UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL

For participants only

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8 March 1973
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ORIGINAL: FRENCH

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

SUB-COMMITTEE I

PROVISIONAL SUMMARY RECORD OF THE SIXTY-SECOND MEETING

Held at Headquarters, New York,
on Wednesday, 7 March 1973, at 3.55 p.m.

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

CONTENTS:

ORGANIZATION OF WORK

The CHAIRMAN said that the Sub-Committee had reached a crucial phase in its work. He paid tribute to the members of the Committee for the enthusiasm with which they approached their task and their spirit of co-operation, which had been a constant source of encouragement to the officers. He welcomed the new members of the Sub-Committee and indicated that two of its Vice-Chairmen, Mr. Fekete (Hungary) and Mr. Ranganathan (India), were absent. He would consult with the Hungarian and Indian delegations, as well as the geographical groups, with a view to solving the problem posed by the absence of the two Vice-Chairmen, taking due account of existing agreements and of the rules of procedure.

No agenda had been circulated because he considered that the work of Sub-Committee I would simply continue. Sub-Committee I had a reputation for avoiding procedural debates, which took up a lot of time: it should be congratulated on that score and urged not to deviate from that course.

He observed that the time available to Sub-Committee I for its work before the opening of the 1974 Conference on the law of the sea would be only about four weeks at the current session and a little longer at the summer session. Furthermore, it would have to share that time with the other Sub-Committees. It would have to complete its work about two weeks before the end of the summer session, which meant that its Working Group would have to complete its tasks one week to 10 days earlier. Sub-Committee I would have to report to the plenary Committee, whose duty it was to consider the reports of the three Sub-Committees. In order to avoid a last-minute rush, he intended to invite the Chairman of the Working Group to report from time to time on the deliberations of the Group and not to confine himself merely to mentioning the subjects discussed. The Working Group could at the same time ask Sub-Committee I to advise it on difficult problems. He hoped that the members of Sub-Committee I would refrain from any polemics or lengthy exchange of views.

The members of the Sub-Committee would recall that, in addition to the questions which were to be considered by the Working Group, there were others which the Sub-Committee itself had to consider. They would also note that the proposals made by the Chairman of the plenary Committee, if adopted, would lead to an increase in the work of Sub-Committee I. In that connexion, all the

(The Chairman)

necessary facts and details would be known by the time the next meeting was held. He would at that time submit proposals to the Sub-Committee for consideration, or would hold consultations with the geographical groups.

Some delegations had stated their wish to make statements before the Sub-Committee, on a date as yet unspecified, which they thought could help facilitate its work. He therefore intended to convene Sub-Committee I when necessary, and in any case at least once a week. The rest of the time would be taken up with the work of the Working Group.

He urged delegations to tackle the work of the Sub-Committee with a sense of its urgency and importance. The present generation aspired after peace, and Sub-Committee I should exert itself to contribute to the establishment of international institutions which would permit the maintenance of peace. It was necessary to set about that task without delay. As soon as the plenary Committee had taken the relevant decisions, he would have the agenda for future meetings circulated. The rest of the afternoon could usefully be devoted to the proceedings of the Working Group. The next meeting of Sub-Committee I would be announced in the Journal.

The meeting rose at 4.10 p.m.

UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL

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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

PROVISIONAL SUMMARY RECORD OF THE SIXTY-THIRD MEETING

Held at Headquarters, New York,
on Tuesday, 13 March 1973, at 3.30 p.m.

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

CONTENTS:

ELECTION OF TWO ACTING VICE-CHAIRMEN

The CHAIRMAN said that the Sub-Committee's first task at the current meeting was to elect two provisional Vice-Chairmen to replace the two who were absent, Mr. Fekete (Hungary) and Mr. Ranganathan (India).

In accordance with the usual procedure, he had asked the Hungarian and Indian delegations to propose replacements for them. They had suggested, respectively, Mr. Banyasz and Mr. Rao. If there were no objections, he would consider that the Sub-Committee agreed to elect Mr. Banyasz and Mr. Rao Acting Vice-Chairmen.

It was so decided.

Mr. RAO (India) and Mr. BANYASZ (Hungary) thanked the members of the Sub-Committee for electing them Vice-Chairmen.

ORGANIZATION OF WORK (continued)

The CHAIRMAN announced that the Working Group would submit its first report to the Sub-Committee on Monday. He hoped that there would be many members who would wish to speak in the general debate, and he announced that he was intending to close the list of speakers at the next meeting. If there were no objections, he would consider that suggestion acceptable to the Sub-Committee.

It was so decided.

The CHAIRMAN said that, before giving any speaker the floor, he wished to remind members of the public who took notes with the intention of publishing them that if the Working Group had decided to do without summary records, it was precisely to permit delegations to express themselves in complete freedom, without their remarks being recorded in any document. Any journalists who wrote accounts of the Sub-Committee's work must be expressly authorized to do so by delegations.

Mr. RATINER (United States of America) said that his delegation had always communicated to the Committee all the information it had. It now had pleasure in presenting a publication from the Geological Survey of the United States Department of the Interior, entitled Summary Petroleum and selected Mineral Statistics for 120 Countries, including Off-shore Areas, which had been written mainly by Mr. John Albers, who was a member of the United States delegation. Mr. Albers was

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ready to answer any questions which members of the Sub-Committee would like to put to him. The United States delegation trusted that the document would be useful to the Sub-Committee in its work.

Mr. SHA PU (China) said that, according to the Secretary of the Committee, that document had been circulated with the agreement of the Chairman. The Chinese delegation noted that it was an official United States Government publication. It also noted that on page 26 of the said document the Republic of China (Taiwan) was mentioned. In the view of the Chinese delegation, such a reference was an unfriendly act to the Chinese people. It wished to protest to the United States delegation and request it to avoid the repetition of such an action in the future. The Chinese delegation also wished to remind the Chairman of the Sub-Committee that it was contrary to the spirit of the resolutions of the United Nations General Assembly to distribute documents giving the impression that there were two Chinas.

The CHAIRMAN assured the Chinese representative that his remarks had been carefully noted.

Mr. RATINER (United States of America) said that his delegation was sorry to see political considerations being introduced into a geological study. The position of his Government on that point was well known, and he reaffirmed the desire of his delegation to help the Sub-Committee in its work by making available as much information as possible.

Mr. SHA PU (China) said that his delegation could not accept the statement made by the representative of the United States. He wished to repeat that neither within the United Nations Organization nor in any of the specialized agencies could his delegation tolerate manoeuvres aimed at giving the impression that there were two Chinas. In the Shanghai Communiqué, the United States and China had recognized that the two peoples living on either side of the Straits of Taiwan made up a single China. Under those conditions, the Chinese delegation did not understand why the United States Government had mentioned the Republic of China in the document which his delegation had had circulated and it hoped that it would see to it that it did not happen again.

The CHAIRMAN recalled his attitude to such exchanges, which was well known. He could only urge the Sub-Committee to keep to the item under discussion.

The meeting rose at 3.55 p.m.

UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL

For participants only

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21 March 1973

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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

PROVISIONAL SUMMARY RECORD OF THE SIXTY-FOURTH MEETING

Held at Headquarters, New York,
on Monday, 19 March 1973, at 3.25 p.m.

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

CONTENTS:

REPORT OF WORKING GROUP 1

Mr. PINTO* (Sri Lanka), speaking as the Chairman of Working Group 1, recalled that Working Group 1 had been set up at the spring session of 1972, at the end of the general debate on item 1 of the programme of work: status, scope and basic provisions of the régime based on the Declaration of Principles (General Assembly resolution 2749 (XXV)). The terms of reference of the Working Group, as proposed by the Chairman in his statement on 20 March 1972 and approved by the Sub-Committee, had been to draw up, in the first instance, a working paper showing areas of agreement and disagreement respectively on various issues. The Working Group would thereafter attempt to negotiate questions of substance on the points where no agreement existed.

By the end of the summer of 1972 the Working Group had held 22 meetings and had completed a first reading of a working paper - annex II, 1 of the report of the main Committee (A/8721, pp. 81 ff) - based on the Declaration of Principles, containing 21 draft texts, which had represented an attempt to reflect within a single document, through the use of square brackets and alternative texts, areas of agreement and disagreement on matters relating to the status, scope and basic provisions of the régime. The Working Group had endeavoured to formulate those areas of agreement and disagreement in as concise and precise a manner as possible so as to facilitate the stage of negotiation and compromise to follow. The object of the first reading of the working paper had been to receive additions and corrections to the text and ensure as far as possible that it reflected fully and accurately and without unnecessary material the views that had been expressed in the course of the work of the Committee.

Upon completing the first reading of the working paper, the Working Group had commenced a second reading, during which it had heard arguments for and against texts or portions of texts, proposals for modifications of texts and counter-proposals, trying all the time to narrow the areas of disagreement and, if that were not possible immediately, to reflect such disagreement as did exist in the most appropriate manner possible. By the end of the summer of 1972, the Working Group had completed its second reading of seven of the first eight texts (it having been agreed that it would be best to take up the very first text at a

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* This statement has been included in extenso in the summary record in accordance with the Sub-Committee's decision.

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later stage). The Working Group had also commenced a discussion of text IX but had not completed consideration of that text. The results of the Working Group's work on the texts originally numbered II, III, IV, V, VI, VII and VIII were shown on pages 85 to 89 of the main Committee's report (A/8721). He also drew attention to the notes on pages 82 and 83 and to paragraphs 73 to 77 of that report, (pp. 22 and 23) which offered further guidance regarding the progress of the Working Group and its methods of work.

Since the opening meeting of Sub-Committee I at the current session, the Working Group has held 14 meetings. The Group was grateful to the Chairman of the Sub-Committee for having secured so many meetings for it and hoped that he would continue to secure the maximum possible number of meetings each week.

At the current session, the Working Group had resumed its second reading of the working paper on the status, scope and basic provisions of the régime based on the Declaration of Principles. Discussion had commenced with article IX (p. 90 of document A/8721), which had been based on paragraph 6 of the Declaration of Principles, dealing with the conduct of States in the Area. The scope of article IX had seemed at once wider and more restrictive than that of article 3 on page 86 of the report: article IX had seemed wider in that it appeared to cover all activities in the area regardless of their nature, while article 3 had seemed more directed to activities of exploration and exploitation and related activities. Article IX had appeared more restrictive than article 3 in that article IX, viewed in the light of its origins in paragraph 6 of the Declaration, appeared more directed to States, while the wording of article 3 was not similarly specific.

In the course of the discussion two broad trends had emerged. There were those who had wished to see the provision addressed to States as such; to see it deal with the actions of States in the area and the actions of States in relation to the area; to specify the basic rules and texts whose provisions should be observed by States in that connexion; and, in a sense, to indicate the general objectives of having a State undertake such obligations, namely, in the interests of maintaining international peace and security, and in the interests of peaceful coexistence and promoting international co-operation and mutual understanding. On the other hand, there were those who, while not opposed to dealing with the conduct of States, had wished to cover the conduct not merely of States in and in

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relation to the Area, but also the conduct of any other juridical entity. Those who had maintained that position had preferred a broad and very general wording for the text: one that would be less specific as to the applicable rules and texts, reflecting a strongly felt uncertainty in that regard, and one that would refrain from characterizing the general objectives of the provision.

The first of those trends had resulted in a text designated alternative (A), while the second had been reflected in a paragraph designated alternative (B), in a document circulated in the Working Group on 14 March 1973. The provisional title of the article, which had read "Applicability of Principles and Rules of International Law", had, in deference to the very general character of alternative (B), been changed to read "General conduct in the Area and in relation to the Area". Following the second reading of the article, it had now taken its place in the Arabic series of numbers as article 6.

Much of the discussion relating to article X, (p. 91 of document A/8721), had dealt with the interpretation or definition of terms. Early in the debate the Group had decided to establish a new provision dealing with interpretation or definition of terms in relation to their use throughout the articles. The new provision was tentatively designated article "0" (zero), and currently envisaged a definition of the terms "industrial exploration" and "shelf-locked country". Others might be added from time to time. That device had reduced the content of article X to its original first paragraph, which stated the general objective of exploration and exploitation as being for "the benefit of mankind as a whole", and its original third paragraph, which dealt with special interest groups. Some delegations had felt that the interests of particular groups should be dealt with differently and at any rate elsewhere. A trend that might have resolved the problem by recalling in a foot-note the need to protect those interests had not been followed in the end, since it had not been possible to agree which groups of countries should be listed. Some had felt that the groups should be listed by reference to geographical or geomorphological characteristics believed to give rise to special interests, as in the third paragraph of article X; others had felt that that was too restrictive a basis for such a list, and that economic and other criteria could also form the basis of special interests in that context. It had

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finally been agreed that no more could be achieved by the Group in regard to the third paragraph, and that it should remain in square brackets.

The discussion on the first paragraph had centred on the inclusion of the reference to "Scientific research" at the beginning of the paragraph. In the view of some delegations the general principle, as based on paragraph 7 of the Declaration of Principles, should be augmented for the purpose of the provision by inserting the reference to scientific research. It had been maintained that nothing in the spirit of the Declaration was inconsistent with the idea that scientific research in the area should also be declared to be "for the benefit of mankind" as a whole. Other delegations, while not denying that, in a general sense, scientific research should serve the interests of mankind as a whole, had felt that few, if any scientists commenced their work with a clear-cut goal of the benefit of mankind in view. To include the reference to scientific research in the paragraph would not therefore reflect the true position and could be interpreted as being unacceptably restrictive of what in their view was an established freedom to carry out scientific research. Some delegations had taken the position that the term "exploration" did in fact cover scientific research, and if there was any doubt on the point, the term "exploration" might be so interpreted in article "0" (zero). Accordingly, no further progress had been possible concerning the first paragraph of article X, which thus remained as it appeared on page 91. However, some delegations were apprehensive that the possible adoption of the first paragraph without square brackets would result in an unqualified reference to scientific research which might affect their position regarding the freedom of scientific research. Consequently, they had felt obliged to add a new paragraph to the text, which would read: /"Neither these articles, nor any rights granted pursuant thereto shall affect the freedom of research on the sea-bed and the subsoil thereof."/ Not being generally agreed, the paragraph would appear in square brackets.

The view had also been expressed that not merely the exploration and exploitation of the Area but also the entire administration of the Area should be "for the benefit of mankind as a whole", and a foot-note to the text would remind the reader that one delegation would wish to see the text start with the words "The administration of the Area and...".

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As the Working Group had thus completed its second reading of article X, it would now appear in the Arabic series of numbers as article 7. The Working Group had decided to postpone consideration of article XI A on page 93, which sought to merge the provisions of article 5 (page 89), on non-discrimination, with those of article X. That merger could be considered later at an appropriate time. The addition of a foot-note would again remind the reader that one delegation would wish to see the text require that the administration of the Area, and not merely its exploration and exploitation, should be carried out for the benefit of mankind as a whole.

The Working Group had devoted considerable time to a discussion of article XI (page 92), dealing with "preservation of the Area exclusively for peaceful purposes". All delegations which had spoken had emphasized the importance of that provision. One view had held that the article should attempt to deal with the subject only in the most general terms, and therefore only provisions such as those of the first and second paragraphs would be acceptable; the detailed aspects of the question would be left to specialized disarmament bodies such as the Conference of the Committee on Disarmament. Others had taken the view that the Sub-Committee, and thus the Working Group, should deal with the subject in greater detail and include provisions along the lines of the last three paragraphs. All positions had been strongly maintained, and as no further narrowing of the areas of disagreement had seemed possible, the Group had decided to conclude its second reading of the text, leaving it unchanged as it appeared on page 92. The article would now take its place in the Arabic series of numbers as article 8.

The Working Group had then dealt with article XII, entitled "Who may Exploit the Sea-bed" (page 94). It had been agreed at the outset that the title should refer to "the Area" and not to "the Sea-bed", and the text had been changed accordingly. After a discussion of the texts on pages 94 and 95, opinions had seemed to crystallize around four basic alternative positions: According to alternative (A), all exploration and exploitation activities in the Area would be conducted by a Contracting Party or group of Contracting Parties or natural or juridical persons under its or their authority or sponsorship, subject to regulation by the Authority, and in accordance with the rules regarding exploration and exploitation set out in the articles. In general, the supporters of that view

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had not favoured exploration and exploitation of the Area by the Authority itself. A variant of that position, however, designated alternative (D), would add to that basic position a provision that "The Authority may decide, within the limits of its financial and technological resources, to conduct such activities".

Alternative (B) encompassed all activities of scientific research and exploration of the Area and exploitation of its resources as well as other related activities, requiring that they would be conducted by the Authority directly or, if the Authority so determined, through service contracts or in association with natural or juridical persons.

Alternative (C) first established the basic position that all exploration and exploitation activities in the Area would be conducted by the Authority either directly or in such other manner as it might from time to time determine. It went on to provide that if the Authority considered it appropriate, and subject to such terms and conditions as it might determine, the Authority might decide to grant licences for such activities to a Contracting Party or group of Contracting Parties or through them to natural or juridical persons under its or their authority or sponsorship, including multinational corporations or associations. Licences might also be issued to international organizations active in the field at the discretion of the Authority. One representative, in expressing broad support for that position, would wish to provide expressly that all activities of intergovernmental organizations or multinational organizations or corporations in the Area would be subject to the general supervision and control of the Authority.

As no narrowing of areas of disagreement as reflected in those four basic positions had appeared possible, the Group had decided to conclude its second reading of article XII, which would now assume its place in the Arabic series of numbers as article 9.5.

The Working Group had embarked upon, and expected to conclude fairly soon, its second reading of article XIII (pages 96-98). The working paper offered two basic approaches to the provision, dealing with "General norms regarding exploitation": the norms were formulated in terms of guidelines for management by the Authority (pages 96-97); and, alternatively, were expressed in the forms of general principles (page 97). At the outset, the Group had decided to adopt the second approach and express the norms as general principles, without prejudice to the

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possibility that some or all of the norms might have to be included at an appropriate place among the provisions dealing with the functioning of the Authority. Consequently, discussion had tended to proceed on the basis of the text on page 97.

The discussion thus far had isolated at least five basic principles: the exploration of the Area and the exploitation of its resources would be carried out in such a manner as, firstly, to provide for the orderly and safe development and rational management of the Area and its resources; second, to provide for the maximum expansion of opportunities in the use thereof; and third, to ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal. As would be readily apparent, those three principles were derived directly from paragraph 9 of the Declaration of Principles. Some representatives had felt it necessary to refer explicitly to a fourth principle, which would require exploitation in a manner that would ensure conservation of the resources, while others had felt that the idea of conservation was already implicit in the concept of "rational management" (the first principle). A fifth principle before the Group concerned exploitation of the resources in such a manner as to minimize any fluctuation in the prices of minerals and raw materials from land sources or sources within national jurisdiction that might result from such exploitation and adversely affect the exports of the developing countries. That principle was derived from the final paragraph of the preamble to the Declaration.

There had been an exchange of views regarding whether those principles should be expressed as applying to States generally or only to Contracting Parties. Some members, seeing in the provisions the codification of jus cogens, had felt that they should apply to all States, irrespective of whether they were Parties to the articles. Others had felt that the principles could only apply to Contracting Parties. In their view it would be impractical to attempt to apply the provisions to States which were not Parties, and in any event only those who accepted obligations under the articles should be allowed to receive benefits under them. According to one view, only States that accepted the articles should be permitted to exploit the Area, while all States should receive the benefits derived from the Area. Several States had referred to the problems that would arise if

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only some States accepted the articles while others did not, and remained outside the general scheme. It had been pointed out that the final treaty to give effect to the régime was required by paragraph 9 of the Declaration to be "of a universal character, generally agreed upon". The Working Group had not yet completed its consideration of article XIII.

The Working Group had yet to consider articles XIV to XXI of the working paper dealing with the status, scope and basic provisions of the régime. Members wished to complete the second reading of those articles before commencing consideration of item 2 assigned to them, namely, status, scope, functions and powers of the international machinery. A working paper dealing with the subject, submitted anonymously, was before the Working Group. He appealed to the Chairman of the Sub-Committee to ensure that as many meetings as possible were allotted to the Group to facilitate the completion of its work programme, bearing in mind that for technical reasons it might have to conclude its current series of sessions by Friday, 30 March, or very soon thereafter.

He expressed the hope that what he had stated represented a fair report on the Working Group's deliberations. He apologized in advance for any errors or omissions and wished to make it quite clear that his statement represented his personal understanding of the main trends of the discussion. It did not, and indeed could not, bind any delegation.

The CHAIRMAN commended the Chairman of Working Group I on the quality of his report and said that he was certain that the Working Group would continue to work with the degree of seriousness expected of it so that it would be able to submit a report that would be useful to the main Committee and Conference on the Law of the Sea. Every effort would be made to provide for as many meetings as possible of the Working Group.

Mr. ZEGERS (Chile) requested that the report by the Chairman of Working Group I should be reproduced in full in the summary records or circulated as a working paper. He also suggested that once the Working Group completed its second reading of the articles, time should be allotted in the Sub-Committee for a political analysis of the points agreed upon.

Mr. VINDENES (Norway) agreed that it would be desirable to permit members of the Sub-Committee to express their views on the substance of matters discussed in the Working Group; such discussion would provide a political barometer for useful interaction between the Working Group and the Sub-Committee.

Mr. DE ROSSI (Italy) associated his delegation with the Norwegian representative's statement and said that the report of the Chairman of the Working Group should be circulated as a document, along with the texts of the articles that had been agreed upon.

The CHAIRMAN said that if there were no objections he would take it to be the Committee's wish that the report should be included in extenso in the summary record.

It was so decided.

The CHAIRMAN said there would be some difficulty in circulating the other papers that had been before the Working Group since some of them had been submitted informally. It would also be difficult to choose the most appropriate documents for reproduction. He was nevertheless sure that the Chairman of the Working Group would take note of the Sub-Committee's comments and include them in the report where necessary. He suggested that a number of meetings be reserved to allow delegations to comment on points in the next report.

OTHER ASPECTS OF WORK

Mr. MOORE (United States of America) said many members of the Sea-Bed Committee had expressed increasing concern that progress in negotiations on the law of the sea had not kept pace with the rapid advances in ocean space technology. His delegation had repeatedly encouraged the Committee to hasten its progress to negotiate a treaty on the law of the sea while it was still able to do so. It was encouraged by the renewed sense of dedication in the Committee to produce a treaty within the time fixed by the twenty-seventh General Assembly.

Sea-bed mining technology had advanced to a stage where the commercial exploitation of manganese modules was almost certain to begin within the next three to five years. United States companies and presumably those of other countries would soon invest large sums of money in order to continue development

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work and begin constructing production facilities. The Committee still had the opportunity to ensure that the new law of the sea and any international institutions established for deep sea-bed resource management were operational when such exploitation took place.

In July 1972, his delegation had been asked to state the position of the United States on pending draft legislation designed to provide interested members of the United States industrial community with a variety of assurances that negotiations on the law of the sea would not ultimately cause them to lose the large investments they would be making soon and the large research and development expenditure they had already incurred. In March 1973, Congress had been informed that the General Assembly had established a firm schedule for the law of the sea conference and that it was anticipated that the schedule would be met. The fact had been stressed that President Nixon's oceans policy statement of 1970 indicated that it was neither necessary nor desirable to try to halt the exploration and exploitation of the sea-bed beyond the depth of 200 metres during the negotiation process, provided that such activities were subject to the international régime to be agreed upon, and that the international régime included due protection for the integrity of investments made in the interim period. The United States wished to avoid taking any action which might be construed by others as the kind of unilateral action of which it had been critical and which did not enhance the prospects for international agreement. As a matter of policy, the United States wished to ensure that sea-bed mining technology would continue to develop and that sea-bed mineral resources would be available to the United States and other countries as a new source of metals. Under any new legal régime a secure and stable investment climate was essential. Sea-bed mineral resource development must be compatible with sound environmental practices.

His Government was making every attempt to ensure that any sea-bed mining would be carried out under fully agreed international rules and regulations and would be administered by international machinery. It had therefore advised Congress that it was opposed at present to the passage of the legislation. It was keenly aware, however, of the lack of confidence many people had in the timely and satisfactory progress of work in the United Nations Sea-Bed Committee. Since

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the legislation pending (H.R.9) was devised to provide private companies with a more secure basis for investment decisions, the United States Government could not rule out the alternative of interim legislation if a law of the sea conference was not held as scheduled and did not produce a treaty that ensured an accommodation of the basic objectives of all nations in the negotiations.

A timely and successful law of the sea conference was possible. Nevertheless, a treaty opened for signature in 1974-1975 would not be timely if several years elapsed before the treaty secured the necessary number of ratifications to come into force. Even if only one or two years elapsed after signature, sea-bed exploitation would probably take place and would not be subject to the international régime and machinery.

In order to ensure a successful treaty which would come into force before actual commercial exploitation began, preparations must be begun at once for the provisional entry into force of those portions of the permanent régime and machinery that would be applicable to deep sea-bed development. The arrangement would only apply to the period after the law of the sea treaty was opened for signature and until the permanent régime and machinery entered into force. An alternative possibility might be to limit the provisional period to a stated number of years. The approach suggested would ensure that sea-bed exploitation would take place under an internationally agreed régime from the outset and that its benefits would accrue to the international community. Provisional arrangements to cover similar situations had been made in the case of the Convention on International Civil Aviation, and were used by such organizations as WHO, the Preparatory Commission for the International Refugee Organization, IAEA and the International Telecommunications Consortium (INTELSAT).

Delegations should give careful consideration to the idea of provisional arrangements. He was not proposing an interim régime, but a means of ensuring that the permanent régime and machinery which would already have been agreed to at the conference would take effect promptly on a provisional basis to ensure that all sea-bed exploitation was covered by the treaty from the outset, and that States would not have to consider other alternatives to resolve the problem. He was not asking the Committee to prejudge the content of the permanent régime and

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machinery, but to support the idea of its provisional entry into force. He hoped that delegations would submit tentative views on the proposal to allow greater responsiveness to Congress before the Committee's next meeting. In the meantime, the Secretary-General should prepare a study of the potential applicability to the Committee's present work of the various ways in which that type of problem had been dealt with in the past. The study should be completed before the summer session; it should be referred to Sub-Committee I and possibly to the Working Group for discussion after completion of its work on the international régime and machinery. If the members of the Committee viewed the proposal for provisional arrangements sympathetically, and if the Secretary-General's study was prepared in time for debate in the summer of 1973, the Committee would be well on its way to solving some of the difficult problems caused by the protracted negotiations.

The aim of the provisional arrangements should be to ensure that deep-ocean mining took place under the system and rules that would be agreed to as part of the permanent régime. Mining activities would thus be conducted under the international régime that the conference had agreed upon to provide for the sound, orderly and economically efficient development of the sea-bed mineral resources for the benefit of mankind, and to ensure safe and environmentally sound operating practices. Like the permanent machinery, the provisional machinery should administer sea-bed resources activities and ensure compliance with the provisions of the régime. Above all, the provisional machinery would acquire substantial experience of the geology, technology and economics of the new undertaking to facilitate the initiation of the work of the permanent machinery. The provisional régime and machinery could also ensure that revenues from sea-bed mining were collected and held in reserve for the revenue distribution system to be used by the permanent régime and machinery. It would need to establish some simple provisional machinery to settle disputes, and should also prepare the preliminary drafts of annexes to the final treaty that could later be promulgated by the permanent machinery. The provisional régime and machinery should be established in such a way as to encourage the prompt ratification and entry into force of the permanent treaty. Thus, the fundamental objective of the provisional arrangements was the protection of the integrity of the permanent régime and machinery while at the same time providing a sound legal

(Mr. Moore, United States)

basis for investment decisions after the treaty was opened for signature and before it came into force. Investments made under such a provisional arrangement would be given the same protection as if they had been made pursuant to the permanent régime.

Some delegations might argue that the provisional entry into force of the régime and machinery would permit those nations which were currently developing the technology to mine the sea-bed to quickly acquire exclusive rights to all of the mineral deposits of the deep sea-bed that were of any potential value. There were a number of reasons why that could not be so. Firstly, the permanent régime would presumably be designed to prevent it; the same provisions could be applied during the provisional period. Secondly, the market opportunities for the metals contained in manganese nodules were limited. The projected growth of world demand for the principal metals they contained, particularly nickel, was such that the rate of growth of productive capacity would necessarily be relatively small. Both the economic implications studies prepared by the Secretary-General would support the conclusion that the markets were so limited in relation to available resources that it would be a very long time before more than a tiny fraction could be exploited economically.

The provisional régime should include all the general provisions of the law of the sea treaty that would be applicable to the international sea-bed area. It should also provide for the granting of rights under general rules and conditions drawn from those which would appear in the permanent régime and machinery and relating to the duration of the rights granted, the nature of the mineral deposit which could be exploited, the boundaries of the area which would be the subject of rights, the economic burdens which would be placed on the mining activity and the standard necessary to ensure safety and environmentally sound practices. Rules would also be necessary to ensure that sufficient information was turned over to the provisional machinery to enable it to administer activities in the area.

As to the provisional machinery, it might be desirable to establish all or most of the permanent organs on a provisional basis. Alternatively, it might be sufficient to establish only a provisional assembly, council and secretariat. The provisional machinery could inspect and administer all of the sea-bed resources

(Mr. Moore, United States)

activities, issue the necessary rights, collect revenues and hold any surplus in reserve for distribution by the permanent machinery, settle disputes and begin the laborious task of drafting detailed rules and negotiating them with States with a view to their eventual promulgation by the permanent machinery.

Much thought must be given to the question of how to establish the provisional arrangements in such a way as to encourage the prompt ratification and entry into force of the final law of the sea treaty which would include the permanent régime and machinery. The Committee must not forget the importance of fulfilling the mandate given by the General Assembly in resolution 2749 (XXV) to establish an "international treaty of a universal character, generally agreed upon". The provisional régime and machinery could cease after a stated period of years or when the permanent régime came into force, whichever occurred first. The fact that investments would be made, and revenues collected, should also act as an incentive to early ratification of the permanent law of the sea treaty.

In short, his Government believed that the provisional entry into force of the permanent régime and machinery would be of substantial benefit to the whole international community. It would enable nations to gain benefits from resource development promptly; it would provide an opportunity to collect and disseminate information on the technology and impact of resource development in its early growth years; it would substantially expedite the preparation of detailed annexes to the treaty, which would then be promulgated by the permanent machinery and could be judged against the background of a sound data base acquired during the provisional period; it would ensure that the resources were developed under international administration from the start; and it would stimulate States to expedite the ratification process. If, based on wide support for the provisional arrangements, future negotiation efforts were both productive and timely, new international law would be successfully developed in advance of technology. If not, the opportunity might be lost to govern through international agreement the last resource frontier on earth.

Mr. ZEGERS (Chile) said his delegation had been the first to query draft legislation H.R.9, now pending before the United States Congress, which involved the granting of licences to conduct operations beyond the limits of national

(Mr. Zegers, Chile)

jurisdiction and for the exchange of licences between countries in a position to begin exploitation in the near future. That was tantamount to a unilateral régime that effectively excluded the developing countries. It was encouraging to note that the text and additional material circulated by the United States delegation showed its Government did not favour the passage of such legislation at present. Nevertheless, that material contained a statement that interim legislation could not be excluded if United States investments were not adequately protected in the meantime. It was unfortunate that while the Committee was trying to reach agreements at an international level, there was a constant threat of national legislation in an area declared international by an unopposed resolution of the General Assembly.

From the legal point of view, freedom of exploitation beyond a depth of 200 metres was not the freedom stemming from resolution 2574 B (XXIV); the relevant provisions were those of the Declaration of Principles contained in resolution 2749 (XXV). Delegations that had voted in favour of that resolution should treat its provisions as being principles of international law in accordance with Article 38 of the Statute of the International Court of Justice. Resolution 2749 (XXV) was incompatible with the commercial exploitation of the sea-bed. It provided a legal principle in accordance with which activities in the area beyond the limits of national jurisdiction must be subject to international legislation. Such activities were clearly prohibited pending the establishment of an international régime.

The form of the provisional arrangements proposed by the United States was interesting in principle. Despite the very considerable legal difficulties that would arise in the absence of ratification and from questions of the political and economic merits of the arrangements, the idea deserved careful analysis in the Committee. The significance of the proposed study to be made by the Secretary-General was not clear to his delegation.

Mr. LA POINTE (Canada) said the United States proposal was very relevant to the work of the Committee since it was intended to ensure that machinery would become effective as soon as possible after the signing of the treaty. The provisional régime proposed had the advantage that it presupposed agreement on the general law of the sea formula and was hence a more or less universal approach.

(Mr. La Pointe, Canada)

His delegation found the proposal interesting. He agreed in principle that the Secretary-General should be requested to prepare a historical summary of precedents to allow the Committee to examine the applicability of provisional arrangements to its current efforts.

Mr. POLLARD (Guyana) said that the United States proposal was very constructive and deserved careful attention. The proposal appeared to be based on four assumptions. One, there would be a generally agreed treaty. His delegation agreed. Two, so long as there was no agreement there would be a juridical hiatus in regard to the rules governing activities of States in the sea-bed. His delegation could not agree with that assumption since the Declaration of Principles constituted a declaration of international public policy which the Sub-Committee was now merely elaborating on. Three, the competence of the machinery to be established would extend only to the resources of the sea-bed. Again, his delegation disagreed, for the competence of such a machinery should include the water column, the minerals in suspension and the superjacent airspace. Four, the area covered by the machinery would begin where the 200-metre isobar ended. Such an assumption suggested a selective reliance on the Convention on the Continental Shelf and it was unlikely that many delegations would accept that.

With those qualifications his delegation could support the proposal for an interim régime, on the assumption that a generally accepted treaty on the subject would predate the entry into force of such a régime. His delegation could also support the proposal that the Secretary-General should be asked to prepare a study of useful precedents in that connexion.

Mr. CISSE (Senegal) said that the United States proposal was a praiseworthy effort that merited careful study. However, his delegation had certain reservations concerning the assumptions on which the proposal was based. Firstly, since the resources of the sea-bed were the common heritage of mankind, they belonged to all States and it was for the Committee to decide how that heritage should be exploited. Secondly, the United States representative had made no reference to the need for a larger share to go to the developing countries. The Committee must state clearly that the common heritage of mankind should be exploited primarily for the benefit of developing countries for it was essential that the special interests of the developing countries should be stressed. Only thus would

(Mr. Cisse, Senegal)

the existing imbalance between the developed and the developing countries be redressed and the progressive deterioration in the terms of trade be halted. Finally, his delegation reserved its right to comment further on the proposal.

Mr. SOTO (Peru) said that it was comforting to hear from the United States representative that the proposed legislation before Congress had not yet been approved. However, he appeared to be presenting the Committee with a series of conditions. If one assumed that the objectives stated on 10 August 1972 included rejection of régime for the sea-bed that included arrangements for a single authority for its exploitation, and if one bore in mind the fact that such arrangements seemed to be receiving much support from the developing countries, the implication was that, unless those conditions were accepted, his Government might, indeed, resort to the kind of legislation it had temporarily rejected; in other words, it might revert to the concept of reciprocal national legislation for the exploitation of an area in which no acquired rights or interests were recognized.

The premise on which the proposal was based, namely, that international law should try to follow and keep pace with technology was not new but was, nevertheless, disturbing. It had also been said that international law should enter into force prior to the beginning of exploitation; however, that was difficult because of the lengthy negotiations involved. It was important to decide whether international law should be based on the public international policy referred to by the representative of Guyana or whether it should follow private activity. In the view of his delegation it would not be beneficial to the negotiations if the United Nations were simply to rubber stamp a fait accompli presented to it by private interests. With that reservation he felt that the United States proposal nevertheless merited careful study.

Mr. BOATEN (Ghana) said that the real merit of the United States proposal was not that it attempted to safeguard the sea-bed for the international community in accordance with the Declaration of Principles - for the principles themselves should suffice for that purpose - but that it was an attempt to eliminate all unnecessary delay in the exploitation of the sea-bed once an agreement had been reached. However, since several matters were still being negotiated the temporary machinery would have to be subject to decisions on various

(Mr. Boaten, Ghana)

matters currently before the Committee. For instance, the size of the area to be administered by the machinery would depend on how far national sovereignty extended, and that question had not yet been decided. His delegation had no objection to the proposal that the Secretary-General should be asked to compile a list of precedents. Finally, he reserved his right to make a substantive statement later if it proved necessary.

Mr. KANIARU (Kenya) said that the United States proposal was a welcome initiative but that it was somewhat premature, for a number of issues were still being negotiated. His delegation had no objection to the proposal to request the Secretary-General to prepare a study of precedents. Indeed such a study could prove very useful. His delegation would comment in detail on the proposal at the appropriate time.

Mr. TOUNGARA (Ivory Coast) welcomed the United States proposal as a praiseworthy effort but said that, owing to the premises on which it was based, his delegation could not comment on the substance of it at present, but would do so later. He supported the proposal relating to the study of precedents.

Mr. ALEMAN (Ecuador) noted that the United States proposal was very interesting. However, since the sea-bed and ocean floor and the resources of the area had been recognized as the common heritage of mankind in General Assembly resolution 2749 (XXV), and since that area was to be covered by international legislation, it was inadmissible that the area should be the object of any national legislation, even temporarily. His delegation did not understand how the United States could set any deadline for the adoption of an international convention since, as the representative of Ghana had said, the limits of national jurisdiction had not even been agreed upon.

Miss MARTIN-SANE (France) said that her delegation supported the proposal that the Secretary-General should be asked to prepare a study of precedents for it would be very difficult to establish a provisional régime without knowledge of such precedents. The Secretariat should be asked to prepare a factual study and to have it ready for the next session of the Committee.

Mr. MAHMOOD (Pakistan) expressed appreciation of the United States proposal, which was a step towards meeting the concern of those delegations who, the previous year, had prepared a draft moratorium decision calling on States to cease and desist all activities relating to commercial exploitation of the sea-bed area. Also the proposed study of precedents would be very useful. However, the provisional régime should come into force only if it was supported by a majority of delegations at the Conference on the Law of the Sea.

Mr. THOMPSON-FLORES (Brazil) welcomed the United States proposal as being very constructive. However, he expressed reservations on two points. Firstly, the statement that it was not necessary to halt exploration and exploitation of the sea-beds beyond the depth of 200 metres reflected the position of the United States delegation on the subject but should not prejudge the decision on the limits of national jurisdiction to be reached by the forthcoming Conference. Secondly, the statement that the United States could not rule out the alternative of interim legislation if the Law of the Sea Conference was not concluded as scheduled was arbitrary and, moreover, such unilateral action would be contrary to the Declaration of Principles adopted by the General Assembly. Although his delegation felt that the Conference should be held at the time decided at the twenty-seventh session of the General Assembly, it did not rule out the possibility that the General Assembly might review its decision. Finally, his delegation would state its position on the proposal at a later time.

Mr. SHITTA BEY (Nigeria) said that the United States proposal deserved serious consideration and should be borne in mind in the future negotiations. His delegation supported the suggestion for a study of precedents and would make a more detailed statement on the main proposal at another time.

Mr. JAYAKUMAR (Singapore), presenting his delegation's initial position regarding the United States proposals, said that it would consider favourably the proposal for the provisional entry into force of the international machinery and régime since it was cautiously optimistic that agreement would be reached regarding the permanent régime and machinery and understood that the proposal would be consistent with such machinery. That would avoid delay in the exploration and exploitation of the sea-bed. His delegation also supported the request for a study by the Secretariat.

Mr. MARTINEZ (Colombia) said that his delegation shared the reservations expressed by the Peruvian representative at the beginning of his statement. Nevertheless, he welcomed the explanation of the United States Government's position regarding draft legislation H.R.9. He hoped that the United States Congress would realize that the adoption of that legislation would place the United States in a position contrary to that which the United States delegation had taken in supporting the Declaration of Principles. While reserving his delegation's right to comment in greater detail at a later stage, he agreed that the proposal regarding a provisional régime merited consideration and that the Secretariat should prepare the study requested.

Lastly, his delegation did not share the Brazilian representative's doubts regarding the date of the law of the sea conference; it fully expected that the Conference would be held in 1974 as scheduled.

Mr. DE ROSSI (Italy) said that although the difficulties involved in implementing an international régime and machinery governing the sea-bed could not be ignored, the United States proposals merited consideration, given the desirability of not delaying technological and scientific progress.

Mr. CAROKIS (Greece), expressing his delegation's preliminary views, said that it welcomed the constructive approach taken by the United States delegation and trusted that the views just expressed by the United States representative in no way prejudged the substance of an international régime, particularly with respect to agreement on the limits of national jurisdiction. The proposed study would be useful.

Mr. ARAIM (Iraq) said that his delegation shared the Brazilian representative's concern regarding the United States representative's comment that interim legislation could not be ruled out if the law of the sea conference was not concluded as scheduled. He agreed that the Secretariat should prepare a factual study.

The meeting rose at 5.45 p.m.

UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL

For participants only

A/AC.138/SC.I/SR.65
27 March 1973

ORIGINAL: ENGLISH

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

SUB-COMMITTEE I

PROVISIONAL SUMMARY RECORD OF THE SIXTY-FIFTH MEETING

Held at Headquarters, New York,
on Friday, 23 March 1973, at 3.20 p.m.

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

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OTHER ASPECTS OF THE SUB-COMMITTEE'S WORK

Mr. ZEGERS (Chile) commended Working Group 1 on the excellence of the work it had completed thus far, as reflected in the report delivered by its Chairman at the preceding meeting. The Working Group's effort to reflect within a single document, through the use of square brackets and alternative texts, areas of agreement and disagreement on matters relating to the status, scope and basic provisions of the régime was acceptable to his delegation, provided that the Declaration of Principles contained in General Assembly resolution 2749 (XXV) was scrupulously adhered to and that the Sub-Committee had the opportunity to undertake a political assessment of the results of the Group's work. The plenary Committee, a political organ of the General Assembly, had to work by consensus, which meant that negotiation was necessary, preferably before the Conference on the Law of the Sea. Accordingly, he trusted that the Sub-Committee would discuss the points agreed upon in the Working Group once the latter had completed its second reading of the working paper (A/8721, annex II, 1) and again at a later stage, when it had completed discussion of the international machinery to be established.

In considering the scope of the régime, it was essential to bear in mind, in accordance with the Declaration of Principles, that all activities regarding the exploration and exploitation of the resources of the area and other related activities must be governed by the international régime to be established. The régime would exercise jurisdiction, although not sovereignty, over the area. Ideally, as the Maltese delegation had proposed, a global régime should be instituted covering all activities in the oceans. That would be difficult, and discussion of military activities was tacitly being avoided in order to prevent political issues from arising.

It was imperative that the régime should govern not only the exploitation of the resources of the area, but also the processing and marketing of commodities recovered from the area (A/8721, annex II, 1, p. 86). Only in that way could it be ensured that the area and its resources remained the common heritage of mankind and that multinational consortia did not take control of the sea-bed.

His delegation attached the utmost importance to item 2 (d) of the Sub-Committee's programme of work, concerning the economic considerations and

(Mr. Zegers, Chile)

implications relating to the exploitation of the resources of the area, including their processing and marketing. General Assembly resolution 2749 (XXV) declared that such activities should minimize any adverse economic effects caused by the fluctuation of prices of raw materials resulting from such activities, and General Assembly resolution 2750 A (XXV) requested the Secretary-General, in co-operation with UNCTAD, to keep the matter under constant review. The subject had also been included in the agenda of the third session of UNCTAD, had been discussed in studies by the Secretary-General and UNCTAD and had been a major concern of the plenary Committee since 1968.

The mineral exploitation activities which would be governed by the régime to be established could not be viewed in isolation from other activities in the area - such as fishing - or from land-based exploitation. Besides petroleum and manganese nodules, there was a potential for the exploitation of other minerals, as was indicated in a report before the Committee on Science and Technology for Development. It was essential to ensure adequate control over new exploitation activities in order to prevent any adverse effects on the economies of developing countries.

He requested the Secretariat to prepare an additional report, pursuant to General Assembly resolution 2750 A (XXV), concerning the economic implications of international sea-bed mining in time for the Committee's summer session, so that it could be incorporated in its final report to the General Assembly and considered at the Conference on the Law of the Sea in 1974. Alternatively, should it prove difficult to prepare a complete study by July, the Secretariat might at least provide a brief report on new economic and technological developments relating to sea-bed exploitation and subsequently prepare an up-dated study for the Conference. The need for such a study was evident, in view of the many new developments in sea-bed exploration and exploitation. By way of example, he drew attention to advances in manganese nodule exploitation involving government agencies and private corporations in Japan, the United States of America, the Federal Republic of Germany, the Soviet Union and France.

Mr. LEVY (Secretary of the Committee) read out paragraph 3 of General Assembly resolution 2750 A (XXV) and said that the Secretariat could prepare a brief interim report on economic and technological developments relating

(Mr. Levy)

to sea-bed resources on the basis of information available to the Secretariat in time for the Committee's summer session; a more detailed report could be prepared for consideration in April 1974.

Mr. IMAM (Kuwait) endorsed the Chilean representative's request for further reports. A comprehensive report was essential to enable the Conference on the Law of the Sea to take appropriate action.

The CHAIRMAN, referring to the Chilean representative's call for a discussion in the Sub-Committee following the completion by the Working Group of the second reading of the working paper (A/8721, annex II, 1), said that members should give political guidance to the Working Group after its Chairman had presented a final report. He cautioned the Sub-Committee against turning itself into a working group of the whole.

If there was no objection, he would take it that the Sub-Committee agreed that the Secretariat should prepare the reports requested by the representative of Chile.

It was so decided.

Mr. WARIOBA (United Republic of Tanzania) welcomed the bold step taken by the United States delegation in circulating copies of a letter addressed by the Department of State to a committee of Congress. He had no strong objection to the United States proposal. Indeed, it had been his country's consistent position that the Law of the Sea Conference should on no account be delayed and it was to be hoped that any treaties or conventions adopted would come into force promptly.

On the other hand, the proposal was too limited in scope, for it urged that provisional application of the régime and machinery should be confined to sea-bed resources development. It should not be forgotten, in discussing the international régime, that there were other matters just as important. In his view, the proposal could well have been placed before the main Committee for a discussion of such topics as the territorial sea and the economic zone. If expanded to include preservation of the marine environment, scientific research, etc., it could also be discussed by the Sub-Committee and, with regard to aspects that fell within their competence, by the other sub-committees as well.

(Mr. Warioba, Tanzania)

Again, the motivation for the proposal appeared to lie in the investments being made in the international area by enterprises of the United States and a few other countries. Moreover, it was stated that if the negotiations were not concluded by the end of 1975 at the latest, the United States and, in all probability, those other countries would take unilateral action - something which sounded very much like an ultimatum.

All would agree that the area was a common heritage of mankind, a concept which had become public policy. It was his hope that no State would take action contrary to that policy, no matter when the negotiations were completed. The Declaration of Principles stated that all activities regarding the exploration and exploitation of the resources of the area and other related activities should be governed by the international régime. Obviously, until such time as the régime was in fact established, States and persons, physical or juridical, were bound, as affirmed in General Assembly resolution 2574 D (XXIV), to refrain from all activities of exploitation of the resources of the area. A delay in reaching agreement should not be taken as an excuse for unilateral action, either in resource development or in any other field, to cause further disorder in the oceans.

Lastly, it was clear that there were still fundamental differences regarding the type of régime and the machinery to be created. Accordingly, the study proposed by the United States, if undertaken, could not be exclusively factual. It would have to take due account of current political positions. It would also have to deal with the possibilities for provisional application if the treaty finally adopted excluded exploitation by all entities other than the international authority.

In short, his delegation was prepared to support both the United States proposals, subject to the reservations he had expressed.

Mr. JAGOTA (India) thanked the United States delegation for yet another valuable contribution to the work in hand. He was able to endorse the proposal that the Secretary-General should prepare a study of precedents, something that would facilitate a decision at the proper time. He also supported in principle the idea of provisional application of a convention, once it had been adopted by the forthcoming plenipotentiary conference, and agreed that it would not amount

(Mr. Jagota, India)

to the establishment of an interim régime but simply to provisional application of the agreed convention. The period of provisional application, which should be such that it promoted early ratifications of the convention, could be determined at a later date. Arrangements could also be made for a review of the provisional application. However, as to what portion of the new convention or conventions on the sea-bed and other questions on the law of the sea should enter into force provisionally, his delegation reserved its position, sharing in that regard the views expressed by the representative of the United Republic of Tanzania.

The representative of the United States had emphasized that his proposal did not ask the Sub-Committee to prejudge the content of the permanent régime and machinery. In his own view, there was an urgent need to expedite the establishment of an equitable and generally acceptable international régime and machinery for the area and the settlement of other crucial questions relating to the law of the sea. Co-operation was being extended on all sides in that endeavour, and he was sure that the outcome would be satisfactory to all.

The United States delegation had elaborated on United States interest in sea-bed resources and technology and it was apparent that research and development were proceeding apace. To the extent that they were a contribution to the establishment of an international régime on the sea-bed, they would be welcome and would earn the gratitude of the international community. On the other hand, to the extent that they were a violation of the moratorium and of the Declaration of Principles (which had distinct legal value even today) and provided a contingency plan for unilateral action by the United States in the event of failure of the plenipotentiary conference and for presenting the world with a fait accompli, they were a matter of serious concern to all. He was none the less convinced that the United States would be able to shape the movement of its sea-bed industry and technology in the service of the international community. In view of man's capacity to retrieve minerals and materials from the depths of the oceans, the vast new continent, full of resources of potential benefit to the world as a whole, could not be left to be parcelled out in unilateral action by States while the international community looked on aghast. Such action would lead to new conflicts that could and must be avoided.

Mr. VINDENES (Norway) said that the report of Working Group 1 clearly showed the considerable progress that had been made. At the same time, it reflected the problems being experienced by the Group in the light of its terms of reference, which required it to negotiate questions of substance on the points where no agreement existed.

He wished to suggest that the Sub-Committee should decide to allow time for short statements on substance after the Chairman of the Working Group had submitted his report on the second reading of articles relating to the régime. In that way, delegations would have the opportunity to comment on matters pertaining to the régime, already discussed in the Working Group, and to indicate their views on questions concerning the machinery. It was to be hoped that a certain evolution of views had taken place since the previous year. A short debate in the Sub-Committee would reflect that evolution and ensure that the assumptions within the Working Group regarding the attitudes of the various delegations were in fact correct.

The CHAIRMAN said that when the final report on the régime had been submitted it would be quite possible for the Sub-Committee to comment on it and, if necessary, to call upon the Working Group to consider certain matters anew.

Mr. SOTO (Peru) said that, in his view, the representative of the United Republic of Tanzania had made a number of particularly valid comments regarding the United States proposal. His own delegation fully endorsed the Tanzanian view that a delay in the adoption of a convention should not be used as a pretext for the type of action envisaged in current initiatives in the United States Congress or for the implementation of what the Indian representative had described as a "contingency plan for unilateral action". Some aspects of the proposal made at the previous meeting by the United States representative needed to be clarified before the Sub-Committee came to a decision. If the régime finally adopted by the plenipotentiary conference established that the international authority alone, or the international authority in association with State or private agencies, could engage in exploration and exploitation of the area, it would be really difficult to see how such a régime

(Mr. Soto, Peru)

could enter into operation immediately after a convention was opened for signature. Some time - not necessarily involving an interminable delay - might elapse before the authority was effectively established and before it made the necessary contacts with the enterprises that were to co-operate with it in exploration and exploitation activities.

In addition, it had not yet been decided if there was to be a convention on the sea-bed or whether an agreement in that regard would simply form one chapter of a convention dealing with ocean space in its entirety, in which case it would be necessary to determine whether the régime applied exclusively to the sea-bed or to all other areas covered by the convention.

He felt that the United States proposal should be submitted in written form, simply to facilitate full consideration of the matter.

In response to a request by the CHAIRMAN for clarification, Mr. MOORE (United States of America) said he fully appreciated and shared the view that the Sub-Committee should avoid prejudging any issues. His delegation had in mind simply a factual study enumerating instances in which the machinery provided for in conventions had been applied provisionally, for the benefit of the international community, after the conventions in question had been signed but before they had taken legal effect.

Mr. CISSE (Senegal) observed that a majority of the members of the Sub-Committee seemed to favour the provision of a factual study for the summer session. He hoped the Secretariat would be able to provide the study two to three weeks in advance in order to allow delegations time for consultations with their respective Governments.

The CHAIRMAN said the Secretariat would take note of that request. He was sure it would do all in its power to provide the study in good time.

Mr. ZEGERS (Chile) said that, while the United States proposal for a study merited further consideration, it also raised certain problems. There could, for example, be one convention covering all aspects of the law of the sea or a separate convention concerning the régime and machinery. For many reasons his delegation felt that there should be one convention but, as had already been

(Mr. Zegers, Chile)

pointed out, it still remained to settle the question of the terms of reference for the Secretary-General in that respect. Furthermore, the Sub-Committee was proposing to establish an international body with adequate powers over the area and its resources and, as the representative of Peru had said, such a process would take time. Finally, while there were legal precedents for it, the introduction of provisional machinery would create constitutional problems. It would, for example, be difficult to arrange for the entry into force in Chile of a convention which had been signed by the executive but had not yet been approved by the legislative branch of the administration.

The CHAIRMAN pointed out that the United States proposal envisaged simply the enumeration of precedents for the provisional application of international agreements. The Sub-Committee would be able to consider that information at the summer session and only then would it be called upon to make recommendations to the main Committee.

Mr. ZEGERS (Chile) thanked the Chairman for his clarification. It would none the less be easier for the Sub-Committee to reach a consensus if it had full details of the United States proposal before it in writing.

The CHAIRMAN suggested that, in view of the comments of the representatives of Chile and Peru, the United States delegation might be asked to submit a document at the next meeting clearly stating its interpretation of the matter.

Mr. MOORE (United States of America) said he would be happy to hold consultations with those delegations which had reservations concerning his delegation's proposal.

ARCHAEOLOGICAL AND HISTORICAL TREASURES ON THE SEA-BED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

Mr. CAROKIS (Greece) recalled that his delegation had submitted a paper on the question of archaeological and historical treasures (A/AC.138/SC.I/L.16) at the last summer session of the Sub-Committee. The document had unfortunately not been included in the Committee's report to the twenty-seventh session of the General Assembly; he hoped it would be included, at least as an annex, in the forthcoming report.

(Mr. Carokis, Greece)

The basic idea behind the proposals in the Greek paper was that expressed in principle 1 of the Declaration of Principles (General Assembly resolution 2749 (XXV)). His delegation believed that archaeological and historical treasures were part of the common heritage of mankind and should be safeguarded as such. The protection of such treasures should be entrusted to the international machinery or authority to be established in accordance with principle 9 of the Declaration of Principles. His delegation further envisaged the establishment of regional organs, especially in areas with closed or semi-closed seas, which would serve as advisers to the international authority and ensure universal sharing in the cultural benefits derived from any archaeological treasures discovered, taking into particular consideration the rightful interests of the State or States of historical origin. Thus, no State or person, whether natural or juridical, would be able to appropriate the treasures found and only States with rightful cultural and historical interests in the origin of the treasures would be able to claim or exercise sovereignty over them. Naturally, all exploration and exploitation of the resources of the area and related activities would have to be carried out in such a way as to avoid any form of damage to treasures found or likely to be found. If necessary, exploration and exploitation could be suspended until such time as the international authority had taken proper measures to protect the treasures. In keeping with the basic tenet of the Greek proposals that archaeological and historical treasures should be preserved for the benefit of all mankind without prejudice to the right of the State or States of cultural or historical origin of such treasures, he believed every State should eventually make it an offence for its nationals, whether legal or natural, to violate the international régime imposed in that field by the international authority. Those proposals were given fuller treatment in the section of document A/AC.138/SC.I/L.16 entitled "General principles". In addition, his delegation had prepared a draft article on the item which it hoped to present to Working Group 1 for its consideration at the earliest possible opportunity.

Mr. JACOVIDES (Cyprus) welcomed the proposals contained in document A/AC.138/SC.I/L.16 and associated his delegation with the remarks made by the Greek representative. The Greek paper represented a constructive approach to the

(Mr. Jacovides, Cyprus)

subject, reconciling as it did both the legitimate interests of the State or group of States of origin of archaeological and historical treasures and the need for universal sharing in the cultural benefits derived from such treasures. It also sought to safeguard such treasures from destruction or unjustifiable disposal for private gain. His delegation was keenly interested in such proposals and would work towards their incorporation in the convention on the sea-bed and the ocean floor and the establishment of effective measures for their implementation.

Mr. AKYAMAC (Turkey) recalled that the question of protection for archaeological and historical treasures had first been raised by his own delegation, at the spring session in 1971. He welcomed the Greek paper, the basic principles of which corresponded to the main points of concern to his own delegation.

Among the points on which his delegation had some misgivings was the question of the disposal of archaeological and historical treasures. According to the Greek paper, the State of origin of the treasure would have a preferential right to buy it from the international authority and, if that right was not exercised, the treasure would be sold to third parties. He presumed that the proceeds from the sale would be treated in the same way as those from the sale of commercial commodities. It might, however, be preferable to dispose of treasures in another manner, since they would be the common heritage of mankind. In that respect, the Sub-Committee might wish to draw on the experience gained by UNESCO in the matter of the protection of cultural property.

Principles 1 and 2 in the Greek paper seemed to presuppose that the national jurisdiction of riparian States within closed and semi-closed seas had been delimited. That was not always the case, and the absence of such delimitation could lead to confusion, particularly if the criteria applied in principles 9 and 11 of the Greek paper to determine the country having the preferential right of purchase were adopted. The phrases "States of cultural origin" and "State of historical origin" were vague and misleading, particularly as it was not uncommon for the same culture to be part of the history of several nations. He strongly recommended, therefore, that those phrases should be replaced by the phrase "State of origin". With regard to principle 5 in the Greek paper, all countries within the area concerned should be represented in the proposed regional organs

(Mr. Akyamac, Turkey)

and the functions of those regional bodies should be more clearly defined and regulated by the convention. That was another field in which the experience of UNESCO might be of assistance. Principles 6, 7, 8 and 9 in the same paper related to the responsibility of the international authority and to the procedure to be followed after the discovery of an historical treasure. In the view of his delegation, the international authority should give notice of such a discovery in its official publication, to be distributed to all its members. He also had doubts about the appropriateness of conferring responsibility for identifying the origin of treasures upon the regional organs serving the international authority. In any case, the participation of all interested States in the process of identification must be ensured.

The interest of his delegation in the item was enduring and he was willing to consult with the representative of Greece concerning his own comments on the Greek paper. He reserved his right to speak, as necessary, on the draft article to be submitted by the delegation of Greece.

Mr. DE ROSSI (Italy) said that his own country, which had close cultural and historical ties with Greece, supported the basic provisions of the Greek paper. The item as a whole merited further study and the assistance of UNESCO might, indeed, be of value in that respect.

Mr. PASTOR (Spain) expressed the support of his delegation for the basic aims of the Greek paper.

The meeting rose at 5.35 p.m.

UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL

For participants only

A/AC.138/SC.I/SR.66
29 March 1973

ORIGINAL: ENGLISH

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

SUB-COMMITTEE I

PROVISIONAL SUMMARY RECORD OF THE SIXTY-SIXTH MEETING

Held at Headquarters, New York,
on Tuesday, 27 March 1973, at 3.25 p.m.

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

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GENERAL DEBATE

Mr. HSIA (China) remarked that since the international machinery governing the sea-bed area must operate in accordance with the international régime and the international régime must be enforced through the international machinery, the two could not be dissociated from one another. Consequently, all the activities of the proposed international machinery, whether political, organizational or operational, must conform to the principles of the yet-to-be-determined international régime.

In accordance with the spirit of the Declaration of Principles adopted by the United Nations General Assembly (resolution 2749 (XXV)), those principles should be the following: One, the international sea-bed area and its resources, being the joint property of the people of all countries, should not be appropriated by any State or person. Two, the area should be managed rationally and its resources properly used without monopoly or manipulation by either super-Power. Three, benefits derived from the exploitation of the resources of the sea-bed should be shared equitably by all States on an equal footing, irrespective of their size, taking into particular consideration the needs of the developing countries. Four, the international sea-bed area should be used for peaceful purposes; as a first step towards that end, the activities of all nuclear submarines and emplacement of nuclear and all other weapons in the area should be prohibited. Five, the marine environment should be protected and pollution should be prevented. Six, the activities of the international machinery should not infringe upon the lawful rights and the legitimate interests of the coastal States. Seven, management of the resources of the international sea-bed area should cover all mineral and living resources. Eight, the international machinery should cover not merely the exploration and exploitation of the international sea-bed area but also other related activities such as scientific research.

Just as the resources of the sea-bed were the common property of all peoples, so the international machinery should be jointly managed by all countries, for to allow it to be controlled exclusively by the two super-Powers, by virtue of their advanced technical capabilities, would result in a new type of colonialism. The machinery should be empowered to manage scientific research, exploration and exploitation of international sea-bed resources; however, it should not be vested

(Mr. Hsia, China)

with sovereignty or jurisdictional powers comparable to those of a State. On the other hand, its functions should not be limited to handling matters of registration, licence-issuing and co-ordination of matters pertaining to the sea-bed for it would then become a purely bureaucratic body and the super-Powers would be able to take advantage of their technical capabilities to monopolize the exploitation of the resources. That would run counter to the interests of the developing countries. Rather, the machinery should be empowered to engage in direct exploitation of resources. Naturally, a number of specific problems would have to be studied but provided all countries showed sincere willingness to co-operate, the problems should not be insuperable. The principles of equality among nations, large and small, rational geographical representation and rotation of officers by election should be applied in staffing the international machinery and a greater proportion of seats should be given to the developing countries in order to reflect those countries' positive role in international affairs. Details of organizational and procedural matters could be settled by consultation among all countries. With regard to the distribution of seats on the Council, neither proposal made by the super-Powers was acceptable. The Council should take decisions after full and extensive democratic consultation so that it could not be dictated to by either super-Power. Naturally, measures must be taken to ensure that Council members did not cling to their individual views and thus give rise to endless debates.

The United States proposal that the international régime and machinery should be applied provisionally before the entry into force of the treaty on the law of the sea would not speed up the progress of the Sea-Bed Committee's work and, in essence, was designed to pressure States into agreeing to the objectives previously spelled out by the United States in a statement in August 1972. In fact, in proposing that, in the absence of a provisional entry into force of the international machinery, sea-bed resources should be exploited by interim legislation prior to the conclusion of a treaty, the United States was seeking to proceed unilaterally with exploitation. That would be in violation of General Assembly resolution 2574 D (XXIV) and was not in keeping with the spirit of the Declaration of Principles, which stated that international sea-bed resources were the common heritage of mankind and should not be subject to appropriation by any States or persons.

(Mr. Hsia, China)

His delegation felt that pending the establishment of the international machinery, commercial exploitation of resources in the international sea-bed area should cease. Moreover, the United States intention not to suspend exploration and exploitation in the sea-bed area beyond the depth of 200 metres during the negotiations concerning the limit of national jurisdiction was an attempt to take the 200 metres criteria as a provisional dividing line in complete disregard of the just demands of the developing countries for the establishment of economic zones. Finally, he pointed out that his delegation would work together with the developing countries towards a reasonable solution of the question of the law of the sea.

OTHER ASPECTS OF THE SUB-COMMITTEE'S WORK (continued)

Mr. MOORE (United States of America), introducing his delegation's draft recommendation that the Secretary-General be requested to describe factually examples of precedents of provisional application of multilateral treaties (A/AC.138/SC.I/L.19), said that he had consulted with all the delegations which had expressed views on the subject and that the document now before the Committee reflected the agreement arrived at in those consultations. Agreement had been reached on an additional passage after the document had been printed. He therefore suggested that the last line of paragraph 2 should be deleted and replaced by the following two sentences:

> "Nor does it prejudge the question that only that part of a treaty relating to the régime and machinery concerning the sea-bed area beyond the limits of national jurisdiction and its resources would apply provisionally or whether provisions relating to other questions of the law of the sea would also apply provisionally. These questions have not been discussed by the Sub-Committee."

Finally, he noted that the language of the request did not prejudge the nature or character of the permanent régime machinery, the concept of provisional application of the régime or the extent of any provisional application.

The CHAIRMAN said that if he heard no objection he would assume that the Committee wished to adopt the draft recommendation (A/AC.138/SC.I/L.19) as orally amended.

It was so decided.

The meeting rose at 3.55 p.m.

UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL

For participants only

A/AC.138/SC.I/SR.67
3 April 1973

ORIGINAL: ENGLISH

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

SUB-COMMITTEE I

PROVISIONAL SUMMARY RECORD OF THE SIXTY-SEVENTH MEETING

Held at Headquarters, New York,
on Friday, 30 March 1973, at 3.30 p.m.

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

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REPORT OF WORKING GROUP 1

Mr. PINTO* (Sri Lanka), speaking as the Chairman of Working Group 1, drew the attention of the Sub-Committee to the provisional paper which had just been circulated and which showed the outcome of the Group's second reading of the articles on pages 96-108 of the English text of the Sea-Bed Committee's report (A/8721).

He recalled his earlier reference (A/AC.138/SC.I/SR.64) to the Working Group's discussion of article XIII, which was to be found on pages 96-98 of document A/8721 and was entitled "General norms regarding exploitation". The Group had been unable to agree on a composite text and had produced alternative versions, designated (A) and (B), which contained much common material in relation to the five basic principles to which he had earlier referred. Thus, both texts would require the exploration of the area and the exploitation of its resources to be carried out in an orderly, safe and rational manner (the first principle). Text (B) referred specifically to the conservation of the area and its resources (the fourth principle), while text (A) covered that notion by its use of the term "rational management", an expression which its authors felt needed to be defined. Both texts contemplated the progressive utilization of the area and its resources (the second principle), text (A) in the expression "expanding opportunities in the use thereof" and text (B) by speaking of "optimum utilization" of the area and its resources. However, while text (A) would apply the foregoing principles to the exploration of the area and the exploitation of its resources, text (B) would apply them to "other related activities" as well. Both texts provided in virtually identical terms for the equitable sharing by States in the benefits derived from the area and its resources, with particular regard to the interests and needs of the developing countries, although text (A) contemplated sharing by States parties to the articles while text (B) referred simply to "all States".

Text (B) laid considerable emphasis on the need to "minimize the fluctuation in the prices of minerals and raw materials from land and off-shore sources" that might result from exploitation of the area and "adversely affect the exports of developing countries, especially those who are producers of wasting and

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* This statement has been included in extenso in the summary record in accordance with the Sub-Committee's decision.

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non-renewable materials" (the fifth principle). The text required specifically that "the mineral resources of the area shall be considered as being complementary to resources produced from land and off-shore areas". That reflected the view of developing country land-mineral producers that economic regulatory techniques such as price stabilization measures should aim primarily at protecting the prices of land-produced minerals upon which their economy depended. Text (A) was not specific with regard to the minimization of price fluctuation, although there was scope for dealing with that problem through the proposed definition of "rational management". In that connexion, he drew attention to a note to text (A) which recalled that the view had been expressed that there was a need to take into account, in the regulations under the machinery, provisions allowing the Authority and States (or States Parties) to pursue measures designed to facilitate the stabilization of commodity prices on a global basis as, for example, through international commodity agreements.

A provision whereby States would be required to pay over to the Authority for equitable distribution among the developing countries the proceeds from any tax levied in connexion with activities relating to the exploitation of the area had been included as a possible second paragraph to follow either of the alternative texts. Many representatives had felt that although the paragraph was not derived from the Declaration of Principles it was not inconsistent with it. Its current placement did not prejudice its relocation or elaboration elsewhere in the articles.

In the view of one representative, the concepts dealt with in article XIII could more appropriately be included among the purposes of the machinery to be established.

With the elaboration of the two alternative texts and the possible second paragraph, the Working Group had concluded its second reading of article XIII; the texts now appeared in the Arabic series of numbers as article 10.

With regard to article XIV, dealing with scientific research, the following positions had been taken by various delegations: (1) every State, whether coastal or land-locked, had the right (or freedom) to carry out scientific research in the area; (2) the foregoing right was subject to the condition that the scientific research in question should be carried out exclusively for peaceful purposes; (3) in the exercise of that right, due regard should be paid to the rights and interests

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of other States and the Authority; (4) States should agree to encourage, and to obviate interference with, scientific research in the area; (5) States should agree to provide international co-operation in scientific research in the area exclusively for peaceful purposes, through the measures enumerated in paragraph 10 of the Declaration of Principles and by other means; (6) no such research activities could form the legal basis for any claim with respect to any part of the area or its resources; (7) scientific research in the area should be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing countries; (8) the Authority should be empowered to authorize scientific research in the area on a non-discriminatory basis, in accordance with specified principles.

Following the second reading of the article, three alternative texts, designated (A), (B) and (C), had been drawn up to reflect those differences of view. Texts (A) and (B) tended to lay emphasis on the right or freedom of every State to carry out research in the area, while text (A) carried a parenthetical reference to research in "ocean space" as a whole in order to take account of the view of one representative. Both texts (A) and (B) incorporated the modes of international co-operation in scientific research specified in paragraph 10 of the Declaration. Text (A) required specifically that due regard should be paid to the rights and interests of States and the Authority, while (B) did not. In text (C), while the right or freedom to carry out scientific research in the area might be taken to be implicit, the emphasis lay, first, on the conditions under which that right or freedom might be exercised (e.g. it must be for peaceful purposes and for the benefit of mankind as a whole) and, second, on control of scientific research by the Authority (e.g. requirement of guarantees of technical competence, responsibility for damage, compliance with regulations). The measures for the promotion of scientific research included in the text represented a development of those enumerated in the Declaration, and there was an express reference in almost every case to the need for assistance to the developing countries. On the other hand, while the injunction to promote scientific research in the area was directed in texts (A) and (B) to States in general, it was restricted to Contracting Parties in

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text (B). The proponents of texts (A) and (B) foresaw the need to define the expression "scientific research". Text (C) omitted the provision, taken from paragraph 10 of the Declaration, whereby research activities could not form the basis of a legal claim to the area for its resources, on the grounds that article 4 would make such a provision redundant. The Group having concluded its second reading of article XIV, it would take its place in the Arabic series of numbers as article 11. Further references to scientific research were to be found in document A/AC.138/SC.I/SR.64 in connexion with the discussion of the first paragraph of article X (now article 7).

While the Declaration of Principles contained no specific provision regarding the transfer of technology in relation to sea-bed exploration and exploitation, the Group had not objected to the inclusion of such a provision in the articles relating to the régime, and the working paper had thus offered, as bases for discussion under article XV, the three paragraphs on pages 100 and 101 of document A/8721. The first such paragraph was based on article VIII C of the Statute of the International Atomic Energy Agency, while the second and third were taken from written proposals to the Committee. The Group had reflected the differing views on the transfer of technology in four alternative texts.

Texts (A), (B) and (C) provided, in more or less specific terms, for international co-operation for the promotion of the transfer of technology and the training of personnel. While text (B) assigned a central role to the Authority in that connexion, text (C) envisaged action by both Contracting States and the Authority. Text (A) made no specific mention of the Authority but left open the possibility that when dealing with the machinery the Authority might be empowered to implement a provision along those lines. Both texts (A) and (C) envisaged the transfer of technology and scientific knowledge to all countries in need thereof, including the developing countries. On the other hand, text (B), which gave the Authority primary responsibility for the promotion of technology transfer, placed the greatest degree of emphasis on assistance to the developing countries. Texts (A) and (C) were addressed to Contracting Parties, while text (B) referred simply to "States".

Texts (B) and (C) contemplated (as did the first paragraph on page 100 of document A/8721) the transfer, under certain conditions, of patented as well as

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non-patented technology to the developing countries. In that connexion, one delegation had drawn the Group's attention to the 1970 Patent Co-operation Treaty, concluded under the auspices of the World Intellectual Property Organization. Articles 50 and 51 of that Convention were to be circulated by the Secretariat for consideration by the Working Group at the summer session, and further refinement of the alternative texts might be made in the light of those provisions.

Alternative (D), which was identical with the second paragraph on page 100 of document A/8721, had been taken from the written proposal of one delegation to the Committee. In providing for the use of revenues derived from sea-bed exploration and exploitation to finance promotion of the transfer of specified types of scientific knowledge, it represented a concrete provision on the transfer of technology within the context of that delegation's proposal. In view of the difference in presentation between text (D) and the other alternatives, a foot-note would recall that proposal and the relationship of text (D) to it.

The second reading of article XV having been completed, it would become article 12 in the Arabic series.

Early in the discussion of article XVI, entitled "Protection of the marine environment, etc.", it had become clear that much of the material on page 102 of document A/8721, apart from the text of paragraph 11 of the Declaration (underlined), was already covered by that text, and therefore redundant, and that the material of importance not covered by the Declaration related to the safety of human life. It had been felt that a provision on the safety of human life was of such importance that it warranted inclusion in a separate article. For that and other reasons of a technical nature, the Group had decided to draft such a separate article. It had thus been left with virtually the original text of paragraph 11 of the Declaration, which enjoyed broad support. However, some delegations had wished to state explicitly that the international rules, standards and procedures referred to in the article should be adopted and implemented with respect to all activities in the area and had asked for the inclusion of the word "all" before the word "activities". Others had felt unable to support that view, and the word "all" had thus been placed in square brackets. The second reading of the article had been completed, and it would now stand in the Arabic series of numbers as article 13.

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The new article, provisionally designated article XVI.A, dealing with the protection of human life, had been drafted in broad and general terms and called for the adoption and implementation of rules, standards and procedures for the protection of human life. As in the case of article 13, differing opinions had been expressed concerning the scope of the article, and the word "all" again appeared in square brackets before the word "activities". The phrase "protection of human life" had been taken to include the protection of human health.

He pointed out that the introductory lines of article XVI.A were identical with those of article XVI (now designated article 13). However, with regard to article XVI.A, the expression "adoption and implementation" had raised doubts in the minds of some representatives as to whether the only rules, standards and procedures whose implementation was contemplated were the new ones to be adopted under those articles. After some discussion, the Group had agreed upon a foot-note acceptable to all members which recorded the understanding that the rules, standards and procedures to be implemented included, in so far as States that were parties thereto were concerned and to the extent that they remained in force, those rules, standards and procedures that were in force on the date of the entry into force of those articles. The text of the draft article had been included in the Arabic series of numbers as article 14.

Three paragraphs dealing with the rights of coastal States appeared on page 103 of document A/8721 as article XVII. The first paragraph, based on paragraph 12 of the Declaration of Principles, required that States and the Authority, in their activities in the area, should pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as those of all other States which might be affected. The second paragraph dealt with emergency measures which a State was entitled to take when facing grave and imminent danger to its coastline or related interests from pollution and other hazardous occurrences caused by activities in the area. That paragraph was derived from paragraph 13 (b) of the Declaration of Principles, which, however, began with the phrase "Nothing herein shall affect...", thus conveying the idea that the right to take such measures was one to which a State was already entitled under customary international law. The third paragraph covered cases where a

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sea-bed resource lay across the boundary between national jurisdiction and the area and its exploration or exploitation would require the agreement of - and, in certain circumstances, consultation with - the coastal State concerned.

In considering the first paragraph of the article, some members of the Working Group had decided to formulate a text which would not be addressed to States (as paragraph 12 of the Declaration had been) but would cover "activities" in general. Some representatives had felt that the text should apply to industrial exploration and exploitation activities and others that it should apply to all activities. Some had wished the provision to apply generally to activities in the area, while others had favoured its application to activities in regions of the area adjacent to its boundary or limits. Those differing views were reflected by the use of square brackets in paragraph 1 of the alternative text (A) produced as a result of the Group's second reading. Square brackets had also been used to indicate a lack of general support for a provision for the elaboration of a system of notification in accordance with the requirement of consultation with the coastal States concerned and for a second provision which would require industrial exploration and exploitation activities in regions of the area adjacent to its limits to be conducted with the concurrence of the coastal State or States concerned.

Some representatives had felt that it would not be appropriate to look at the matter merely from the point of view of States. Their opinion, reflected in the second version of paragraph 1 of alternative (A), had been that it was also necessary to safeguard the area and the rights of the Authority as the entity with central responsibilities with respect to the area. Foot-note 22 drew attention to the change in the title of the article which would be required if that version was adopted.

Opinions had also differed as to a State's right to take remedial action in the face of grave and imminent danger, which was dealt with in paragraph 2 of alternative (A). In one view, the right of a State to take such measures under customary international law was subject to the limits imposed by that law, such as necessity and proportionality, and should be restated in the article without qualification. In another view, the vagueness of the limits imposed on that right by customary international law made it necessary to regulate its exercise within the context of the articles. The two views were reflected in alternative versions

of paragraph 2 of alternative (A). Paragraph 3 of the same alternative remained within square brackets, since no agreement had been possible on the terms of such a provision.

Alternative (B) reflected the opinion of some representatives that there was a need for a very broadly worded text providing for co-operation between coastal States and the Authority in a zone of specified width on either side of the boundary between the areas under their respective jurisdiction. Co-operation in that zone would result in an accommodation between the activities of the coastal State on the one hand and activities in the area on the other. The actual means for achieving that accommodation might be worked out in a separate convention, a device which would also be required in connexion with the provision in paragraph 2 of alternative (B) under which coastal States would transfer to the Authority a portion of the financial benefits obtained from the exploitation of the natural resources of maritime areas adjacent to the limits of the international area. Foot-note 24 mentioned the change in the title of the article which would be necessary if paragraph 2 of alternative (B) was adopted.

Attention had been drawn to the possibility that the concept of an "intermediate zone", which had formed part of a written proposal before the Committee, might be relevant to the article.

With the completion of the second reading of the article, it took its place in the Arabic series of numbers as article 15.

The basis for the Working Group's discussion of the legal status of waters superjacent to the area had been article XVIII on page 104 of document A/8721. Subparagraph (b) of the original text had been deleted at the outset, since it was now covered in paragraph 2 of alternative (A) of article 15. Following the Group's second reading of the article, a first paragraph, based on paragraph 13 (a) of the Declaration of Principles, maintained the status of the waters superjacent to the area. Alternative opening phrases reflected differing views concerning the possibility that the régime for the sea-bed could affect that status. The reluctance to characterize the waters superjacent to the area as "high seas" appeared to reflect apprehension concerning the use of traditional terms in the context of the imminent and wide-ranging revision of the law of the sea. A second paragraph, on which no agreement had been reached, reflected the views of those who wished to see the principal aspects of the freedom of the high seas maintained

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and covered the material found in subparagraph (c) on page 104 of document A/8721. In the view of one representative, the entire article was superfluous and should be omitted. With the completion of its second reading, article XVIII became article 16 of the Arabic series.

Article XIX, on page 105 of document A/8721, contained two statements of broad principle on accommodation of uses of the marine environment (paragraphs 1 and 2) and a third paragraph which referred to certain regulatory norms. The Group had decided to retain the two statements of broad principle and to incorporate the reference to regulatory norms in a note recognizing the possibility of more detailed treatment of "non-interference rules" at a later stage. In the original article XIX, the first statement of principle had stipulated that activities in the marine environment should be conducted "with reasonable regard" for exploration and exploitation of the area, whereas the second such statement had said that exploitation of the area should not result in "unjustifiable interference with" other activities in the marine environment. In one view, that difference of approach, which appeared to accord a kind of primacy to activities in the marine environment as against sea-bed exploitation, had been unwarranted. The Group as a whole had been unable to accept the use of either the "reasonable regard" or the "no unjustifiable interference" formula in both cases, so that both had been included as alternatives in each paragraph. The title of the article had been altered so as to be neutral on the point. The article would now be article 17 in the Arabic series of numbers.

In the course of the Group's second reading of article XX as it appeared on pages 106 and 107 of document A/8721, it had become clear that the issues involved could only be dealt with in an acceptable manner after it had been decided which entities - whether States, the Authority exclusively, States and the Authority, juridical persons, etc. - should explore and exploit the sea-bed. It had been agreed that detailed rules on responsibility were needed and should be included in the articles or in a separate instrument, as had been done in the case of the Outer Space Liability Convention. It had also been pointed out that the question of the responsibility of the Authority ought to be covered expressly in the article and that that would not be practicable until the character and status of the Authority had been determined following the discussion of the international

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machinery. For those reasons, and in view of the scope and complexity of the subject matter, the Group had decided to return to the article at a later stage.

It had been noted during the discussion of article XX that the term "responsibility" used in paragraph 14 of the Declaration of Principles and in the working paper should be more clearly defined, according to whether it meant "liability", "obligation" or something more. Reference had also been made to the questions of whether liability for damage should be strict and whether States ought to be liable jointly and severally for damage caused by an organization of which they were members.

Article XX now appeared as article 18. Two minor changes had been made: the number /1/ had been added at the beginning of the first paragraph to indicate that some felt only that paragraph should appear in the article and that the rest of the text was unacceptable; the square brackets around the word "provisions of these articles" had been removed.

The Working Group had also dealt with two new articles. The first had been based on a text submitted by Zambia, which had originally read as follows:

> "In order to enable land-locked States to explore and exploit the area and to derive benefits therefrom on equal terms with coastal States, land-locked States shall have the right of free access to and from the area."

Although that text had received considerable support, some representatives had felt that it telescoped two issues: firstly, the question of deriving benefit from the area, which was dealt with in article 7, where the interests and needs of the developing land-locked countries had been given an appropriate emphasis not found in the Zambian text, and, secondly, the question of free access to and from the area, a principle which, by itself, might have received unqualified support. The text had been reformulated to state the "right of free access" first, and the section dealing with benefits had been placed within square brackets. Some representatives had felt that the words "right of" in the phrase "right of free access" were unnecessary and lacking in precedent, and they had also been placed in square brackets. It had been proposed that certain other States, broadly described as "geographically disadvantaged", should receive treatment similar to that accorded to land-locked States both as regarded access to the area - which, for example, in the case of shelf-locked States, might necessitate

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their traversing the territorial seas of neighbouring States to reach the area - as regarded the distribution of benefits. Not all representatives had accepted that proposal, and the reference to "geographical disadvantaged States" appeared in square brackets. The word "free" in the phrase "free access" had also been placed in square brackets on the ground that its meaning was not clear and that it was in any event redundant. The view had also been expressed that the article should not be interpreted as discriminating in favour of land-locked countries with regard to access to the area. The article had been designated article 19 in the Arabic series.

The representatives of Turkey and Greece had submitted texts on archaeological and historical objects which it had been possible to combine into a composite text, indicating by means of square brackets the one particular area of disagreement. Both texts had sought to ensure preservation of all objects of an archaeological and historical nature found in the area, an idea which had received wide support. The two proposals had differed in that one would confer a preferential right to an object found on the sea-bed on the "State of the country of origin" and the other would confer it on the "State of cultural origin". A third alternative, the use of the phrase "State of archaeological and historical origin", had been suggested during the Group's discussion, and all three versions had been included within square brackets. Both original texts had envisaged that the Authority would have primary responsibility for the preservation and also the disposal of objects found. That idea had not been accepted by all members, and the corresponding text had been placed in square brackets. One representative had felt that there should be no question of disposal of a find or of a preferential right to it and that those provisions should be omitted. Another representative had been of the opinion that it was inappropriate to deal with the subject in the context of the articles and that the text should be omitted altogether.

A second paragraph, dealing with the recovery and disposal of wrecks and their contents, had been provisionally included in the article. It had been acknowledged that the paragraph might require further study in the light of existing international agreements on the matter, and the paragraph had therefore been included in square brackets. The article as a whole now appeared as article 20.

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(Mr. Pinto, Sri Lanka)

The Working Group had briefly discussed article XXI, on page 108 of document A/8721, and had decided that it should be considered in detail at a later stage, perhaps after discussion of the articles dealing with the international machinery. Article XXI would now be designated article 21 in the Arabic series of numbers.

The Working Group had thus completed its second reading of the draft text dealing with the status, scope and basic provisions of the régime. His statement represented a personal assessment of the results of that second reading and could not be held to be binding on any delegation. The Working Group had now commenced its first reading of a set of draft texts dealing with the status, scope, functions and powers of the international machinery.

Mr. VINDENES (Norway) noting that his statement was intended to provide the Working Group with a knowledge of the evolution in his delegation's views since the general debate of the previous year, emphasized that on the question of the régime his delegation was in favour of putting the Declaration of Principles as far as possible into treaty language. It was concerned to see the reluctance with which some delegations had greeted the proposal and, in particular, would view as unfortunate any shifting of the commitment to consider the international sea-bed area the common heritage of mankind from the operative part of the treaty to the preamble. That commitment was fundamental and, despite its lack of precision, properly belonged in the operative part.

Naturally, it would be unrealistic to expect - except in so far as the establishment of the machinery was concerned - that the principles could be elaborated to any substantial degree, nor would extensive elaboration be desirable since it would limit the freedom of action of the future international organization. The establishment of precise rules on the many issues which would require regulation should be left to that organization, subject only to the 15 principles as incorporated in the text of the treaty. None the less, some elements could be spelled out more precisely. For example, his delegation would support a clause such as the one bracketed in the present text, to the effect that activities in the area must not result in any unjustifiable interference with other legitimate uses of the seas such as navigation and fishing. Specific reference should also be made to situations where the dividing line between the international sea-bed

(Mr. Vindenes, Norway)

area and areas under national jurisdiction cut through mineral deposits, and it should be clearly stated that in such cases exploitation could only be carried out in agreement with the coastal State or States concerned. His delegation was pleased to see that that point had been covered by the bracketed text.

His delegation had studied with interest the United States proposal relating to the provisional entry into force of the provisions relating to the exploitation of natural resources, and, to the extent that the proposal would shorten the interval between the end of negotiations and the entry into force of the treaty, his delegation supported it. Consequently, it looked forward to seeing the study of precedents which had been requested.

Turning to the question of the machinery, he pointed out that negotiations had reached a stage when it was essential for a mutual spirit of accommodation to be shown and that, since the most difficult questions facing the Sub-Committee were, precisely, those relating to the machinery and time was short, it was entirely appropriate that the terms of reference of the Working Group should include negotiation of questions of substance. In the hope of facilitating a negotiated settlement he suggested that a solution concerning the machinery should be based on the following two main elements. Firstly, the international organization to be established should, within the framework of the treaty, have broad regulatory powers and all activities relating to the exploration and exploitation of natural resources should be subject to its decision. Furthermore, it should be able to engage directly in exploration projects should it so desire and should be free, i.e. not bound by detailed rules in the treaty. Questions such as the provisions governing licensing and the distribution of the organization's income should be left for the organization itself to settle through decisions taken by its General Assembly on proposals from the executive organ, subject only to the 15 principles incorporated in the treaty. Given the rapidity with which the environment would be changing in the decades to come, it was essential that the organization should be given a high degree of flexibility in its operations.

Secondly, concerning the rules governing the decision-making process, it would be unrealistic to expect the most highly industrialized countries to support an organization with such broad powers unless certain concessions were made on the

(Mr. Vindenes, Norway)

issues relating to the composition and decision-making process in the executive organ of that organization. Several proposals had already been submitted in that connexion. He merely wished to emphasize that concessions in those matters, provided they did not go too far, would be far less damaging than concessions on the scope of the organization's powers concerning which it was essential not to give way.

Mr. ZEGERS (Chile) requested that the text of the statement by the Chairman of the Working Group should be reproduced in extenso and that once it had been circulated the Sub-Committee should devote another meeting to a political analysis of the main points dealt with by the Working Group. Then as the representative of Norway had suggested, the Sub-Committee should go on to the next stage of negotiations.

The CHAIRMAN said that, if he heard no objection, he would take it that the Sub-Committee wished to have the statement by the Chairman of the Working Group reproduced in extenso in the summary record of the meeting.

It was so decided.

Mr. ROMANOV (Union of Soviet Socialist Republics) pointed out that foot-note 19 to version (D) of draft article 12 concerning the transfer of technology could be omitted since page 34 of the comparative table did not relate to the transfer of technology. That would facilitate the achievement of an agreed decision on the transfer of technology. The Sub-Committee could revert to those questions regarding the transfer of technology on which agreement had not been reached as soon as there was evidence that a solution had been reached concerning the régime to govern the international sea-bed area.

He also wished to point out that there was a certain amount of repetition in draft articles 7 and 11. He suggested that the first three words of draft article 7, "Scientific research and", should be deleted. His delegation would then be prepared to agree to the deletion of draft article 7, paragraph 3, on the understanding that version (B) of draft article 11 - which reproduced article 7, paragraph 3 - would remain as it stood and that that part of version (C) of article 11 which reproduced the idea that scientific research should be for the benefit of the whole of mankind - contained in the first two words of article 7 -

(Mr. Romanov, USSR)

would also be included. His delegation was prepared to agree to such an amendment provided that Peru and the other delegations which had supported alternative 11 (C) agreed. The proposal was made in a spirit of compromise in order to try to increase the small number of agreed articles; however, if there was any objection he would not press the matter.

The CHAIRMAN said that since the report of the Working Group was not officially before the Sub-Committee, any comments about the document which were made in the Sub-Committee should be discussed by the Working Group.

Mr. de SOTO (Peru) agreed that for the time being it was the Working Group, rather than the Sub-Committee, which should discuss the Working Group's report.

The CHAIRMAN, replying to a query from Mr. MOORE (United States of America), recalled that it had been agreed at earlier meetings that the Sub-Committee was free to offer guidance to the Working Group. However, a document which was not officially before the Sub-Committee should not be discussed in detail.

Members would have the opportunity at forthcoming meetings to undertake the political analysis of the Working Group's work requested by the representative of Chile.

Mr. PANDEY (Nepal) said that his delegation was disappointed at the unnecessarily large number of square brackets and foot-notes in article 19, which dealt with access to and from the area. Their presence suggested a lack of appreciation of the cause of land-locked countries and an attempt to prevent them from achieving the objectives categorically sought for them in the Declaration of Principles. He appealed to all countries to ensure that land-locked countries shared in the common heritage of mankind without any discrimination.

Mr. THOMPSON FLORES (Brazil) agreed with the Chairman that, at the present stage, amendments to the Working Group's draft should be discussed in the Working Group itself. However, the Sub-Committee should be free to discuss and modify it as well.

It was becoming increasingly difficult for some delegations to service all the Working Groups of the plenary Committee, and in the future it might be necessary to take up some items in a Sub-Committee rather than in a Working Group.

The CHAIRMAN said that members certainly could provide guidance to the Working Group; however, since the latter's work was proceeding smoothly, the Sub-Committee need not take over its task.

Mr. JAGOTA (India), referring to the Nepalese representative's statement, expressed regret that article 19 was unsatisfactory to the land-locked countries. Difficulties had arisen in the Working Group because of confusion regarding concepts.

As a transit State, India believed that land-locked countries must have access to and from the sea and the area, that they must have the same rights as coastal and transit States in the area and that they must share in the benefits - perhaps even on a preferential basis - derived from its exploration. Unless a serious attempt was made to ensure that land-locked States received fair treatment, the forthcoming Conference on the Law of the Sea was unlikely to be successful.

Mr. MOORE (United States of America), referring to the Brazilian representative's remarks, said that it was one thing for the Sub-Committee to send back to the Working Group texts on which confusion persisted; it was quite another to reopen discussion on texts from which square brackets had been removed and which thus represented the result of genuine negotiation and compromise. Although his delegation could not fundamentally object to reopening discussion on agreed texts, it felt that if that was done the prospects for progress at the summer session would be dim.

The CHAIRMAN said that the Sub-Committee had the right to take any decision it wished regarding the work of its subsidiary bodies. He interpreted the United States representative's statement as an appeal. Since the Working Group was open-ended, it would be helpful if all members of the Sub-Committee could take part in its negotiations. The Chairman of the Working Group reported fully on its work to the Sub-Committee, and he trusted that members would make any comments they felt were necessary and would recognize that when an agreement had been reached in the Working Group, it reflected the views of all concerned. The Working Group would of course take the comments of non-members into account.

Mr. de SOTO (Peru) agreed that delegations which were not members of the Working Group should have the opportunity to express their views on the

(Mr. de Soto, Peru)

Group's deliberations. He had not addressed himself to the Soviet representative's remarks in his earlier statement because he recognized that the Working Group's report was not officially before the Sub-Committee. However, it would be wrong to consider agreements reached in the Working Group as sacrosanct. The views expressed by the Working Group could commit only its own members.

Mr. KANIARU (Kenya) agreed that the Sub-Committee should have the opportunity to examine the results of the Working Group's work in all respects in order to ensure that its report corresponded with previous debates in the Sub-Committee and to define areas which required further negotiation, particularly in situations where a minority might be pressing its views excessively.

Mr. POLLARD (Guyana) said that in view of the financial constraints on his Government, which determined its level of representation in United Nations forums, his delegation did not consider itself restricted from raising any issue in any parent body which had been agreed upon in a subsidiary body.

Mr. MANGAL (Afghanistan) said that his delegation would express its general views on the international régime and machinery at a later stage. It fully shared the Nepalese delegation's disappointment regarding article 19 and hoped that the Sub-Committee and the plenary Committee would give favourable consideration to the particular needs and interests of land-locked countries. The spirit of understanding reflected in the Indian representative's remarks was most encouraging.

The meeting rose at 5.35 p.m.

UNITED NATIONS

GENERAL ASSEMBLY

PROVISIONAL

For participants only

A/AC.138/SC.I/SR.68
9 April 1973

ORIGINAL: ENGLISH

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

SUB-COMMITTEE I

PROVISIONAL SUMMARY RECORD OF THE SIXTY-EIGHTH MEETING

Held at Headquarters, New York,
on Thursday, 5 April 1973, at 11.05 a.m.

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

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STATEMENT BY THE CHAIRMAN

The CHAIRMAN* said that nothing in the personal assessment of the work of the Sub-Committee and Working Group 1 at the current session which he was about to make was intended to compete with the summary records as a source of factual information.

The Sub-Committee had discussed general and specific questions relating to its mandate. At the suggestion of the Chilean delegation, the Secretariat had been requested to provide a brief interim report on economic and technological developments relating to sea-bed resources, on the basis of information available to it, in time for the summer session. A more detailed report would be submitted at a later stage for consideration at the Conference on the Law of the Sea. The United States delegation had introduced a proposal inviting support for the idea of provisional entry into force of aspects of the régime and machinery at such time as a new treaty relating to the law of the sea was open for signature. Pursuant to the United States proposal, the Sub-Committee had approved a recommendation to the main Committee (A/AC.138/SC.I/L.20) that the Secretary-General be requested to describe factually, for the Sub-Committee's use at its summer session in 1973, examples of precedents of provisional application, pending their entry into force, of all or part of multilateral treaties, especially treaties which had established international organizations and/or régimes. The Rapporteur would present that recommendation to the Committee for approval later in the week. The language of the recommendation had been carefully chosen to avoid dubious interpretations.

In the course of the discussion of archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction, the Greek delegation had described provisions of the working paper (A/AC.138/SC.I/L.16) which it had submitted the previous year. The Turkish delegation had tabled a draft article on the item which was contained in document A/AC.138/SC.I/L.21.

He had been greatly encouraged by the enthusiasm with which both members and non-members of the Working Group had attended the open-ended deliberations and deeply regretted that circumstances had arisen which had compelled him to insist on the exclusion of all but accredited representatives of States from the Group's

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* The full text of the statement made by the Chairman will be issued as document A/AC.138/SC.I/L.23.

(The Chairman)

meetings. On behalf of the Sub-Committee and on his own behalf, he thanked the Chairman of the Working Group for the excellent detailed accounts he had rendered of the progress in that body. He sincerely hoped that members of the press and non-governmental organizations would profit from those reports as had the members of the Sub-Committee. The value which the Sub-Committee attached to them had been manifest in its decision to have them reproduced in extenso in the summary records.

It would greatly facilitate the Sub-Committee's task, especially during the crucial summer session, if all members made an extra effort to understand the nature of the outstanding problems and seek ways of narrowing areas of disagreement. The results of its endeavours thus far, viewed against the report of the preceding session, had been encouraging; however, the distance and the nature of the road ahead demanded the strongest sense of purpose and urgency, which would be crucial to the success of the Conference.

Thus far, the Working Group had completed its second reading of the norms and principles relating to the régime, item 1 of its programme of work. In most cases, the draft texts appeared to give a much clearer picture of the differing views within the Group. The Sub-Committee could make even further improvements in that regard, thus enhancing its effort to present draft articles for consideration at the Conference. However, he felt that the Working Group had carried its work on the principles relating to the régime as far as could be expected at the present stage.

There were a number of problems that would have to be considered and, it was to be hoped, solved before work on the régime could be carried substantively further. The priority of importance attached to various problems by different delegations continued to haunt the Sub-Committee's efforts. The discussions in the Working Group had demonstrated more than ever that, in addition to the question of the limits of the area, two matters must be settled if progress was not to prove elusive: firstly, the functions of the proposed authority, i.e. the range and nature of the activities for which it would be responsible, and, secondly, the question of who could exploit the area. Another related question, which was dealt with under the heading "general norms regarding exploitation", was whether the authority should have the power to act with a view to minimizing price fluctuations for relevant minerals, or, more generally, the question of economic

(The Chairman)

considerations and implications relating to the exploitation of the resources of the area, including their processing and marketing. The Sub-Committee must face those subjects squarely, perhaps at a different level, in order to bring the views of delegations closer together. As to the question of machinery, he urged representatives to reflect on the composition and decision-making procedures of the Council. Accommodation on that subject would open the door to final agreement. Delegations should request sufficiently flexible instructions from their Governments to enable them to embark on serious negotiations in Geneva. He could not overemphasize the need to seek and reach basic accommodation that would assist in the preparation of articles designed to bring into force a generally acceptable régime and machinery.

Should it ultimately prove impossible to resolve certain important differences, the Sub-Committee's work would have been completed when it had gone as far as it could towards that goal and had set out for consideration by the Conference, in as clear and concise a form as possible, the range of alternatives in regard to various subjects that had emerged during its work. It would then be for the Conference, the final arbiter, to adopt the necessary political decisions or consider what action to take. While it would be preferable to send to the Conference a more or less agreed set of articles, it would not necessarily be a dismaying end to the Sub-Committee's work if it was unable to do so in all cases. The world community, which was larger than the Committee, would have to make its own independent aasessment of the draft articles.

At the summer session, the Working Group would continue where it had left off with regard to the machinery. The Sub-Committee would receive progress reports from the Group in the course of the session and a final report some three weeks before its conclusion, at which time it would consider what action should be taken to solve problems that might be susceptible of solution and, finally, decide how it should present the results of its work to the main Committee for transmittal to the General Assembly.

He had gathered from consultations that it was the general view of the Sub-Committee that the document to which the Chairman of the Working Group had referred constantly in his last progress report - containing the various texts on the status, scope and basic provisions of the régime - was indispensable for the study and fullest possible understanding of that report and should be circulated as

(The Chairman)

a Sub-Committee document. If he heard no objection, he would take it that the Sub-Committee agreed.

It was so decided.*

Mr. THOMPSON FLORES (Brazil) proposed that the Chairman's statement should be circulated as a document of the Sub-Committee.

The Chairman said that such a procedure would have financial implications. If he heard no objection, he would take it that the Brazilian proposal was acceptable to the Sub-Committee.

It was so decided.

OTHER ASPECTS OF THE SUB-COMMITTEE'S WORK

Mr. RYDBECK (Sweden) congratulated the Working Group on the results it had achieved thus far in completing the second reading of the draft texts on the régime. The Group had been wise in deciding mainly to draft clear alternatives where possible rather than mark disagreements by bracketing texts. The method adopted was a clear way of presenting the remaining areas of agreement and disagreement and would make it easier for members to adopt a position. At the present stage of its work, the Group should be requested only to continue to try to reduce the number of points of disagreement to a minimum. It was now time to turn to the texts regarding the international machinery. Commendable progress had already been achieved, and the negotiations to follow would be considerably facilitated if efforts were concentrated on the difficult task of completing the readings of those texts. The time when true negotiations could take place seemed to be closer at hand in the Sub-Committee and its Working Group and in other subsidiary bodies of the Sea-Bed Committee, and he was confident that the Chairman would be able to provide the necessary guidance.

He cautioned against reformulating the principles contained in General Assembly resolution 2749 (XXV), which were the result of laborious negotiations and compromise. The final language of some of those principles in many instances hid divergent views which were not easy to reconcile. Despite their legal and technical shortcomings, many of the principles could be incorporated more or less in their present form in the future treaty. With respect to the broad scope of the régime, he cautioned against eroding the vital concept of the common heritage of mankind; some of the alternatives regarding the régime did not seem to take it fully into account.

* The document was circulated during the meeting under the symbol A/AC.138/SC.I/L.22.

(Mr. Rydbeck, Sweden)

His delegation had noted with satisfaction that all statements regarding the principle of preservation of the area exclusively for peaceful purposes had emphasized the importance of that principle. However, different opinions had been expressed as to whether the treaty should reflect the principle in detail or in general terms. His delegation favoured the latter course. The task of elaborating regulations for its implementation should be left to other organs, such as the Conference of the Committee on Disarmament, which possessed the expertise required to deal with all aspects of the problem.

As to the subject dealt with under the heading "Who may exploit the area", the sea-bed authority should be empowered to issue licences governing all activities regarding the exploration and exploitation of the natural resources - both mineral and living - of the sea-bed and the subsoil thereof in the area. Such licences should in principle be granted directly to States but could also be issued to natural or juridical persons, provided that they were sponsored by a State which could guarantee the fulfilment of the conditions under which the licence had been issued. States should also be able to issue sublicences to natural or juridical persons under their jurisdiction, but in such cases the State itself would be responsible for the fulfilment of the conditions of the contract. The authority should also be able to engage in exploration and exploitation activities on its own or in joint ventures. It would be in a better position than the Committee or the Conference on the Law of the Sea to take specific decisions as to how and by whom activities in the area should be conducted in the interest of all mankind. His delegation's firm support for strong machinery presupposed that when delimiting coastal-State jurisdiction over the sea-bed, the Conference would apportion to the international community a meaningful area of the sea-bed and not only the deep ocean basin or abyssal floor.

With regard to the important concept of access to the area, the view that the special geographical position of certain States should not result in their being prevented from enjoying their share of the common heritage of mankind should be duly reflected in the future treaty.

With respect to the United States proposal regarding the provision entry into force of the treaty once an agreed text had been prepared at the Conference, he agreed that the rapid entry into force of the permanent régime and machinery could

(Mr. Rydbeck, Sweden)

ensure that any exploitation of the area was covered by the treaty from the outset. Pure formalities should not prevent the functioning of a treaty which had been adopted by a qualified majority of States participating in the Conference. However, the question arose whether it might not be more appropriate if all the basic provisions of the treaty entered into force at the same time. Some difficulties could be envisaged if the United States proposal was only partially implemented. The study requested from the Secretary-General concerning the ways in which similar situations had been dealt with in the past would be of great value when it came time to take a final decision on the matter.

Mr. ZEGERS (Chile) expressed confidence in the ability of the Chairmen of both the Sub-Committee and the Working Group to guide the negotiations during the summer session. It was imperative to resolve areas of disagreement before the Conference on the Law of the Sea so that the Committee could present agreed texts to the Conference. The Sub-Committee should not renegotiate points which had already been negotiated in the process of formulating the Declaration of Principles.

One point on which negotiations were necessary was whether the area and its resources were in fact the common heritage of mankind, i.e., whether all States were entitled to participate in the administration of the area and share in the benefits derived therefrom. It was clear from the Declaration of Principles that the concept of the common heritage of mankind was a legal principle. He had heard with satisfaction the remarks of the representative of Sweden in that connexion and noted that Norway and Sweden had been the first developed countries to support the concept of the common heritage.

With regard to the scope of the régime, it should apply not only to the exploitation of the area but to the entire economic process, including production, distribution, marketing and related matters such as pollution and scientific research. Two opposing concepts had emerged: one favoured the fullest exploitation for the benefit of the entity carrying out the exploitation, while the other favoured the rational development of the area to ensure maximum benefit for all developing countries.

(Mr. Zegers, Chile)

A number of Latin American and other delegations supported the idea that the area should be exploited by a sea-bed authority, which could also grant licences to other parties. Other delegations felt that the area should be open to anyone having the capacity to conduct exploitation activities, a view which was not in keeping with the concept of the common heritage of mankind.

Political negotiation was also necessary with respect to the powers to be entrusted to the international machinery and the voting procedures it would follow, as well as the United States proposal concerning the provisional entry into force of the régime and machinery.

Mr. KOPAL (Czechoslovakia) said that the Working Group had been one of the most hard-working bodies of the Sea-Bed Committee. The method of work it had followed in drafting the various texts had been useful, and some progress had been achieved. However, bearing in mind the terms of reference of the Working Group as set forth in paragraph 71 of the Committee's report to the General Assembly (A/8721), it had only entered the first stage of defining areas of agreement and disagreement. The Working Group should now negotiate questions of substance on the points where no agreement existed.

He urged members to reconcile their opposing positions; otherwise, hopes for an effective international régime and machinery would remain unfulfilled.

Mr. RATINER (United States of America) said that, in general, his delegation agreed with the practice of drafting alternative texts with regard to matters of unusual difficulty. The existence of such alternative texts did, however, tend to polarize views and prevent the achievement of a compromise solution. Efforts should therefore be made in both the Working Group and the Sub-Committee to draft alternative texts which would bridge the gap between polarized texts wherever possible. The representative of Sweden had said that the Declaration of Principles disguised divergent views, many of which remained unchanged. He wondered whether the Sub-Committee could continue to employ the language of the Declaration of Principles, which, as it were, papered over those divergent views, or whether it should not, as was the case in the Working Group, isolate the different opinions in alternative texts in the hope of reaching a compromise

(Mr. Ratiner, United States)

solution. The Committee was seeking to draft rules to gover man's behaviour in the oceans, and agreement or compromise on the important points which, despite the existence of the Declaration of Principles, were still in dispute was essential.

With reference to the remarks of the representative of Sweden concerning the powers of the international authority, his delegation felt it would be unconscionable from the standpoint of common law for the authority both to regulate deep sea mining activities and to engage in them itself. That would place States engaged in similar activities at a disadvantage and raise doubts as to whether due process of law was being observed. His delegation still believed that the authority should not have the power to exploit sea-bed resources directly; he urged those in favour of such an arrangement to reflect seriously on the implications of giving regulatory and judicial authority to the same body. He agreed with much that had been said by the representative of Chile, and particularly with his call for negotiations on areas of agreement and disagreement. He had no wish to see even improved versions of the text produced by the Working Group put to the vote, for it was probable that only a few of those texts would receive sufficient support to form part of a truly universal treaty. Negotiation and compromise were, therefore, essential on most issues.

He could not accept the Chilean representative's interpretation of the concept of the common heritage of mankind; the phrase "common heritage" did not mean "common patrimony" in the common law sense of the word "patrimony". It would not now be appropriate to reopen the discussion of the legal meaning of the term "common heritage". The Working Group had discussed that question and had accepted the inclusion in document A/AC.138/SC.I/L.22 of the text of the first paragraph of alternative version (A) of article 2, which reflected the view of his own and other delegations. The representative of Chile had mentioned certain points which he felt should be included in the treaty. His delegation accepted the need for articles of that type but not the contention of the representative of Chile that their inclusion in the treaty was dictated by the common heritage principle.

Mr. ROMANOV (Union of Soviet Socialist Republics) pointed out that the Working Group had failed to reach agreement on even one of the 20 draft articles contained in document A/AC.138/SC.I/L.22. While progress had been made with regard to certain articles, there were others for which there were three or four complete alternative texts, a situation which caused his delegation great concern. The only way to resolve the situation and to achieve agreement was, as some previous speakers had said, through international co-operation based on mutual consideration for and understanding of the interests of all the States in the Committee and of the broader international community as a whole. His own delegation had, indeed, demonstrated such a spirit, making important concessions. It had agreed, for example, that the sea-bed and the subsoil thereof should be considered as part of the common heritage of mankind, despite the fact that there were differing views as to the meaning and even the value of the latter concept. Again, his delegation had originally felt that exploitation of sea-bed resources should be carried out by States. However, taking the interests of many developing countries into account, he had stated in the Working Group that his delegation would not object to exploitation of sea-bed resources by both States and the international authority, once the latter was properly equipped to undertake such activity. At the request of many countries from Africa and Asia, his delegation had agreed to certain changes in article 6, an article on which basic agreement had now been reached except for the continued support by one delegation of alternative text (B). The way to success in the Sub-Committee's work lay through the process of making concessions, but it was important that those concessions should be reciprocal. The situation should not arise where one side made concessions and the other took them for granted, making no similar moves of its own.

There had recently been many references to the use of alternative texts. Some delegations had even claimed that it was impossible to produce a single draft treaty on the law of the sea and that there should be several such drafts, with the final choice between them left to the forthcoming Conference. The attitude seemed to be that if the Conference chose a good text, so much the better and if it chose a bad text, that was merely unfortunate. That was a most inappropriate method of drafting such an important instrument of international law. The need was for a single draft treaty, of a universal nature and acceptable to all. He saw no grounds for pessimism or for waiting until the Conference could vote on texts. Instead,

(Mr. Romanov, USSR)

every effort should now be made to draft an agreed text and accommodate differing views to the greatest extent possible.

In that connexion, he shared the view of the representative of Chile that all the necessary preparatory negotiations should be undertaken prior to the Conference. He understood that representative's concern over that point, for Chile was to be the host country for the Conference. The host country was always in a delicate and difficult position when controversial matters were being discussed, and it was, indeed, a well-founded practice for the host country to refrain from making statements on such subjects in order to ensure the success of the international meeting which was to be held in its territory.

Mr. MENDOZA (Philippines) said that, while periodic political appraisal of the work being done by the Sub-Committee might be of use, it was perhaps not appropriate to undertake such an exercise at the present time. His delegation was not certain, for example, that the Committee's work would be facilitated by adopting the position that the concept of the common heritage of mankind necessitated the inclusion of certain articles in the treaty, although it would certainly have some influence on the latter's content since it could not be repudiated. The political appraisal could more profitably be undertaken once the Working Group had completed its discussion of the machinery, for only when full details of its structure and powers were available could the impact of the régime on States be assessed. The making of an appraisal would also require information on the decisions taken in the other Sub-Committees and the plenary Committee with regard to such important related matters as the concept of the archipelago and the limits of the territorial sea.

He had recently been able to participate himself in the discussions of the Working Group and could say that the very existence of a large number of alternative texts and bracketed phrases showed that progress was being made. He considered that the Working Group had adopted the most reasonable procedure, and he endorsed its continued use.

He noted the United States proposal concerning the provisional application of certain aspects of the régime. That proposal raised a number of practical problems to which his delegation would give careful thought before the next session.

Mr. DE SOTO (Peru) said that he felt the Working Group had made some progress. It had drawn up in document A/AC.138/SC.I/L.22 the principles which must govern the international régime for the sea-bed. Of those principles, Nos. 6 and 9

(Mr. De Soto, Peru)

were particularly important, since both were closely linked to what his delegation understood by the principle of the common heritage of mankind. His delegation could not agree that the concept of the common heritage was meaningless; it had, indeed, influenced the content of the entire Declaration of Principles.

It was important to define what was meant by the term "common heritage". His delegation saw little difference between speaking of a "common heritage" and speaking of "common property". In that connexion, the concessions made with regard to article 9 of working paper A/AC.138/SC.I/L.22 were of importance. There was still room for improvement, but it was gratifying to note that alternative texts (B) and (C) no longer expressed the extreme position that only the international authority would be able to exploit the resources of the area. There had also been changes in alternatives (A) and (D), neither of which now excluded the possibility of exploitation by entities other than the authority.

Most delegations, particularly those of the developing countries, had a clear concept of what action should be taken to apply the principle of the common heritage. However, there were slight differences in the positions adopted by different delegations. Norway and Sweden had been the first of the developed countries to subscribe to the principle of the common heritage. In his statement at the current meeting, the representative of Sweden had said that the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction should be exploited by States on the basis of licences issued to them or to natural or juridical persons sponsored by them. His delegation did not agree that that was the best way to give effect to the principle of the common heritage of mankind.

The representative of the United States had raised the problem of possible conflicts of competence between the authority and States. However, the authority could not survive if it had to compete with States. That was a basic political problem that would have to be solved before negotiations could start.

One speaker, in referring to article 6, had said that alternative (B) of that article had been supported by only one delegation. That was not the case: it had been supported by several delegations. Alternative (A) contained the implication that the principle of the freedom of the high seas was applicable to the area of the sea-bed beyond the limits of national jurisdiction. That was unfounded and was

opposed to the international policy outlined in the Declaration of Principles. If that idea was given currency, many delegations feared that individual States would feel entitled freely to extract minerals from the area of the sea-bed beyond the limits of national jurisdiction.

There were a number of countries which wished to dictate the length of time the Sub-Committee should take to complete its work. It was impossible to impose conditions in that regard; the Sub-Committee had to await the outcome of work undertaken by other bodies dealing with questions relating to the sea-bed. That was not to say that the work of the Sub-Committee had reached an impasse. Progress could be made, but only on the basis of real concessions. Such progress would depend on what the representative of Czechoslovakia had referred to as the conciliation of extreme positions. Concessions would have to go beyond the acceptance of general principles.

Mr. BOATEN (Ghana) said that the Chairman, in his opening statement, had acknowledged the difficulties facing the Sub-Committee in its attempt to reach an agreed international position in conformity with the principle that the sea-bed should remain the common heritage of mankind. Despite those difficulties, the Chairman was optimistic that the Sub-Committee would be able to agree on basic principles for the exploitation of the area. His delegation shared that optimism. The problem had been complicated by a number of factors which could not be ignored if agreement was to be reached. Two of those factors were the varying levels of scientific and technological advancement in the countries constituting the international community which was to benefit as a whole from the exploitation of the sea-bed, and the varying economic and geograhpical circumstances of States. The principles that were finally evolved should reflect all such factors in a harmonious manner.

His delegation shared the concern of the United States delegation which was implicit in its proposal for the provisional application of the régime. As he understood it, the provisional authority established for the provisional application of the régime would be no different from the authority which would ultimately be established as a result of the negotiation of a convention on the law of the sea in the Sub-Committee. That proposal was designed to ensure that there was no delay in the application of the régime before the convention came into effect.

(Mr. Boaten, Ghana)

He hoped that the divergences of view reflected in the proceedings of the Working Group would be resolved and that the factors giving rise to them would be given due consideration in the Sub-Committee's future negotiations.

Mr. ZEGERS (Chile) said that it appeared from the debate so far that there was a consensus in the Sub-Committee on the urgent nature of the negotiations it was to undertake. The representative of the United States had said that it was important to negotiate the convention article by article. That was true, but the principle of the common heritage constituted an exception. That principle, as he had already mentioned, had an intrinsic value of its own, at least in the French and Spanish languages. The most important thing was for negotiations to begin; the manner in which they were conducted was a secondary issue. He welcomed the spirit of concession that had been shown by both developed and developing countries.

He assured the representative of the Soviet Union that Chile, as host country for the forthcoming Conference on the Law of the Sea, would not allow intellectual inhibitions to prevent it from continuing to express frank and constructive views on the problems to be discussed at the Conference.

Mr. THOMAS (Trinidad and Tobago) said that his delegation fully supported the method of work that had been adopted by the Working Group. He expressed appreciation to the Chairman of the Working Group for the manner in which he had guided its proceedings.

The Group had made a great deal of progress. It had adopted the worth-while procedure of enclosing in square brackets those parts of the draft treaty articles on which there was only a slight divergence of views and of elaborating alternative texts for those parts on which there was a wide divergence of views. Opinions were divided on the approach to be adopted with regard to the question of the common heritage. His delegation agreed with the Peruvian delegation that the common heritage was an established fact not dependent upon any draft treaty articles. Such articles would do no more than legally consecrate a principle which already existed. Thus, there would be no inherent contradictions - as some delegations had said - in the work of the authority which was to be set up to apply to the régime. His delegation felt that a flexible approach should be adopted, providing for co-operation among all States in the work of the authority.

(Mr. Thomas, Trinidad and Tobago)

His delegation was optimistic that the divergences of opinion which had arisen with regard to the philosophy of the régime would be ironed out during the negotiations to be held at the Sub-Committee's summer session.

Mr. KAMARU (Kenya) said that the tasks of the Working Group would be facilitated if a greater measure of accommodation was shown by certain groups of States in an effort to respond to the aspirations of many developing countries.

His delegation attached particular importance to draft articles 2, 3, 9, 10 and 18, as contained in document A/AC.138/SC.I/L.22, as well as to the question of the rights of land-locked countries.

Referring to the concept of the common heritage, he said that, whether or not a treaty was elaborated, it could not be denied that the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction was the common heritage of mankind. That was a fundamental principle. The treaty would only regulate the activities to be carried out in that area. The question was whether States could exploit the area on behalf of their own peoples or whether all States had a stake in its exploitation, in accordance with General Assembly resolution 2749 (XXV).

Mr. HYERA (United Republic of Tanzania) said that the issue which was crucial to the success of the Sub-Committee's work was whether the principle of the common heritage of mankind did in fact exist or whether it still had to be elaborated. If it did exist, then the Sub-Committee had to concern itself with working out rules for its application.

The Declaration of Principles contained in General Assembly resolution 2749 (XXV) was clear in that regard in so far as it solemnly declared that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, were the common heritage of mankind. Those who had claimed that that declaration was loosely worded had done so out of a desire either to refute it or to cloak it in ambiguity. The work of the Sub-Committee would have been greatly facilitated if recognition had been given to the existence of the principle of the common heritage. In that connexion, he endorsed the interpretation placed on that term by the representative of Chile. The future work of the Sub-Committee would be made much easier if members could agree to that interpretation.

(Mr. Hyera, Tanzania)

He noted that all members appeared to agree on the need to negotiate by consensus. That was the procedure which the Sub-Committee had followed in the past. However, he reminded members that failure to achieve a consensus might well jeopardize the chances of drawing up a convention, which was their ultimate aim.

The CHAIRMAN said that he would address a letter to the Chairman of the Committee, describing the state of progress of the work of the Sub-Committee. He announced that the Sub-Committee had completed its work for the spring session.

The meeting rose at 1.40 p.m.