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

SUMMARY RECORD OF THE THIRTEENTH MEETING

Held at Headquarters, New York,
on Wednesday, 12 November 1969, at 11.5 a.m.

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Consideration, pursuant to operative paragraphs 3 and 4 of
General Assembly resolution 2467 A (XXIII) of 21 December 1968,
of the reservation exclusively for peaceful purposes of the
sea-bed and the ocean floor, taking into account the studies
and international negotiations being undertaken in the field
of disarmament (continued)

Chairman:

Mr. AMERASINGHE

Ceylon

Rapporteur:

Mr. GAUCI

Malta

CONSIDERATION, PURSUANT TO OPERATIVE PARAGRAPHS 3 AND 4 OF GENERAL ASSEMBLY RESOLUTION 2467 A (XXIII) OF 21 DECEMBER 1968, OF THE RESERVATION EXCLUSIVELY FOR PEACEFUL PURPOSES OF THE SEA-BED AND THE OCEAN FLOOR, TAKING INTO ACCOUNT THE STUDIES AND INTERNATIONAL NEGOTIATIONS BEING UNDERTAKEN IN THE FIELD OF DISARMAMENT (A/7741) (continued)

Mr. TSURUOKA (Japan) said that, in view of the mandate which the Committee had been given in General Assembly resolution 2467 A (XXIII), it was most appropriate that it should be kept informed of developments in other United Nations bodies, particularly in the Conference of the Committee on Disarmament which had recently achieved considerable progress on the question of disarmament measures on the sea-bed and the ocean floor.

His delegation had been extremely gratified to learn that the co-Chairmen of the Conference, the representatives of the Soviet Union and the United States of America, had jointly submitted a draft Treaty on the prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Sub-Soil Thereof. It wished to express its gratitude to the two countries concerned, which had taken the initiative in the right direction and had worked consistently to produce a basis for a meaningful treaty on the subject. In view of the importance of the draft Treaty and its relevance to the work of the Committee, the text should be given the fullest possible attention and studied with great care.

The preliminary views of Japan on the question of the prevention of the arms race on the sea-bed and the ocean floor had been expressed in the Conference of the Committee on Disarmament; and there would be a more appropriate opportunity for detailed discussions on the substance of the draft Treaty at a later stage. At the present time he merely wished to reiterate his delegation's statement in the Conference to the effect that it welcomed the agreement between the Soviet Union and the United States on a measure to diminish the terrors of nuclear weapons, and that efforts to enlarge the scope of the prohibition should be continued after the Treaty had come into force. His delegation had also reaffirmed the Japanese Government's view that the prohibition should cover the

(Mr. Tsuruoka, Japan)

entire area of the sea-bed and the ocean floor, whether under the high seas or territorial sea, and had expressed the hope that all States would refrain from emplacing nuclear weapons on the sea-bed under their territorial sea until the territorial sea was covered by the Treaty.

He hoped that the successful working relationships which had now been established between the Conference of the Committee on Disarmament and the Sea-bed Committee would be continued and that, following the significant step taken by the two great Powers in submitting the draft Treaty, other States too would co-operate constructively in a common attempt to produce a really meaningful treaty.

Mr. PINTO (Ceylon) said that the negotiations in Geneva on the prohibition of the emplacement of nuclear and other weapons of mass destruction on the sea-bed had important implications for the Committee. His delegation welcomed the initiative taken by the representatives of the Soviet Union and the United States in the Conference of the Committee on Disarmament in preparing the text of the draft Treaty set forth in annex A of the report of the Conference (A/7741). It noted from the report that several delegations had submitted specific amendments dealing with subjects of great importance. Although some of the amendments had been incorporated in the revised draft Treaty, he assumed that other amendments which had not been rejected or withdrawn would be discussed further in the General Assembly or at a future session of the Conference; and he therefore concluded that much work still remained to be done.

The most important provisions in the present draft were articles I, II and III. Article I amounted to a virtual exclusion of weapons of mass destruction from the sea-bed beyond a twelve-mile belt adjacent to the coast. Article II was significant because of the disclaimer contained in the second paragraph; and article III, concerning verification rights, was undoubtedly likely to give rise to controversy. All three provisions would have certain implications for the work of the Sea-bed Committee.

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(Mr. Pinto, Ceylon)

At present, three major initiatives were being undertaken within the Committee. First, there was the attempt to formulate by the twenty-fifth session of the General Assembly a draft Declaration of the legal principles governing the peaceful uses of the sea-bed beyond the limits of national jurisdiction, with a view to the conclusion of a multilateral treaty embodying those principles. Secondly, a large number of States believed that the sea-bed and its resources were the common heritage of mankind and that the resources of the areas should be exploited for the benefit of all States, taking into account the special interests and needs of the developing countries. Those States - of which Ceylon was one - would like to see the establishment of an autonomous international organization with jurisdiction over the peaceful uses of the area. Thirdly, efforts were being made to establish internationally-agreed outer limits of national jurisdiction.

The Geneva negotiations had implications for each of those initiatives. For example, if the twelve-mile zone referred to in the Geneva negotiations was generally agreed upon for a denuclearization treaty, would the twelve-mile limit be regarded as the limit of national jurisdiction for other purposes? Or again, how would the exercise of the powers of verification provided for under the draft Treaty be reconciled with the exercise of supervisory powers by an international organization with jurisdiction over the area?

Since further time would be required for a more detailed study of the implications of the Geneva negotiations, he hoped that the General Assembly would not find it necessary to take a decision on the draft Treaty immediately. His delegation would welcome the opportunity to study the implications of the text in greater detail before taking a final position on it.

He suggested that, in accordance with the instructions contained in General Assembly resolution 2467 A, operative paragraphs 3 and 4, the Committee should have a full exchange of views on the Geneva negotiations, bearing in

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(Mr. Pinto, Ceylon)

mind the implications they might have for its wider responsibilities concerning the reservation of the international zone of the sea-bed exclusively for peaceful purposes. It should then adopt a brief report informing the First Committee of any recommendations it might wish to make. Finally, the report, together with the summary records of meetings and any other relevant Committee documents, should be submitted to the First Committee for consideration during its discussion on the item. He hoped that the exchange of views would also be of assistance to the members of the Committee on Disarmament in their continuing efforts to secure as wide a measure of agreement as possible on the text of the draft Treaty.

Mr. RUDA (Argentina) said that his delegation considered that the decision to convene the Committee to examine the draft Treaty was a very sound one, partly because it was logical for the Committee to discuss a draft relating to an arms control measure in a field that was to a large extent beyond the jurisdiction of States, and partly because the draft Treaty should obviously be examined carefully by the various competent bodies before any hasty decisions were adopted.

Since there had been very little time for the Committee on Disarmament to examine the draft Treaty in depth, it was appropriate that the competent bodies of the General Assembly should give it special attention, particularly as the draft did not by any means reflect a consensus in the Committee on Disarmament. His own country's delegation to that Committee had stated that it considered the draft merely as a point of departure for the General Assembly's consideration of the question, and it understood that the draft would be amended as necessary to ensure the viability of the Treaty and adequate protection of the rights of Member States. It had also stated that before the General Assembly agreed on the draft, Members of the United Nations which were not represented in the Committee on Disarmament should be given an opportunity to comment upon, and perhaps further modify the text.

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(Mr. Ruda, Argentina)

One of the factors which had undoubtedly contributed to the progress of the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor was its decision to avoid complex questions of jurisdiction which it was not competent to solve; and his delegation considered that it was equally wrong to incorporate controversial concepts in an arms control measure, since they would only lead to sterile discussion and consequent difficulties in achieving the Committee's basic objective.

In that connexion, his delegation was glad that the co-Chairmen of the Conference of the Committee on Disarmament had agreed to include article II, paragraph 2 in the draft Treaty, since that paragraph represented a commendable attempt to circumvent any controversial problems. He regretted, however, that the same approach had not been taken in other parts of the draft, particularly in article I, paragraphs 1 and 2, and article II, paragraph 1, which stated that the outer limit of the contiguous zone should be measured in accordance with the provisions of the Geneva Convention on the Territorial Sea and the Contiguous Zone. It should be noted that the majority of States Members of the United Nations were not parties to that Convention, and could not be expected to agree to a draft based on a concept whose legal implications they had declined to accept. According to the traditional definition, the contiguous zone was the zone of the high seas, contiguous to the territorial sea, in which a coastal State could exercise the control necessary for preventing or punishing any violation of its customs, fiscal, immigration and health laws or regulations committed in its territory or territorial water. He wondered what relation there could be between the characteristics of the contiguous zone as described in that definition, on the one hand, and a treaty on the prohibition of the emplacement of nuclear weapons on the sea-bed and ocean floor, on the other.

If it was intended that the draft Treaty should not prejudice matters of jurisdiction, there should be no difficulty in working out a simple, well-defined formula establishing the limit of the maritime zone exempt from the prohibition at the twelve-mile line, as proposed in the original Soviet draft (ENDC/240). If it was intended that the draft should avoid all difficulties other than those inherent in an arms control measure, it seemed to his delegation that little progress was being made in that direction.

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(Mr. Ruda, Argentina)

It was obvious that article II, paragraph 2 was ineffective, since the draft Treaty contained specific provisions which for no valid reason prejudged the question of the extent of national jurisdiction and thereby jeopardized the possibility of reaching agreement.

Article III of the draft Treaty also gave rise to certain difficulties because of its vagueness and the absence of any specific reference to the sovereign rights of coastal States over the continental shelf. It was obvious that an arms control measure could not alter the principles of customary international law which unreservedly upheld the coastal States' exclusive rights of exploration and exploitation. Moreover, those rights had been recognized in various international instruments and clearly explained by the International Court of Justice in its recent opinion on the North Sea continental shelf. His delegation did not believe that there was any need to alter firmly established principles of law in order to allow an arms control procedure to function effectively.

The Canadian delegation had made a very useful contribution to the consideration of that and other questions in its working paper submitted to the Conference of the Committee on Disarmament (CCD/270). His own delegation was prepared to co-operate in drafting a new text for article III which would solve the present difficulties.

On the question of verification, he wished to point out that verification would take place in the sea-bed and ocean floor beyond the limits of national jurisdictions. His delegation had stressed on several occasions that that area was the common heritage of the international community, and as such was not subject to appropriation or claims of sovereignty for enjoyment, occupation or exclusive utilization by any State or entity.

Article III should therefore contain an additional clause which, while expressly recognizing the rights of coastal States over the continental shelf, would rule out any possibility of a change in the status of the sea-bed and ocean floor as a result of verification activities. The clause should expressly state that verification activities should be strictly confined to ensuring compliance with obligations assumed under the Treaty, that they should not serve as a basis for establishing rights of sovereignty over the sea-bed and the ocean

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(Mr. Ruda, Argentina)

floor, or for preferring, supporting or denying a claim of sovereignty over the sea-bed or ocean floor, and that they should not affect the coastal State's sovereign rights and rights of exploration and exploitation on the continental shelf adjacent to its coasts. His delegation would be drafting a text to that effect for circulation in due course.

Though the fourth preambular paragraph of the draft Treaty recognized that the draft Treaty constituted a step towards a Treaty on General and Complete Disarmament under strict and effective international control, there was, surprisingly, no provision in the operative part reflecting the decision to continue negotiations to that end. His delegation failed to understand why the operative part contained no reference to further efforts to achieve the Committee's objectives; and contained no provisions which would place the proposed arms control measure in its true perspective as a measure collateral to general and complete disarmament.

His delegation reserved the right to revert to the matter in the First Committee, where it would refer in detail to other difficulties which the draft Treaty raised in the context of the disarmament.

Mr. KIKHIA (Libya) said that his delegation had always believed that the principle that the sea-bed should be used exclusively for peaceful purposes logically implied (i) the prohibition of the establishment of military installations and the placing of weapons of mass destruction on the sea-bed or in its sub-soil, (ii) the prohibition of the emplacement of any objects containing nuclear weapons or the stationing of such weapons on the sea-bed or in its subsoil in any other manner, and (iii) the prohibition of the establishment of military bases or the testing of any type of weapon on the sea-bed and the ocean floor.

The military aspect of the matter could not be isolated from the over-all question of the peaceful uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction, and the Sea-Bed Committee was therefore a proper forum for discussion on the draft Treaty; and he hoped that the Committee would be able to consider the draft Treaty in greater depth during its next regular session, in accordance with operative paragraph 3 of General Assembly resolution 2467 A (XXIII).

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(Mr. Kikhia, Libya)

The fact that the draft Treaty represented the combined views of two major Powers was encouraging; the instrument would serve the cause of world peace and help to reduce international tensions, and might well herald an era of genuine co-operation among States.

Nevertheless, the document did not entirely satisfy the needs of all nations and of the international community as a whole; and he wished to present his delegation's preliminary comments on the substance of the draft Treaty.

Firstly, his delegation regretted that there was no reference in the preamble to the basic principle that the sea-bed and the ocean floor beyond the limits of national jurisdiction constituted the common heritage of mankind. Secondly, it further regretted that no reference was made to current negotiations relating to the establishment of any international régime, including appropriate international machinery, to govern the peaceful uses of the area under discussion. Thirdly, his delegation had strong doubts concerning the relevance of a specific reference to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. It would have been preferable to refer to the twelve-mile maritime zone, the term used in the original USSR draft Treaty. The reference to the Geneva Convention, which was not yet universally accepted as an instrument of international law, could create ambiguities and was juridically questionable. The contiguous zone was described in the Convention as "a zone of the high seas", and obviously encompassed only the superjacent waters. A reference to the contiguous zone in the draft Treaty would therefore prejudge a very important issue -- namely, the question of the separate treatment and separate legal status of the sea-bed, on the one hand, and the superjacent waters, on the other.

His delegation also had reservations concerning article III, which dealt with methods to ensure compliance with the provisions of the Treaty. Most coastal States lacked the appropriate technical means to carry out such verification, and the absence of suitable international inspection machinery was regrettable.

Mr. OLISEMKA (Nigeria) felt that it was indeed appropriate for the Committee to consider those aspects of the draft Treaty which related to its work. However, in view of the complexity of the subject and since delegations required more time to study the draft Treaty thoroughly, detailed consideration

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(Mr. Olisemeka, Nigeria)

would not be possible at the present series of meetings. The Committee should therefore take it up again in 1970 and should inform the First Committee that it had held a preliminary exchange of views on such aspects of the draft Treaty as related to its work and that thorough consideration would be given to the subject at its sessions in 1970.

Mr. KAPLAN (Canada) suggested that the objection raised by the representatives of Argentina and Libya to the reference in article I, paragraph 2, of the draft Treaty to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone might be met by inserting a phrase along the following lines in article II, paragraph 1: "with respect to existing international conventions or other legal instruments".

Mr. ENGO (Cameroon) reiterated the views he had expressed at the previous meeting, and echoed the Ceylonese representative's hope that the First Committee would not take any action which might prejudice the work of the Sea-Bed Committee on the item.

Mr. SOLOMON (Trinidad and Tobago) and Mr. de SOTO (Peru) shared the views of the Cameroonian representative. The Committee would be unable to give the draft Treaty the attention it deserved at the present series of meetings and the First Committee should not discuss the matter until the Sea-Bed Committee had done so in 1970.

Mr. MENDELEVICH (Union of Soviet Socialist Republics) said that there was no need to take a formal decision to defer consideration of the item until the Sea-Bed Committee met in 1970, since such further consideration was automatically implied in the Committee's terms of reference as contained in operative paragraphs 3 and 4 of General Assembly resolution 2467 A (XXIII).

Mr. ENGO (Cameroon) said that he was not making a specific proposal. He was merely suggesting that once those members who were prepared to discuss the draft Treaty at the present stage had made their statements, the Sea-Bed Committee should suspend consideration of the item until 1970.

Mr. de ARAUJO CASTRO (Brazil) said that he fully agreed with the Cameroonian representative. The important point was that the Committee should

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(Mr. de Araujo Castro, Brazil)

make clear, in a brief report to the First Committee, that it had merely suspended consideration of the draft Treaty.

The CHAIRMAN noted that the Sea-Bed Committee, as a subsidiary body of the General Assembly, was not empowered to suggest that a General Assembly Committee should postpone its discussion on any agenda item.

Mr. PHILLIPS (United States of America) said that he fully recognized that fact. At the present stage, members of the Sea-Bed Committee should simply present their general views on the draft Treaty.

The CHAIRMAN said that the list of speakers would be closed at the end of the next meeting.

The meeting rose at 12.30 p.m.