mr. VALDIVIESO (Peru) said that the Spanish text of paragraph 34 contained an error: the words "un consejo" and "órgano ejecutivo" should be connected by the conjunction "u". He drew attention to the fact that 13 Latin American countries had submitted a working paper containing draft articles in 1971, in which it was proposed to establish an "enterprise" which would be one of the principal organs of the authority and, as such, would be empowered to undertake all technical, industrial or commercial activities relating to the exploration of the area and exploitation of its resources.[31] The report of Sub-Committee I should logically refer to all the proposals that the Sub-Committee had had before it. The subsequent mention in the fourth sentence of paragraph 35 of the draft report of an "enterprise" which "would have the power to undertake all activities relating to exploration and exploitation, either directly or through a system of contracts for services or joint ventures", did not correspond to the proposal made by the Latin American countries.

Mr. MOTT (Australia), Rapporteur, said that the contents of paragraph 34 were headed by an introductory sentence which indicated that they constituted "a common view". He did not think that the establishment of an "enterprise" as envisaged in the Latin American draft could be so qualified. On the other hand, the introductory sentence did make it clear that, according to that common view, the machinery should consist of "at least" four kinds of main organs, which did not, therefore, exclude the possibility of other organs in addition to those that were mentioned in paragraph 34.

31/ See Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421), annex I.8, articles 33-35, p.100.

Mr. ROMANOV (Union of Soviet Socialist Republics) endorsed the Rapporteur's remarks and said that the question of the desirability of creating an "enterprise" could not be referred to in the report as reflecting a common view. If it was to be mentioned in the report, it should be mentioned as an individual view.

Mr. VALDIVIESO (Peru) said that the proposal to create an "enterprise" was sponsored by 13 countries. He doubted whether all the proposals contained in paragraph 34 had as much support. Peru maintained its proposal that the Latin American working paper should be referred to in the Sub-Committee's report.

Mr. FONSECA TRUQUE (Colombia) supported the statement made by the Peruvian delegation and said that the proposal of the Latin American countries was quite new and, on that ground, deserved to be mentioned in the report.

Miss MARTIN SANE (France) said she did not think it was possible to refer to the "enterprise" in paragraph 34, since that paragraph reflected the common view of the members of the Sub-Committee. Perhaps, as a compromise, the position of paragraph 38 could be changed and, after being redrafted by the representatives of Peru and Colombia, it could be placed between paragraphs 33 and 34. The word "Enterprise" could be used with an initial capital.

Mr. BALLAH (Trinidad and Tobago) challenged the suggestion that all the sub-paragraphs of paragraph 34 reflected the common view of the members of the Sub-Committee, particularly the third and fourth sections of the paragraph. In his view, it would be fairer to begin paragraph 34 with the words: "The view was held that the basic machinery should consist of" and to mention the Latin American proposal either in the third or in the fourth section of the paragraph, spelling the word "Enterprise" with an initial capital.

Mr. ZEGERS (Chile) supported the proposal made by the representative of Trinidad and Tobago. Like the representative of Peru, he thought that the "enterprise" should be one of the main organs of the machinery.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that the Latin American proposal concerning the "enterprise" did not represent the general view of the members of the Sub-Committee. Moreover, paragraph 34 as it was drafted did not reflect the views of the Soviet Union. The paragraph should say, for example, "The view was expressed that the international organization for the sea-bed should consist of two main organs, namely an assembly, where all States parties to the treaty would be represented, and an executive council, which would be composed of an equal number of the representatives of the various geographical groups of States".

Mr. PALACIOS TREVIÑO (Mexico) supported the statements made by the representatives of Peru and Chile.

Mr. KANIARU (Kenya) proposed that paragraph 34 should begin directly with the words "The basic machinery should consist of at least five kinds of main organ ..." and that a fifth section should be added to the paragraph, in accordance with the wishes of the Latin American countries.

Mr. RATINER (United States of America) suggested that the text incorporating the Peruvian proposal should be inserted between paragraphs 33 and 34 and introduced by the words "Several delegations suggested ...". Moreover, he shared the view of the representative of Trinidad and Tobago and proposed that the words "third" and "fourth" should be deleted. It would be sufficient to say "Some speakers felt ...", and "Many delegations said that it would be necessary ...".

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that the suggestion made by the United States representative opened the way to a solution. Nevertheless, he thought it would be more logical to make no mention of the Peruvian proposal before paragraph 34, which was supposed to reflect the common view of the Sub-Committee. It would be preferable to add at the end of the paragraph two sentences referring to the proposals made by the delegations of Peru and the Soviet Union, as individual views.

The CHAIRMAN asked the delegations concerned to agree on a compromise text that could be adopted the following morning.

The meeting rose at 7 p.m.

SUMMARY RECORD OF THE SIXTIETH MEETING

held on Tuesday, 15 August 1972, at 10.30 a.m.

Chairman Mr. ENGO Cameroon

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

DRAFT REPORT OF SUB-COMMITTEE I (continued) (A/AC.138/SC.I/L.18 and Add.1-3)

Second part (continued) (A/AC.138/SC.I/L.18/Add.1)

The CHAIRMAN said that, as informal consultations were taking place on paragraph 34, the Sub-Committee would meantime pass on to the following paragraphs.

Paragraph 35

The CHAIRMAN said that the last sentence would appear elsewhere. The amendment submitted by the representative of the United Republic of Tanzania could therefore appropriately be inserted in paragraph 35. The proposal was that a sentence should be added at the end of the paragraph, which would read: "A suggestion was also made for the establishment of a distribution agency and a stabilization board to deal with the distribution of benefits and the stabilization of prices respectively."

The Tanzanian amendment was adopted.

Paragraph 35, as amended, was adopted.

Paragraphs 36-38

Paragraphs 36-38 were adopted.

Paragraph 39

Paragraph 39, with a minor drafting change, was adopted.

Paragraphs 40-42

Paragraphs 40-42 were adopted.

Paragraph 43

Paragraph 43, with minor drafting changes, was adopted.

Paragraphs 44-46

Paragraphs 44-46 were adopted.

Paragraph 47

Paragraph 47, with a minor drafting change, was adopted.

Paragraphs 48-51

Paragraphs 48-51 were adopted.

Paragraph 52

Mr. MOTT (Australia), Rapporteur, replying to Mr. RATINER (United States of America), said that the second sentence should be read in conjunction with the first sentence. It was intended to give some examples of benefits other than financial benefits or revenues.

Mr. PARDO (Malta) said that the insertion of the words "inter alia access to" before the words "raw materials" might clarify the sentence.

The Maltese amendment was adopted.

Mr. BALLAH (Trinidad and Tobago) said that if the word "concept" was replaced by the word "term", it would be clear that the reference was to benefits.

It was so agreed.

Paragraph 52, as amended, was adopted.

Paragraph 53

Mr. RATINER (United States of America) said that his delegation had expressed the view, both in the plenary Committee and in its working paper submitted in 1970, entitled "Draft United Nations convention on the international sea-bed area (A/AC.138/25)", 32/ that the sharing of benefits should be restricted to parties to the treaty. He therefore proposed that the following sentence should be added at the end of paragraph 53: "A view was expressed that benefits derived under the treaty should be made available only to those States which ratify or accede to the treaty".

The United States amendment was adopted.

Paragraph 53, as amended, was adopted.

Paragraphs 54-56

Paragraphs 54-56 were adopted.

Paragraph 57

Mr. PARDO (Malta) said that his delegation had expressed the view that some means should be found to permit a contribution to be made to whatever authority was established out of the benefits derived from all activities conducted within the entire area subject to national jurisdiction. Perhaps the Rapporteur could draft an additional sentence, beginning with the words "Another delegation", which would reflect the Maltese view.

The Maltese amendment was adopted.

Paragraph 57, as amended, was adopted.

32/ Ibid., Twenty-fifth Session, Supplement No. 21 (A/8021), annex V, p.130

Miss MARTIN SANE (France) drew attention to the fact that the heading preceding paragraph 58 had been omitted from the French text.

Paragraph 58

Mr. RATINER (United States of America) asked that a sentence be inserted after the second sentence, which would read: "Other delegations pointed out that the possibility existed of discouraging sea-bed mining by the imposition of restrictive controls and that this would act to the detriment of the international community as a whole".

The United States amendment was adopted.

Paragraph 58, as amended, was adopted.

Paragraph 59

Paragraph 59 was adopted.

Paragraph 60

Mr. RATINER (United States of America) proposed that the following passage should be added at the end of the first sentence: "although it was pointed out that it had not yet been proved that ocean minerals can actually compete at present real price levels".

Mr. BALLAH (Trinidad and Tobago), supported by Mr. PRIETO (Chile) and Mr. PARDO (Malta), said that that addition, though acceptable in itself, should form a separate sentence, preceded by the words "A delegation pointed out that ..." or "A view was expressed that ...".

Mr. RATINER (United States of America) said that his delegation could agree to the introduction of a separate sentence, but that the view in question had been expressed in strong terms by several delegations. He therefore suggested that the sentence should begin with the words "Several delegations pointed out that ..".

After a brief discussion, the CHAIRMAN suggested that the new sentence should begin with the words "Some delegations pointed out that ...".

The United States amendment, with the change proposed by the Chairman, was adopted.

Paragraph 60, as amended, was adopted.

Paragraph 61

Paragraph 61, with a minor drafting change, was adopted.

Paragraph 62

Miss MARTIN SANE (France) said that the paragraph as it stood reflected only one view and suggested that the words "inter alia" should be inserted after the words "It was stated" in the second sentence, that the last sentence should be preceded by the words "The view was expressed that" and that the following sentence should be added at the end of the paragraph: "Several speakers felt that these forecasts were far too optimistic and they stressed that at the present time there was no precise indication as to the possibility of economically feasible and commercially profitable exploitation".

Mr. PARDO (Malta) said that he agreed with the French representative that the paragraph needed considerable modification. Indeed, paragraphs 62 and 63, which were closely connected, did not seem to reflect the actual sequence of events in the Sub-Committee.

The CHAIRMAN pointed out that those two paragraphs referred to the debates during the Committee's spring 1972 session. The sequence seemed to him to be perfectly logical; moreover, all the paragraphs in the section under consideration were closely connected.

Mr. RATINER (United States of America) supported the French suggestion and further suggested that the word "gradually" should be inserted between the words "would then" and "become available" in the third sentence.

Mr. LIVERMORE (Australia) suggested amending the opening words of the existing last sentence to read "Notwithstanding the somewhat differing views as to the time-scale in which significant sea-bed production would be achieved, there was general agreement on the great importance ...".

Mr. ZEGERS (Chile) pointed out that the views on the time-scale expressed during the debate had included the United States' opinion that profitable exploitation could well begin before 1975 and also that the report of the Secretary-General entitled "Additional notes on the possible economic implications of mineral production from the international sea-bed area" mentioned the approximate date of 1975-1976 (see A/AC.138/73, para.21). To counterbalance the French addition, therefore, he suggested that the last phrase of the second sentence should be amended to read "... there was reason to hope that minerals on the sea-bed would become exploitable on a large scale between 1975 and 1980".

Miss MARTIN SANE (France) said that her delegation had no objection to the Australian, Chilean and United States suggestions. In the light of the Chilean amendment, however, her delegation would qualify the adjective "optimistic" in its own new sentence by the words "much too" and would suggest that the word "somewhat" might be deleted from the Australian amendment.

Mr. LIVERMORE (Australia) said he could agree to that suggestion.

The amendments of France, the United States, Australia and Chile were adopted.

Paragraph 62, as amended, was adopted.

Paragraph 63

Mr. RATINER (United States of America) proposed that a new sentence should be inserted after the first sentence to read "It was pointed out that some nations might not have the appropriate domestic legal controls to provide such assurances". Another delegation had made that point, but the United States had supported the view and considered that it should appear in the report.

Mr. BEESLEY (Canada) said that his delegation could support the United States' suggestion with one small change. Since States might have the necessary machinery but not specific legislation, the words "legal controls" might be replaced by the word "legislation".

Mr. RATINER (United States of America) accepted that suggestion.

The United States amendment, as modified by the Canadian representative, was adopted.

Paragraph 63, as amended, was adopted.

Paragraph 64

Paragraph 64 was adopted.

Paragraph 65

Mr. ZEGERS (Chile) proposed that a summary of the document referred to in the paragraph (A/AC.138/73) should be annexed to the report and that the following sentence should accordingly be added at the end of the paragraph: "The Sub-Committee recommended to the main Committee that it should annex to its report a summary of the report of the Secretary-General referred to above".

Mr. RATINER (United States of America) said that his delegation opposed the Chilean proposal, since a summary of the report of the Secretary-General would not have the same impact as the complete text. It had no objection to the report being issued as a Committee document.

Mr. ZEGERS (Chile) said that previous reports of the Committee had contained summaries of reports by the Secretary-General. The incorporation in the report of reports on important studies conducted by the Secretary-General was extremely useful to delegations which were not members of the Committee. Whether the report of the Secretary-General was annexed in its entirety or in summary form, it should be incorporated in the Committee's report, in accordance with the usual practice.

Mr. STEEL (United Kingdom) said that his delegation would have great difficulty in agreeing to the Chilean proposal. Admittedly, it was desirable that the results of the study by the Secretary-General should be made available to all interested delegations, but it was the whole report that should be made available. It would be extremely difficult to produce and agree on a faithful summary. It was true that the report of the Secretary-General had not been made available to States which were not members of the Committee, but there were in practice 90 members of the Committee and only 40 non-members. Most of those 40 delegations had participated in the Committee's proceedings as observers and the others would have no difficulty in obtaining copies of the report. His delegation would have no objection to the inclusion of a foot-note indicating where the report of the Secretary-General could be obtained.

Mr. ZEGERS (Chile) expressed surprise that the United Kingdom and the United States delegations had not made similar observations concerning the inclusion in the Committee's report of other reports of the Secretary-General in previous years. He would now propose, however, that the Committee should annex the complete text of the report of the Secretary-General to its report. Consequently, the following sentence should be added at the end of the paragraph: "The Sub-Committee recommended to the main Committee that it should annex to its report the text of the Secretary-General's report referred to above".

Mr. RATINER (United States of America) said that he would have no objection to that proposal.

The Chilean amendment was adopted.

Paragraph 65, as amended, was adopted.

Paragraph 66

Mr. GREKOV (Byelorussian Soviet Socialist Republic) proposed that the first sentence should be deleted.

The Byelorussian amendment was adopted.

Paragraph 66, as amended, was adopted.

Paragraph 67

Paragraph 67 was adopted.

Paragraph 68

Mr. MOTT (Australia), Rapporteur, replying to a question by Mr. MASSINI EZCURRA (Argentina), explained that the third sentence represented a summary of a view expressed by one delegation, which had proposed that the two categories of States referred to in the sentence should have equal representation in the organs of the machinery.

Paragraph 68 was adopted.

Paragraph 69

Mr. PARDO (Malta) said that a clear distinction should be drawn between the two different ideas referred to in the second sentence. He proposed that the second sentence should be replaced by the following text:

"One view was that the international machinery should provide opportunities for those States to conduct activities of exploration and exploitation in the area - either individually, in partnership with another State, as a member of a group of States, or in co-operation with the sea-bed authority. The view was also expressed that the machinery should provide land-locked countries with opportunities for training in marine technology".

The Maltese amendment was adopted.

Paragraph 69, as amended was adopted.

Paragraphs 70-74

Paragraphs 70-74 were adopted.

Paragraph 34 (concluded)

The CHAIRMAN read out the following amendments, which had been agreed on by a number of delegations. In the first sentence, the words "four kinds of main organs or procedures" would be replaced by the words "two kinds of organs". In the second

section of the paragraph, the words "Agreement existed." in the second sentence would be replaced by the words "Agreement was limited to the notion", the word "widespread." in the third sentence would be inserted before the word "differences", and the words "size of the Council" in the same sentence would be replaced by the words "fundamental aspects of the Council, including its size". The following sub-paragraph would remain unchanged, except for the Tanzanian amendment which had already been adopted (59th meeting). In the third section of the paragraph the words "third - speakers appear to agree" at the beginning of the first sentence would be replaced by the words "It was also stated by many delegations", and the word "and" would be added at the end of the sentence, which would be linked to the words "that it would be necessary" at the beginning of the following sentence, the words "fourth - many speakers said" being deleted. The following new passage would be added at the end of paragraph 34: "A number of delegations considered that other organs should be created and pre-eminence should be given to the international sea-bed enterprise, which would be in their view the organ par excellence of the machinery in regard to all the technical, industrial and commercial activities concerning the exploration of the area and the exploitation of its resources".

The amendments read out by the Chairman were adopted.

Paragraph 34, as amended, was adopted.

Paragraph 75-77

Paragraphs 75-77 were adopted.

Paragraph 78

Mr. PARDO (Malta) said he was not sure whether the fourth sentence was correct. Was it necessary to obtain authorization from a particular State in order to exploit sea-bed resources beyond national jurisdiction?

Mr. ZEGERS (Chile) said that his delegation's objections to the fourth sentence were based on an entirely different reason, namely, that there was, in its opinion, a vast legal vacuum with regard to the sea-bed. The General Assembly had, however, called on States and individuals to refrain from exploiting sea-bed resources. He therefore proposed that the words "which were thinking of authorizing the exploitation of sea-bed resources" should be deleted.

Mr. PARDO (Malta) supported the Chilean proposal and proposed that the words "invite their nationals to exercise moderation and should not encourage them in their activities" should be replaced by the words "not encourage their nationals in the exploration and exploitation of sea-bed resources beyond the limits of national jurisdiction".

Mr. RATINER (United States of America) proposed that the words "It was" at the beginning of the fourth sentence should be replaced by the words "Some delegations" or "Many delegations". That would avoid giving the impression that the view expressed in the sentence was attributable to the Sub-Committee as a whole.

Mr. ZEGERS (Chile) proposed that the words "Many delegations" should be used, in order to avoid undue modesty with regard to a very modest suggestion.

The amendments proposed by the Chilean, Maltese and United States delegations were adopted.

Paragraph 78, as amended, was adopted.

Paragraphs 79, 80 and 81

Mr. RATINER (United States of America) proposed a number of amendments reflecting the views of his delegation.

Mr. ZEGERS (Chile) pointed out that, whereas the views of the majority of members were reflected in paragraph 79, opposing views were expressed in paragraphs 80 and 81. If paragraph 79 was amended in accordance with the wishes of the United States delegation, the report would contain only a minority view on that point. His delegation therefore opposed the United States amendments.

Mr. PARDO (Malta) opposed the United States amendments, since the content of the Secretary-General's report referred to in paragraph 77 was not outlined in the report of the Sub-Committee.

Mr. VALDIVIESO (Peru) supported the observations made by the Chilean delegation.

Mr. RATINER (United States of America) acknowledged the point made by the Chilean representative and suggested that interested delegations should hold informal consultations in order to agree on an acceptable text for the three paragraphs.

It was so decided.

Paragraphs 82-85

Paragraphs 82-85 were adopted.

The CHAIRMAN said that the Sub-Committee would consider paragraphs 29 and 79-81 of the draft report at its following meeting.

If there was no objection, he would take it that the Sub-Committee agreed that the draft report of the Working Group of the Sub-Committee (A/AC.138/SC.I/L.18/Add.3) should be annexed to the report of the Sub-Committee.

It was so agreed.

The meeting rose at 1.20 p.m.

SUMMARY RECORD OF THE SIXTY-FIRST MEETING

held on Tuesday, 15 August 1972, at 4 p.m.

Chairman: Mr. ENGO Cameroon

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

DRAFT REPORT OF SUB-COMMITTEE I (concluded)(A/AC.138/SC.I/L.18 and Add.1-3)

Second part (concluded) (A/AC.138/SC.I/L.18/Add.1)

The CHAIRMAN recalled that, at its 60th meeting, the Sub-Committee had been unable to adopt four of the paragraphs of the second part of its draft report (A/AC.138/SC.I/L.18/Add.1). Following consultations, new texts had been drafted, which the Chairman then read out.

Paragraph 29 (concluded*)

The CHAIRMAN said that the first sentence remained unchanged and that the second sentence should be replaced by the following text: "Among those questions were the delimitation of the area in which the machinery would exercise authority, the powers of the machinery, and the resources of the area."

The amendment was adopted.

Paragraph 29, as amended, was adopted.

Paragraphs 79, 80 and 81 (concluded)

The CHAIRMAN said that the text of paragraph 79 remained unchanged. The second and third sentence in paragraph 80 had been amended. In the second sentence the words "they felt the report might" had been replaced by the words "the hypothetical production estimates used in the report might". In the third sentence, the words "likely to be commercially feasible only at current prices" should be replaced by the words "not likely to be commercially feasible at less than current price levels for the metals to be derived from manganese nodules, that investment in nodule production was not justifiable at less than the current price level for these metals", the end of the sentence remaining unchanged.

The text of paragraph 81 remained unchanged, but it was proposed to replace the final stop by a comma and to add the following text at the end of the paragraph: "but that a long period of development free from excessively restrictive regulations may be necessary if revenues are to be generated from sea-bed mineral production for the maximum benefit of mankind."

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* Resumed from the 58th meeting.

A new paragraph 82 would be inserted between paragraph 81 and the present paragraph 82 which, with the following paragraphs would be renumbered accordingly. The new paragraph 82 would read:

"A number of delegations reiterated the view, supported, in their opinion, by the report and in particular the chapter prepared by UNCTAD on the negative effects which most certainly may derive from the new production to the economies of developing countries, which are the main land producers, and the subsequent need for the over-all control of the production process in all its stages. It was furthermore emphasized that many developing countries, due to their high degree of dependency on mineral production and export, would be the most affected by a lack of such control."

The amendments were adopted.

Mr. OKAWA (Japan) proposed that the beginning of the last sentence of paragraph 80 should be amended to read: "They affirmed that several errors of fact and figures were contained in the report and held that in some cases ..."

Mr. ZEGERS (Chile) said that the Chilean delegation would accept the Japanese amendment, provided that a sentence was added at the end of the new paragraph 82, that the Chairman had just read out, reading: "These delegations affirmed the validity of the data provided by the Secretariat". That addition would serve to counterbalance the Japanese amendment.

Mr. de SOTO (Peru) approved the Chilean proposal, but thought that the Japanese amendment was worded too categorically.

The Japanese amendment to paragraph 80 and the Chilean amendment to the new paragraph 82 were adopted.

Paragraph 79 was adopted.

Paragraphs 80 and 81, as amended, were adopted.

The new paragraph 82, as amended by the Chilean amendment, was adopted.

The second part of the draft report of Sub-Committee I (A/AC.138/SC.I/L.18/Add.1) as a whole, as amended, was adopted.

Decision of the Sub-Committee concerning the continuation of its consideration of item 2 of its work programme

The CHAIRMAN recalled that the Sub-Committee had to take a decision on the way it was going to continue its consideration of the question of the international machinery and proposed that delegations should approve the inclusion in the second part of the report of a text, which he read out, concerning the terms of reference of the Working Group set up by a decision of Sub-Committee I on 27 March 1972 (44th meeting).

Mr. ROMANOV (Union of Soviet Socialist Republics) said that the procedure suggested was an unusual one, since delegations were being asked to include in the report a text which had not been considered by the Secretariat but which had emerged in the course of informal consultations. The USSR delegation wished to state that, in its view, the text in question would in no way prejudge the decisions of the Working Group concerning the implementation of its terms of reference, which would be taken by consensus, in accordance with the procedure followed hitherto. On those conditions, his delegation would not oppose the insertion in the report of the text in question, in particular the sentence stating that the Working Group could start its consideration of the question of the machinery before concluding that of the international régime. Similarly, the USSR delegation interpreted the passage concerning the composition of the Working Group as meaning that there would be no increase in the number of countries represented within each geographical group, even though there was rotation among the countries belonging to each group.

Mr. de ROSSI (Italy) said that the Italian delegation interpreted the text in the same way as the Soviet delegation, so far as the composition of the geographical groups was concerned.

Mr. WARIOBA (United Republic of Tanzania) said that he interpreted the text setting forth the Working Group's terms of reference as permitting the Group to consider the questions of the régime and the machinery simultaneously, and not necessarily one after the other. If that was the case, the Tanzanian delegation would agree to the insertion of the text in the Sub-Committee's report.

The text read out by the Chairman was adopted for inclusion in the report of Sub-Committee I. 33/

The draft report of Sub-Committee I (A/AC.138/SC.I/L.18 and Add.1-3) as a whole, as amended, was adopted.

CONCLUSION OF THE WORK OF SUB-COMMITTEE I FOR THE SESSION

After the usual exchange of courtesies, the CHAIRMAN expressed his best wishes for the rapid recovery of the absent Chairman, Mr. Engo, and declared that Sub-Committee I had concluded its work for the current session.

The meeting rose at 4.30 p.m.

33/ See paragraphs 93-96 of the report of Sub-Committee I, which was subsequently circulated under the symbol A/AC.138/82.