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

SUMMARY RECORDS OF THE SIXTY-FIRST TO THE SIXTY-SEVENTH MEETINGS

held at the Palais des Nations, Geneva,
from 19 July to 27 August 1971

Chairman	Mr. AMERASINGHE	Ceylon
Rapporteur	Mr. VELLA	Malta

Note. The list of representatives is to be found in documents A/AC.138/INF.5 and Corr. 1 - 3, INF.5/Add.1 and Add.1/Corr.1, INF.5/Add.2 - 4.

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CONTENTS

SUMMARY RECORD OF THE SIXTY-FIRST MEETING

held on Monday, 19 July 1971, at 3.30 p.m.

Chairman: Mr. AMERASINGHE Ceylon

OPENING OF THE SESSION

The CHAIRMAN declared open the sixty-first meeting of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. He welcomed the participants and stressed the importance of the new session, which was the second in the current year. Future work - in particular the Conference on the Law of the Sea planned for 1973 - would depend on the progress made both in the main Committee and in the sub-committees.

The Committee should first of all consider the structure and organization of its work. Three questions had been left pending from the previous session (12-26 March 1971), and should be settled before the beginning of the general debate.

ADOPTION OF THE AGENDA

The CHAIRMAN suggested the following agenda:

1. Opening of the session
2. Adoption of the agenda
3. Message from the Secretary-General
4. Questions pending and general debate
5. Other business

The provisional agenda was adopted.

MESSAGE FROM THE SECRETARY-GENERAL

Mr. KUTAKOV (Under Secretary-General for Political and Security Council Affairs) read out a message from the Secretary-General of the United Nations.

In the message, the Secretary-General expressed his deep appreciation of the work carried out by the Committee and his sincere wishes for its future success. The importance of the questions which the Committee was called upon to deal with was manifest and the Committee's work opened up a wide range of possibilities for the future of international co-operation. It would have an impact beyond the fields of exploitation of sea-bed resources and the law of the sea. The outcome of the Committee's endeavours would have much to do with the future nature of the international community itself, and with the ability of mankind to have confidence in the capacity of that community to cope with the problems of the present day. He had

no illusions about the reality of the difficulties that the Governments of Member States would encounter, but he was encouraged by the convergence of views on the problems as a whole and by the lessening of differences.

Since the inclusion of the question of the sea-bed in the agenda of the twenty-second session of the General Assembly in 1967, considerable progress had been made in that extremely complex field. He referred in that connexion to the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction contained in General Assembly resolution 2749 (XXV), the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof (General Assembly resolution 2660 (XXV), annex), the successive resolutions adopted by the General Assembly and the reports submitted by the Committee and its predecessor, the Ad Hoc Committee.

It was thus clear that the world community was endeavouring to reach realistic and equitable solutions to the new problems which had been added to the old. New ideas and new terms had appeared, but that was no more than a beginning. The Secretariat had played an important role in the progress achieved and it would continue, within the material possibilities open to it, to provide the Committee with all the assistance it needed. The documentation produced so far was considerable and many of the documents - for example, the reports of the Secretary-General on the question of the establishment of international machinery[1/] - were substantial in content.

In conclusion, the Secretary-General stated that he would follow with great interest the progress of the Committee's work.

QUESTIONS PENDING AND GENERAL DEBATE

The CHAIRMAN said that there were three questions still pending: the order of priority, the limits of national jurisdiction and the peaceful uses of the sea-bed and ocean floor.

With regard to the first of those questions, he had established contacts in the period between the two sessions and it had been proposed that Sub-Committee I should be asked to study the question of the international legal régime. One group thought

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1/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 22, (A/7622 and Corr.1), annex II and ibid., Twenty-fifth Session, Supplement No. 21, (A/8021), annex III.

that the question of the limits of national jurisdiction should be allocated to Sub-Committee II, while other representatives had favoured joint meetings of Sub-Committees I and II. The problems of the peaceful uses of the sea-bed could be studied by Sub-Committee III, which was not overburdened with work at the moment.

He suggested that the geographical groups should appoint two or three representatives to participate in the proposed consultations.

OTHER BUSINESS

Mr. HALL (Secretary of the Committee) read out a list of the documents which would be available to participants in the current session as soon as they arrived from New York. He informed the participants that the first part of the "Laws and Regulations on the Régime of the High Seas" would be published very soon in the Legislative Series, and that the second part was due to appear early in August. There were, in addition, the reports of the Secretary-General that had been issued some time ago: "The sea - Mineral resources of the sea" (E/4973) and "The sea - Prevention and control of marine pollution" (E/5003), and the progress report of the Secretary-General on the long-term and expanded programme of oceanic research (E/5017).

Mr. ARIAS-SCHREIBER (Peru) asked whether it would be possible for the geographical groups to have five representatives each in the contact group that was to meet on the next day. He also suggested that, as had been agreed in March, the substantive work to be carried out in the sub-committees should be undertaken only when the procedural questions still pending had been resolved.

The CHAIRMAN said he saw no objection to the contact group being composed in the way suggested by the Peruvian representative. So far as the second question was concerned, everything depended on what was meant by substantive problems. It seemed that it would not be possible to embark on those problems for another two days.

He reminded the Committee of the important role played in the field of international law by the Asian-African Legal Consultative Committee, and invited its Secretary-General, Mr. Sen, who was present at the meeting and who was closely interested in the work of the Committee, to take the floor.

Mr. SEN (Secretary-General of the Asian-African Legal Consultative Committee) thanked the Chairman for the opportunity to say a few words at the beginning of the Committee's session, when it was about to resume its consideration of issues which were so vital to the progress and well-being of mankind. He hoped that the deliberations at the present session would be fruitful and thus pave the way for a constructive approach towards the solution of the outstanding problems at the forthcoming conference on the law of the sea in 1973.

The establishment in 1968 of the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction by General Assembly resolution 2340 (XXII)[2/] had been of particular significance in that it had reflected a recognition of the need for the formulation of appropriate rules for determining national jurisdiction and for the establishment of a legal framework for the exploration and exploitation of the resources of the sea-bed and ocean floor; it had also been recognized that there existed an area in the sea-bed beyond national jurisdiction which was the common heritage of mankind. In its resolution 2467 A (XXIII), the General Assembly had instructed the Committee to study the elaboration of the legal principles and norms which would promote international co-operation in that field, and would meet the interests of humanity as a whole. The fact that the Asian-African States had a special interest in the work of the Committee was evident from its original composition which had included 18 Asian and African nations.

He wished to congratulate the Committee on its achievements since 1968, particularly on the elaboration of the principles adopted by the General Assembly in December 1970. With its enlarged membership and the extension of the scope of its work, the Committee had become even more important; in addition, it had become in the main a preparatory body for the forthcoming conference on the law of the sea.

The Asian-African Legal Consultative Committee had been following the Committee's deliberations - particularly the discussions of the Legal Sub-Committee - with great interest. At its twelfth session, held at Colombo in January 1971 (A/AC.138/34) it had begun consideration of questions relating to the sea-bed, and was keenly interested in the outcome of the forthcoming conference. Prior to the conference, it was important that governments should exchange views both on a formal and informal basis.

The items discussed at the Colombo session had been the breadth of the territorial sea; international straits; the rights of coastal States in respect of fisheries in areas beyond the territorial sea; the exploration and exploitation of the sea-bed, including the question of national jurisdiction; the concept of trusteeship over the continental margins; the type of régime to govern the sea-bed and the ocean floor beyond the limits of national jurisdiction; islands and archipelagos; and the preservation of the marine environment. A representative of the Government of the

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2/ See Official Records of the General Assembly, Twenty-second Session, vol. I, Supplement No. 16 (A/6716).

United States and representatives of five Latin American countries had been invited to attend the session. After discussions on specific subjects in plenary, a Sub-Committee on the Law of the Sea had been appointed composed of representatives of all member States of the Asian-African Legal Consultative Committee, and a Working Group consisting of representatives of Ceylon, India, Indonesia, Japan, Kenya and Malaysia had been set up for a detailed study of the problems. That Group had met in New Delhi at the end of June 1971, and the Sub-Committee on the Law of the Sea in Geneva from 15 to 17 July.

The Asian-African Legal Consultative Committee would like to think that its work in preparation for the conference on the law of the sea complemented the work of the Sea-Bed Committee, and it was anxious that the two bodies should keep in close touch. It felt that, to ensure the success of the 1973 conference, it would be necessary to arrive as early as possible at a broad consensus on the list of subjects to be dealt with by the conference and to formulate concrete proposals for solving outstanding problems.

Moreover, it was a matter of some importance to decide in advance the question of priority as between problems concerning the régime and the proposed international machinery for the sea-bed area outside the limits of national jurisdiction on the one hand, and problems concerning the determination of those limits on the other. Two member States of the Asian-African Legal Consultative Committee would like the archipelago concept to be considered too, since that topic did not appear to have received adequate consideration at previous Conferences on the Law of the Sea. There were a large number of straits in Africa and Asia, some of which would fall within the territorial waters of coastal States if a 12-mile belt were to be adopted as the limit of the territorial sea. Navigation through those straits might have to be safeguarded subject to the rights of the coastal States, and that was certainly a matter which would have to be considered at the forthcoming conference. Some States also favoured reconsideration of certain issues which had formed the subject matter of the four Conventions adopted during the 1958 United Nations Conference on the Law of the Sea,[3/] since a large number of African States had not had an opportunity to participate in previous discussions of the matter.

3/ See United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.: 58.V.4, vol.II), annexes, document A/CONF.13/L.58, para. 12.

The Asian-African Legal Consultative Committee was a regional intergovernmental organization whose activities related to the field of law; it would therefore like to collaborate in full in the work of the Committee and in all activities of the United Nations which had as their object the establishment of a legal order in the international sphere. It maintained close links with all organs of the United Nations charged with the codification and progressive development of international law, such as the International Law Commission, the United Nations Commission on International Trade Law and the United Nations Conference on Trade and Development (UNCTAD).

The Asian-African Legal Consultative Committee had assisted in the preparation of the United Nations Conference on the Law of Treaties in 1969, thus contributing in some measure to the Conference's success, and it intended to help African and Asian countries, irrespective of whether they were members of the Committee or not, to prepare for the conference on the law of the sea. At its next regular session at Lagos in January 1972, it would examine the subject in detail. It was not its policy to take decisions or to recommend the adoption of any particular viewpoint, but solely to make available to Asian and African countries such documentation and advice as would help them to take their own decisions.

The meeting rose at 4.05 p.m.

SUMMARY RECORD OF THE SIXTY-SECOND MEETING

held on Monday, 26 July 1971, at 11 a.m.

Chairman: Mr. AMERASINGHE Ceylon

TRIBUTE TO THE MEMORY OF PRESIDENT WILLIAM TUBMAN OF LIBERIA

Mr. IMRU (Ethiopia) on behalf of the African Group, Mr. YANGO (Philippines) on behalf of the Asian Group, Mr. SOLOMON (Trinidad and Tobago) on behalf of the Latin American Group, Mr. RIPHAGEN (Netherlands) on behalf of the Western European Group and others, Mr. GREKOV (Byelorussian Soviet Socialist Republic) on behalf of the Eastern European Group, Mr. PHILLIPS (United States of America) and Mr. ADESALU (Nigeria) expressed their sorrow at the death of President William Tubman of Liberia, who had been a great Liberian, a great African and a great internationalist.

On the proposal of the Chairman, the members of the Committee observed a minute's silence in tribute to the memory of President William Tubman of Liberia.

Mr. HOLDER (Liberia) thanked the members of the Committee for their expressions of sympathy which would be conveyed to Mrs. Tubman and the members of the late President's family.

GENERAL DEBATE (resumed)

Mr. McLOUGHLIN (Observer for Fiji), speaking at the invitation of the Chairman, said that his Government felt that, by stating its position, it might help the Committee in finding solutions to the many problems facing it, and more especially in finding solutions which would do justice to the special needs of mid-ocean archipelagos.

After describing the geographical location and economic conditions of Fiji, he said that the indigenous Fijians had always been acutely aware of the importance of the sea. They were by tradition seamen and navigators, whose ocean-going canoes had once been the largest vessels in the Pacific. Many were also skilful fishermen, and fish constituted a major source of protein in their diet. Until relatively recently most fishing had been strictly for subsistence, for which purpose historic fishing rights had been established by various tribal units over areas of coastal waters and reefs.

In more modern times, with the great increase in population, and with growing urbanization, the demand for fish had far outstripped the supply, with the result that Fiji currently imported about 10,000 tons of fish a year, mainly canned fish.

Active steps had been and were being taken to develop a commercial fishing industry. They included research into catching techniques, the provision of cold-storage facilities, and the training of local crews. The United Nations Development Programme (UNDP) was assisting in that project and was training local seamen in the use of pole-fishing techniques to catch tuna.

One of Fiji's difficulties in trying to develop a viable local fishing industry was that its vessels had to compete with foreign-owned fleets which were using the seas within the Fiji archipelago, but outside the three-mile limit of territorial waters, for large-scale fishing (mainly tuna) by long-line techniques.

The Government of Fiji, as well as fostering the development of commercial fisheries, had encouraged intensive mineral exploration programmes which had been carried out both on land and in the shallower off-shore areas. A petroleum exploration programme was currently under way over a large part of the submerged platforms upon which the islands of the group were based. To date, petroleum exploration concessions had been granted over a total of 15,000 square miles of off-shore areas. Applications were under consideration for a further 12,000 square miles, and applications were being invited for an additional 6,000 square miles.

The people of Fiji were, in consequence, deeply aware of the importance to them of their marine environment and of the necessity for control over the resources of their archipelagic waters and of the sea-bed and sub-surface of the sea-bed in the vicinity of the archipelago.

The position of Fiji as a mid-ocean archipelago was not unique; there were many other small nations and emerging territories with roughly similar geographic features. Fiji, however, was more dependent than most countries on the development of her marine environment for her economic development. It was of importance to such countries, and of vital concern to Fiji, to control the development of their marine environments in order to ensure that such development was in their best interests and to prevent any form of depredation or pollution that might endanger that environment or deplete its resources.

His Government was of the opinion that in the development of the law of the sea adequate consideration had not been given to the position of countries like Fiji.

The claims of archipelagos had been considered in the past but had tended to be regarded as legal aberrations rather than as serious problems. Fiji was of the opinion that those claims should now be given serious attention and a solution found to

the problem of mid-ocean archipelagos. That was one of the prerequisites for the revision of the Geneva Conventions adopted by the United Nations Conference on the Law of the Sea[1] and the establishment of any form of international régime for areas of the sea and the sea-bed beyond the limits of national jurisdiction.

The Government of Fiji supported the establishment of such a régime, provided that the difficult problem of determining the limits of the areas of national jurisdiction of archipelagic States could first be settled and an acceptable solution found to the question of the limits of the continental shelf. It did not seek any substantial departure from the existing rules set out in the Geneva Conventions but wished merely to obtain confirmation of the integration of the archipelagic principle in existing international law in such a way as to accommodate the interests of the archipelagic States without disproportionately affecting the interests of other States or of the world in general.

What was the present status of archipelagos in international law? Proposals concerning archipelagos had been considered for many years.

The first proposal that islands should be grouped together for the purpose of delimiting the territorial sea had been made by Alvarez at the Thirty-third Conference of the International Law Association at Stockholm in 1924.[2] In presenting draft regulations for determining the limits of the territorial sea, he had proposed that a zone of six miles should be drawn around islands and that, in the case of an archipelago, the islands should be considered as forming a unit and that the extent of the territorial waters should be measured from the islands situated farthest from the centre of the archipelago. He had placed no limitation on the permissible distances between the islands or on the circumference of the group from which the territorial sea could be measured. No conclusion had been reached by the International Law Association with regard to those proposals.

The question had again been raised in 1927 in the Institut de droit international. In 1928 the Institut had adopted a resolution which made a distinction between coastal archipelagos and mid-ocean archipelagos and had stated that in the case of coastal

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1/ See United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No. 58.V.4., vol.II), p.132 et seq.

2/ See International Law Association, Report of the Thirty-third Conference held at Stockholm, September 8th to 13th, 1924 (London, Sweet & Maxwell, 1925), p.267.

archipelagos the breadth of the territorial sea should be measured from the islands or islets situated farthest from the coast, provided that the archipelago was composed of islands the distance between which did not exceed double the breadth of the territorial sea, and that the islands nearest to the coast were not situated farther from it than twice the breadth of the territorial sea. In the case of mid-ocean archipelagos, the resolution provided that a group of islands should be considered as a unit if the distance between each island on the circumference did not exceed double the breadth of the territorial sea and that the breadth of the territorial sea should be measured from a line joining the outer extremities of the islands.3/

In further attempts made to formulate rules relating to archipelagos in the 1920s, the concept of treating the islands comprising an archipelago as a unit had been accepted, but there had been no agreement on the permissible distance between each island on the circumference. Some had postulated a maximum distance of twice the breadth of the territorial sea and others three times the breadth of the territorial sea.

The question had been discussed by the Preparatory Committees set up to establish the Bases of discussion for the League of Nations Conference for the Codification of International Law, held at The Hague in 1930, and its Sub-Committee on the Territorial Sea. The results had, however, been so inconclusive that the idea of drafting a definite text on the subject had been abandoned.

The results of the Hague Conference had shown that no agreement was then possible in relation to the territorial waters of island groups without previous agreement on either the extent of territorial waters or the nature of the waters enclosed within the baselines. However the majority of Governments which had expressed opinions on the latter had assumed that they would not be inland waters but territorial waters and as such subject to a right of innocent passage. In the academic consideration of the outcome of the discussions at the Hague Conference, the representative of France, Gilbert Gidel, had supported the conclusion that, if in the progressive development of the law of the sea any elimination of high seas resulted from the enclosure of an archipelago, the waters so enclosed would be transformed into territorial waters and not into inland waters, so that the freedom of innocent passage would not be nullified.

3/ See Annuaire de l'Institut de Droit International 1928 (Brussels), pp.755-759.

With regard to the question of the extent of territorial waters, the report to the Hague Conference of the Second Sub-Committee on the Territorial Sea had stated that the majority opinion was that a distance of ten miles should be adopted as the basis for measuring the territorial sea outwards in the direction of the high seas. The proposal for the ten-mile territorial sea had been made by Japan in an attempt to resolve the archipelagic question by treating archipelagos as fictive bays; but it in turn depended upon general agreement on a ten-mile closing line for coastal sinuosities.

The next important step in the development of the law of the sea in its application to archipelagos had resulted from the judgement of the International Court in the Anglo-Norwegian Fisheries Case in 1951.4/ The Court had approved the principle that in determining the points in relation to the coast line from which the breadth of the territorial sea was to be measured, straight base lines might be drawn following the general direction of the coast instead of following all its sinuosities.

The importance of that part of the decision lay in the rejection by the Court of the previously held opinion that the maximum closing distance permissible for bays and other sinuosities of the coast was ten miles, thereby destroying the very basis upon which the 10-mile base lines for the delimitation of archipelagic waters rested. In fact the Court had accepted base lines as long as 44 miles.

Another important feature of the judgement in that case had been that the Court, in determining the criteria to be applied in testing the validity of delimitations within territorial limits of waters previously considered to have formed part of the high seas, had permitted reference to the special economic interests of the region concerned.

Whilst the judgement of the Court in that case had applied to coastal archipelagos, the Government of Fiji submitted that the principles utilized by the Court should not be confined only to coastal archipelagos but were equally applicable to mid-ocean archipelagos. For example, the condition that a baseline must not depart to any appreciable extent from the general direction of the coast was equally applicable to mid-ocean archipelagos if it was recognized that that was in itself merely a method of expressing the requirement for an intrinsic relationship between a line of natural features and the land to which those features formed a barrier. In that case, the

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4/ ICJ Reports 1951, p.116.

essence of the mid-ocean archipelago was that such a relationship existed between the features themselves, so that the situation was analogous to that of a complex coast of a continental country.

His delegation accordingly submitted that the rules applicable to coastal archipelagos were equally applicable to mid-ocean archipelagos, and that the effect of the judgement of the Court in that case had been to remove the entire question of archipelagos from the confines of precise limits and shapes and from the abstract definition where all previous discussions on the question had sought to place it.

Although a number of claims with respect to archipelagos had been made, there had in fact been no significant advance towards the solution of the question since the Anglo-Norwegian Fisheries case, the principal reason being that the question had been excluded from the text of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.5/ The subject had in fact been given only cursory attention by the International Law Commission in drafting its text on the Law of the Sea; and after a brief and somewhat superficial debate it had been agreed that, whilst the Commission recognized the need to deal with the matter, it lacked the time and the necessary assistance of experts. The question had accordingly been shelved with a recommendation that the 1958 United Nations Conference on the Law of the Sea should try to solve the complex and controversial problem of archipelagos. However, although Denmark, the Philippines and Yugoslavia had initiated moves to take up the question at the 1958 Conference, they had been unsuccessful.

In his delegation's view, one of the fundamental difficulties in finding a solution to the problem of archipelagos related to the right of passage through their waters. That difficulty arose as a result of the acceptance, in the debates in the International Law Commission, of the view that waters enclosed within base lines of archipelagos would become internal waters with the consequential closure of those waters to the right of international passage. That view did not in fact accord with the generally accepted position in the discussions at the 1930 Hague Codification Conference. In those discussions the view had been taken that the waters enclosed by the base lines of archipelagos would become territorial waters and, in consequence, subject to the right of innocent passage. The same view had been taken by jurists who had in the past supported the archipelagic principle.

5/ United Nations, Treaty Series, vol.516, p.205.

It was the latter position that the Government of Fiji adopted. The interests of archipelagic States could be satisfied without undue harm to other States, if it was accepted that the enclosure of waters by archipelagic baselines did not have the effect of depriving other States of their right of innocent passage. That right should however, in his delegation's view, be subject to the regulations of the archipelagic State with respect to police, customs, quarantine and control of pollution, and should not involve any derogation from the exclusive right of that State with respect to the exploration and exploitation of the natural resources of the waters so enclosed and of the subjacent sea-bed and the sub-soil thereof.

His delegation was aware of the problems underlying the unrestricted right of innocent passage but felt that they were not insurmountable.

Account had to be taken of the need to keep open shipping channels, the closure of which by an archipelagic State might have serious economic repercussions on other States. His delegation considered that that could be done by acceptance of the principle that the waters so enclosed were to be regarded as territorial waters subject to the right of innocent passage.

So long as the limits of national jurisdiction remained uncertain, his delegation felt that no solution could be found concerning the exploitation of the sea-bed beyond those limits. That was why it hoped for an early solution of the problems of archipelagos. It proposed that a base line should be drawn in the form of a polygon around the outer extremity at low-water-mark of all of the islands or drying reefs of the Fiji Group with the exception of the remoter islands - namely, the Rotuma Group, the Ono-i-Lau Group, the islands of Vatoa and Conway Reef. It further proposed that the limits of the territorial sea should be at a distance of 3 miles outwards from those base lines and that an exclusive fisheries zone should be established within an area bounded by lines at a distance of 12 miles outwards from those base lines.

With regard to the islands of the Rotuma Group, the Ono-i-Lau Group, Vatoa, and Conway Reef, its proposal was to establish the territorial waters and exclusive fishing zones at distances of 3 miles and 12 miles respectively around them, the breadth in each case being measured from low-water-mark around the coasts or drying reefs of those islands.

The second question to which his delegation considered a solution must be found, as a prerequisite to the establishment of an international régime, was the determination of the limits of the continental shelf. The boundaries of Fiji's continental shelf

proper were quite easy to determine, since the group of islands was largely based on two submerged platforms. The problem areas were however the deep waters of the Koro Sea; the chasm between the islands of Viti Levu and Kandavu; and the submarine ridge running in a south-westerly direction to Conway Reef. If his delegation's proposal concerning archipelagos was accepted, the first two problems would cease to exist, as the areas concerned would become part of Fiji's territorial waters. That would leave only the ridge to the south-west which formed the southern edge of the submarine plateau known as the Fiji plateau and linked the islands of the Fiji Group to the New Hebrides, which in turn formed the western edge of the Fiji plateau. Should any problem arise under the existing rules set out in the Geneva Convention on the Continental Shelf[6/] his delegation was confident that it could be resolved by agreement between the Governments of the New Hebrides and Fiji on the basis of a median line. The islands of Rotuma, being literally mountains rising almost sheer from the sea-bed at the eastern end of the Vitiaz trench, had no true continental shelf.

In the light of that situation, the Government of Fiji took no firm stand regarding the determination of the limits of the continental shelf and would welcome any reasonable proposals that might be put forward for the solution of the problem.

One aspect to which he wished to draw attention, however, was that to establish boundaries by reference only to depth of water, without regard to natural physical characteristics, could well lead to serious anomalies. The test of exploitability could only result in the extension of boundaries. Whereas the exploitability potential had a few years ago extended only to 200 metres, it now extended to 500 metres, and might soon extend to 1,000 metres. In fact it was expected that drilling rigs would be available by 1975 to carry out commercial operations in waters to that depth.

His delegation's suggestion for the solution of that problem was that the limits over which a State was to have control of the resources of the sea-bed and the sub-soil thereof outside its territorial waters should be determined by the dual criterion of water depth in relation to natural characteristics, as opposed to the single determining factor of water depth irrespective of the physical characteristics of the area under consideration. For instance, a true continental shelf might lie from 50 metres to 500 metres below the surface of the sea. Therefore, to fix an arbitrary limit of

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6/ United Nations, Treaty Series, vol.499, p.311.

200 metres in depth, would result in the creation of an artificial boundary having no relation to reality. Just as in the Anglo-Norwegian Fisheries Case the Court had rejected an arbitrary limitation on the length of closing lines and postulated more flexible criteria for determining the permissible limits of territorial waters, his delegation submitted that the Committee should consider the postulation of similar criteria for determining the extent of the legal continental shelf.

Another criterion which might well be considered was that of defining the boundary of the legal continental shelf by reference to distance from the coast. That might constitute an alternative to the criterion of water depth or supplement it.

Mr. SMALL (New Zealand) said that his country, which was a new member of the Committee, had recently been reassessing the law of the sea in the light of a number of general considerations.

New Zealand's special interests were in part the same as those of a large number of coastal States: it had a small merchant marine: it was vulnerable to pollution; and it had a fishing industry which though expanding was not yet able to exploit fully the adjacent waters, and certainly not to engage in distant water fishing. In other respects its situation was unusual: it was isolated in the middle of a vast ocean environment; it had more than 3,000 miles of coastline; and it had a continental margin which was very large in absolute terms and exceptionally large in relation to its land area. The area of sea-bed adjacent to New Zealand and out to the 200 metre isobath was not far short of the country's total land area. Its continental shelf and continental slope made up a sea-bed area of over one million km^2, which was at least four times larger than the land area. The special features of New Zealand's geographical position were in many ways a disadvantage. The country's isolation was an important limiting factor on its capacity as a trading nation. In other ways New Zealand might well stand to gain from those features; and it looked to a development of the law of the sea which would permit it to do so, consistently with the legitimate interests of other States and of the international community as a whole.

He shared the view expressed by many delegations at the Committee's previous session (12-26 March 1971) that the law of the sea in its present form was weighted heavily in favour of a relatively small number of major maritime Powers. Although that was not true of the whole of the traditional law of the sea, its central feature - the concept of the freedom of the high seas - had undoubtedly been forged by the policy

and practice of the large maritime Powers. It was generally recognized, however, that the freedom of the high seas, if exercised in a responsible and reasonable manner, was not merely compatible with the interests of coastal States, but positively advanced them. That was certainly true for New Zealand which was heavily dependent on ocean-borne trade and on naval mobility for its defence, and was concerned to ensure that freedom of navigation was preserved in a broad area of the seas. The present law had a serious imbalance, however, in its failure to recognize the coastal States' need to exercise control over the waters adjacent to them for a variety of legitimate purposes - for example, management and conservation of fisheries and other marine sources, protection of the environment supporting those resources, protection of local industry and prevention of damage to coastal interests from pollution.

A coastal State's claim to exercise jurisdiction over a relatively broad area for those and related purposes need have little, if any, impact on the exercise by other States of the freedom of the high seas. The fact that some coastal States had advanced claims which had been challenged as a threat to that concept was due in no small measure to the rigidity of the present law.

Attempts at the 1958 and 1960 Conferences to codify the law of the sea had failed wholly or in part on certain key questions. Insufficient notice had been taken - more particularly by the major maritime powers - of the coastal States' demands to exercise a greater measure of control over their coastal waters. Those demands had risen sharply in the intervening years and the success of the 1973 conference would depend to a large degree on significant shifts in the law of the sea policies pursued by the major maritime Powers. Every State would have to subordinate to the common good some part of its national interest and New Zealand was prepared to do so. Large and medium-sized Powers, driven by inadequacies in the present law to the doctrine of unilateralism, might achieve some success in protecting law of the sea claims advanced at the outer limits of established law. That was unlikely for New Zealand, which considered the doctrine of unilateralism as unhelpful and uncomfortable. What was needed was a widely accepted and respected multilateral settlement.

New Zealand regarded the establishment of a limit to territorial sea claims as a major task of the 1973 conference. It at present claimed a 3-mile territorial sea but readily acknowledged that recent State practice pointed strongly in the direction of 12 miles. A basis existed for a 12-mile limit, but agreement on that limit would be achieved only, if, as had been argued by the representative of Mexico at the March

session, it was recognized that the establishment of a limit for the territorial sea was a separate issue from the establishment of limits for the exercise by the coastal State of other and lesser forms of jurisdiction. He believed it was generally thought in the Committee that the linking together of the two now quite distinct questions of territorial sea limits, and limits for fisheries jurisdiction, was not calculated to promote a solution for either problem.

On the question of passage through international straits, which was related to the establishment of a boundary for the territorial sea, New Zealand would have great difficulty in accepting any proposal contemplating the establishment of two different régimes for passage through international straits - one for straits newly overlapped by territorial sea as the result of extension of particular claims to 12 miles, and another for straits which were at present entirely territorial sea. Such a proposal would not provide a basis for an agreement since it would inevitably produce anomalous and inequitable results. It might be necessary in that context to examine carefully, with a view to a more exact statement of the concept of innocent passage than was contained in the existing law, the kinds of control that States might reasonably seek to exercise over shipping in their territorial sea. The possibility of arbitrary interference with passage through international straits which fell wholly within the territorial sea of the littoral State would be avoided only if the rules were clear and constituted an adequate response to the security and other requirements of the littoral State.

No one would underestimate the difficulty of reaching an agreement about the extent and nature of the rights of the coastal State to control fisheries in the high seas adjacent to it. A readjustment of the existing law would be needed, and a greater recognition of the coastal State's interests in conserving the living resources of the sea around it and reserving a reasonable share of those resources for its own nationals. All that required a considerable change of attitude on the part of the few States which were equipped to undertake distant-water fishing.

The Mexican representative, speaking at the March 1971 session, had made an admirable statement of the framework within which an attempt should be made to re-state and amplify that part of the law. He had pointed out that conditions varied greatly and that in some cases preferential rights would be more appropriate than exclusive rights while in others the proper solution would be the adoption of conservation methods. He had further stated that with regard to the criteria for defining the limits of such

special jurisdiction, the Mexican delegation thought that the share of fish resources adjacent to the coastal State to be reserved for the coastal State should be commensurate with its catching capacity which, in the case of the developing countries, was bound to increase. He had added that there were two equally inadmissible extreme positions: that a country should claim to close arbitrarily some portion of the high seas outside its jurisdiction, so that the living resources of the sea, if left totally unexploited, would be lost to the international community; and that a coastal State should be denied the right to reserve for its nationals a stock of fish and other natural resources when it was in a position to exploit them efficiently. The Committee would have to find a formula somewhere between those two extremes.

In the search for such a formula New Zealand would like to see special attention paid to the concept of fisheries management zones - areas of the high seas in which the coastal State would have the right to apply rules to fishermen of whatever nationality in order to ensure that the living resources of the area were utilized in a rational way and that the wellbeing and expansion of its own fishing industry were not affected by the depletion of fish stocks. His Government would not consider it satisfactory that the coastal State's exercise of that right should be made conditional on its ability to prove the scientific or economic necessity for management and conservation rules. New Zealand would like to see the coastal State authorized to establish a fisheries management zone in a broad area of the high seas adjacent to it.

With regard to the focal point of the Committee's work - the question of an international régime for the deep sea-bed and the establishment of exact boundaries for it - everyone was agreed on the need for an international régime, but there was still a notable lack of agreement on the nature of the régime and the extent of the area to which it should apply. On the question of delimitation most countries, especially the developing countries, had for the time being suspended final judgement. He assumed, however, that it was generally accepted that there was value in an exchange of views on the matter.

New Zealand's land mass possessed very large underwater prolongations and no other country was situated nearer to it than about 1,200 miles. Despite exploration, nothing very significant in the way of minerals or hydrocarbons had yet been discovered off the coast except for a certain amount of natural gas, and the full potential of the area was not yet known. As the relevant coastal State, New Zealand had issued prospecting

licences to a depth of about 1,000 metres over various parts of the submarine mass, mainly at distances of up to 250 miles - some up to 500 miles - from New Zealand territory.

New Zealand accordingly hoped that a settlement of the sea-bed boundaries issue would be achieved under a formula which would accord a reasonably generous share of the continental margin to the coastal State. His country's view was that the peculiar geographical situation and interests of countries like New Zealand should be taken fully into account and that such States should in sea-bed matters be able to benefit to a fair degree from their own off-shore areas. Some notice should therefore be taken of the extent to which such a State could be expected to sacrifice to an international régime the rights to which it might lay claim by reference to existing law.

Some formulas mentioned in the Committee would bear more severely on New Zealand than on almost any other country. To take an extreme example, if the outer limits of the international sea-bed régime were set at a depth of 200 metres from the coast of every country and its rights terminated at that depth, New Zealand would be asked to renounce significant areas over which it had already exercised jurisdiction; yet under the same criteria many European countries would yield only a very little of the useful area of their sea-bed. Similarly, under such a formula, many littoral States along the coasts of Africa and South America would surrender little, if any, easily exploitable sea-bed to the international régime. That sort of proposal would really amount to drawing from a very limited number of countries - including New Zealand - a considerable quantity of potentially exploitable continental margin.

Obviously, geographical considerations would make it impossible to ensure exact equality of sacrifice among all coastal States, but New Zealand could not accept with equanimity a situation where some countries were required to give little or nothing of their more valuable sea-bed area to the international régime, while other countries such as New Zealand were required to contribute vast areas. It hoped that an equitable balance of sacrifices would be struck.

He stressed, however, that New Zealand wanted to see real substance given to the notion of the common heritage of mankind in accordance with the objectives of the Declaration of Principles adopted at the twenty-fifth session of the General Assembly. His Government was willing to examine without prejudice and in good faith all proposals advanced on sea-bed limits, including more complicated ones incorporating the idea of an intermediate or trusteeship zone and intended to achieve a suitable reconciliation of interests.

As for the type of international sea-bed régime that should be adopted, he looked forward to the substantive work which was entering a more intensive phase at the present session and was encouraged by the competition of texts now taking place. His Government would approach them all with an open mind, although it saw no good reason why the régime and its associated machinery should not be fairly rigorous and comprehensive. It was vitally important to secure an arrangement which gave significant benefits to the developing countries. Thinking and planning on those issues had been carried another step forward by the recent reports of the Secretary-General on the possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment (A/AC.138/36) and on possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from the exploitation of the resources of the area beyond the limits of national jurisdiction (A/AC.138/38 and Corr.1).

The Committee had also been given full responsibility for advancing work on the major topic of pollution. He assumed that attention should be devoted principally to pollution deriving from sea-bed activities and operations - such as the horrifying consequences of some overwhelmingly harmful leakage of oil resulting from an accident in sea-bed drilling at medium or great depths. The Committee would have to devise rules for the prevention of pollution from sea-bed operations, adequate machinery to ensure their observance, rules on the action to be taken when pollution occurred and rules on liability for damage. It would also be necessary to determine precisely where the responsibility for implementing those rules resided.

If the sea-bed as a whole were divided into an international area and an area under the exclusive jurisdiction of the coastal State, the international authority and the coastal State would presumably have responsibility in the respective areas over which each exercised jurisdiction. If there were also to be an intermediate or trusteeship zone in which the coastal State and the international authority had concurrent jurisdiction, the responsibility of each regarding pollution control in that zone would have to be precisely located and defined. But whether there were two zones or three, it was important to confirm the coastal State's liberty to impose, in the area subject to its control, more stringent anti-pollution laws than those required under agreed international standards.

There seemed to be a widespread desire in the Committee to look at pollution of the marine environment more generally, as was permitted under paragraph 11(a) of General Assembly resolution 2749 (XXV). New Zealand was keenly interested in that subject.

New Zealand's isolation afforded it a measure of protection against at least certain forms of marine pollution suffered by some other States, such as agricultural run-off from, and the dumping of industrial and urban waste by, neighbouring countries. The volume of shipping round New Zealand's coasts which might give rise to pollution from oil or other noxious substances was at present relatively small, but it was not beyond the bounds of possibility that a new generation of super-tankers would want to navigate through the Tasman Sea. Moreover, New Zealand's very long coastline, large continental margins and frequently bad weather made it peculiarly vulnerable to pollution, especially by oil from shipping. His delegation would accordingly seek recognition of the coastal State's right to apply its anti-pollution laws, including laws relating to the dumping of toxic, radioactive and other noxious materials in a broad area of the high seas adjacent to it.

Mr. VENCHARD (Mauritius) said that the views expressed by many delegations showed that the existing rules governing the sea and ocean space in general were inadequate. In the opinion of his delegation, that inadequacy had its origin mainly in two situations which, both intrinsically and in relation to each other, had assumed an importance which it would be in the long-term interest of every nation and of the international community as a whole to recognize.

First, the seas and oceans had evolved over the years from a means of communication to an economic entity with a variety of uses which were equally important to coastal and to land-locked States. Many of the uses had been identified and rules made to regulate them as the occasion arose. The present problem was not so much the identification of new uses as how to reconcile the various uses made of ocean space and how best to pursue them in a manner consonant with the individual and collective interests of all States irrespective of their maritime and technological development.

Secondly, a significant number of States which now formed part of the world community in their own right had not had a chance of actively participating in the evolution of the law of the sea. Rules and customs had been designed to protect and implement the interests of a relatively small number of States controlling vast territories many of which had now acquired their own identity and their own economic, social and political needs.

In the view of his delegation, the problem could most usefully be tackled by reconciling the multifarious uses of ocean space bearing in mind the equal sovereign rights of all States. Considerable success might be achieved by a less dogmatic approach to the problem than in the past. The approach would gain a wider measure of acceptance if it took account of the geographical and historical differences between States and their different stages of economic development and differing needs, instead of trying to achieve absolute uniformity. Many mid-ocean States had now acquired or reverted to their sovereignty and were legitimately seeking to preserve their territorial integrity and their means of subsistence - in the interests of their own survival and development, and no longer in the perspective of the policy of the larger States of which they had formerly been a part. Those countries had not had a voice in the preparatory stages of the various conferences which had taken place over more than half a century and their particular problems had not been recognized in the discussions on problems relating to the delimitation of archipelagos. The need to preserve the territorial integrity and the development of those archipelagic States had still to be reflected in conventional rules.

Whatever the extent of the political goodwill which States might bring to bear in attempting to reach a consensus in such a vital area of international relations, each State would seek primarily to secure a measure of protection for its own interest. Failure to recognize that fact, combined with the inherent economic and geographical differences among States, had been responsible for the limited success of the Law of the Sea Conventions - for their inadequate content and for their limited degree of acceptance.

There was another aspect of the problem calling for urgent attention and a greater measure of understanding than in the past. Despite all efforts at containment, the population growth in many developing countries, including Mauritius, had outstripped what their limited land resources could reasonably provide, and means of subsistence would have to be sought increasingly from outside. In that new situation the traditional idea of territorial waters and fishing zones no longer had its original purpose and would have to be modified to accommodate those new and legitimate needs. The rights of States to the sea and the ocean space around them had acquired a new meaning which called for the protection and recognition that would enable them to obtain their fair entitlement from the living and non-living resources of the sea.

However great the efforts might be to reach agreement, there would be little success unless the rights which had been conferred or exercised by the law as it stood were recognized. It was essential that whenever there was any danger of curtailing those rights, accommodation should be made for the equitable preservation of the benefit of those rights in one form or another.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE SIXTY-THIRD MEETING

held on Thursday, 5 August 1971, at 11.10 a.m.

Chairman: Mr. AMERASINGHE Ceylon

GENERAL DEBATE (continued)

Mr. GALINDO POHL (El Salvador) said that in an age of rapid change in political and economic patterns and social customs, the Committee must face, without regret, the task of devising new régimes and new rules more appropriate to the time and to an international community that was now truly universal.

The membership of the Committee had been increased from 35 to 42 and more recently to 86. Its growth in size and the broadening of its terms of reference reflected the international community's interest in matters relating to the sea. A membership of 86 was unusual for a United Nations committee. It meant that the Committee's work would be different from the preparatory activities for the 1958 Conference on the Law of the Sea; and at the same time it made the Committee more difficult to guide and probably slower in its work than a smaller group would have been. However, in view of the essentially political nature of the Committee, whose members were under direct instructions from their Governments - with technical considerations playing a subordinate role - its discussions and decisions might actually save time for the Conference itself. It was said that the Committee was preparing and would continue to prepare for the third conference on the law of the sea. However, its methods of work and its composition were such that it might well be regarded as the start of the conference itself.

His delegation believed therefore that the Committee could do much more than was customarily achieved by a strictly preparatory committee for a plenipotentiary conference. It should not only prepare documents and provide a forum for exchanges of views. It should recognize also that it was a centre for negotiation. Although not explicitly stated, that aspect of the Committee's terms of reference was implicit in General Assembly resolution 2750 C (XXV) creating the enlarged Committee; and the Committee should make clear in its report to the General Assembly at its twenty-sixth session that it interpreted its terms of reference in that manner. The Committee's work had many technical aspects, but it was essentially concerned with political decisions which, once taken, could easily be given legal form.

The preparatory work should be pursued to the point of defining options for Government decisions. The documents to be drafted would set forth in a single text - which would be subject to revision later - the issues on which agreement had in principle been reached, and would list the options and alternatives still requiring negotiation and final decision.

Procedural matters which had been left over from the March 1971 session, and others which might be raised in the future, were important but should be settled within a reasonable time, so that the Committee could concentrate on substantive matters. The time available was short and must be used to the best advantage. Negotiations between States, especially on the future status of the earth's only remaining free resources, were bound to be laborious. Decisions should not be taken hastily, if they were to stand up to the test of time; much patience would be needed. However, the Committee should be determined to achieve specific results in the near future.

The following results might be achieved during the current session. First, the Committee might study in detail the various draft conventions on the sea-bed régime, identify common ground between the drafts submitted, determine the majority view of the delegations and list reasonable alternatives and options. Secondly, it might draw up a list of subjects and issues for the conference and start to develop them in working groups; and, thirdly, it might undertake a preliminary consideration of the subjects allocated to Sub-Committee III, in the light of the Secretariat studies and proposals by delegations.

Discussion of the items for the conference should be based on the principle that the sea was a physical and ecological whole, and that all the divisions introduced by man - such as the territorial sea, the contiguous zone and the rights of coastal and of land-locked States - were incidental and ephemeral.

The régime for the seas should therefore take into account the physical and ecological unity of the seas, as well as the political plurality of groups, technological progress, scientific knowledge, and actual circumstances such as the development or under-development of peoples, and the existence of the international community which had become a sociological reality.

In the seventeenth century, the idea had been advanced that a coastal zone - of a breadth determined by the range of coastal artillery, then three miles - should be incorporated into national territory. At that time, the sea had seemed to offer inexhaustible resources: problems of contamination, scientific research and peaceful uses had been non-existent or unknown. However, international custom had established the rule that the coastal State had sovereign rights over the territorial sea, subject to the right of innocent passage by vessels of other countries. The rule of innocent passage indicated that the type of powers accorded to the coastal State in the territorial sea differed from those it enjoyed in its territory proper, even though it exercised sovereignty over both.

At the present time it might be asked whether the right of innocent passage was the only exception to the exercise of full State powers in the territorial sea. In the present stage of technology, should every State do exactly as it wished in its territorial sea? Provided that it did not harm others, it could unquestionably exercise that right; but as soon as there was a possibility of danger to others or danger to the common resources of the high seas, that right was disputable and would have to be the subject of international understanding. The theory of the abuse of the right was worth developing under that and other headings of international law.

The divisions of the sea introduced by man were purely political and legal, and were adapted to circumstances existing at particular stages in the development of the international community. In the light of the physical and ecological unity of the oceans and the interests of the international community, certain fundamental principles would have to be elaborated for application to all waters, including the territorial sea. The interests of States should be co-ordinated with the interests of the community so as to obtain complete harmony. It was unnecessary to adhere to certain outmoded concepts. The territorial sea, for example, could be divided into two stretches, one relatively narrow - say, three miles - open to innocent passage only, and the other much broader, with complete freedom of navigation.

The current controversies on the territorial sea, the contiguous zone and fishing limits were mainly economic in origin. The developing countries had no great strategic interests and were to all intents and purposes spectators of the competition between the great Powers. Their interests were basically economic. The claim to territorial waters was not and could not be an absolute claim for a mare clausum. It was but one aspect of a system of jurisdictions compatible with the inter-dependence of States and the specific interests of the international community. Exclusive and preferential fishing zones, based on the particular geographical and human circumstances of the coastal State, would open a new chapter in the relations of the international community.

Many countries claimed specific zones of jurisdiction - under various names such as the "territorial sea" - as a means of establishing rights in specific terms over the resources of the sea, the sea-bed and the subsoil thereof. There was no interference with free navigation, although coastal States were afraid of million-ton tankers because of the disasters which might occur if they were wrecked or damaged. Those States had no wish to interfere with scientific research, but rather to promote it because the rapid development of contemporary society depended on scientific and technical progress. They did not wish to raise problems concerning the strategic

interests of the great maritime powers, but were concerned with the peaceful uses of particular areas of the seas. His delegation in the First Committee of the General Assembly had accordingly supported de-nuclearization of the entire ocean floor, without distinction of any kind.

A great deal had been said about the sacrosanctity of the freedom of the high seas. That freedom was indeed a great asset to the international community and should be preserved; but it should be rationalized so that it would not benefit only a few countries, but would provide increased opportunities for the developing countries. It had been argued that the extension of special jurisdictions would jeopardize the freedom of the high seas, by reducing the area over which it was exercised. That argument was sometimes advanced by those who benefited from the status quo; sometimes it was based on ignorance of the nature of the claim for special jurisdictions. In the case of fishing and the exploitation of the resources of the sea-bed, the claim would reduce the area exploitable on a "first come first served" basis. But the truth was that coastal States could exploit only the area near their coasts. The wider area available to the "first come" was used for the benefit of the States with large economic and technical resources.

Freedom of the high seas at the present time was an admirable concept but had little substance, since the majority of States - the developing countries - lacked the means to enjoy it. It should be given real significance and substance by helping the developing countries to advance. In order to rationalize matters and establish a system of equal opportunities in the use of the high seas, there was no need to destroy traditional freedoms they should rather be given real meaning. It was difficult for the developing countries to maintain their freedom of navigation when they had no merchant fleets. Freight rates were constantly increasing, and the shipping conferences took no account of the interests of the users. In justification of high freight rates, it was sometimes argued that the developing countries had no port facilities; but even when facilities were installed, the freight rates continued to rise.

Freedom of the high seas might be equitable if all countries had reached the same stage of development, but with the present technological imbalance, it favoured the maritime powers.

He hoped those points would be taken into account in the negotiations. Frank speaking was more likely to ensure the success of the conference. National and international freedoms were the best expression of man's self-development, but they were of no value in isolation they should be part of a system. They should be governed by justice in order to acquire real meaning and offer equal opportunities to all.

The third conference on the law of the sea should not be a conference for codifying customs which had flourished and been useful in the past, but did not meet the needs of the present-day international community. The major part of international maritime custom was of European origin. The Latin American countries, as cultural offshoots of Europe, had been saddled with a mass of rules designed for a very limited international community in which one continent exercised supreme and undisputed control. The newly independent countries of Africa and Asia were also entitled to reconsider the old rules and contribute to the establishment of a world maritime order suited to a truly universal community. In his opinion the Committee and the Conference should concentrate their attention on lex ferenda, and not lex lata.

Man was not bound by abstract reasoning, but by concrete reasoning with a real content. No law, national or international, was made for eternity: laws should be revised periodically in the interests of justice and international co-operation.

Most of the developed and developing land-locked countries could not derive full benefit from the seas; consideration should therefore be given to the possibility of compensating them by giving them something more than the notional benefits they might derive from the formal freedom of the high seas.

In the new régime of the high seas, five basic factors should be borne in mind: first, the very rapid increase since 1958 in the number of States comprising the international community; secondly, the predominant role of science and technology in contemporary life; thirdly, the process of rationalization of all human activities, including the exercise of rights, responsibilities and freedoms; fourthly, the concept of development, which was now the dominant element in international technical assistance and co-operation activities; and, fifthly, the division of the international community into developed and developing countries, with coastal and land-locked countries in both groups. Also, the sea on which coastal States were located could be enclosed, semi-enclosed or open, and their continental shelves could be narrow or extensive.

As the third conference on the law of the sea would be extremely important, adequate preparations had to be made for it. It would be very useful if the Committee could make substantial progress in the negotiations, leaving the conference to decide between alternative texts on which it had been unable to reach a consensus, and to finalize the texts.

Mr. BEESLEY (Canada) said that the time had come to take stock of the situation and to ask whether the means and concepts that the Committee had been using to date were really appropriate. The fundamental question which every member

of the Committee should ask himself was what interests the law of the sea was intended to serve. Those interests could be divided into the two broad headings of coastal interests and maritime interests, although the distinction was neither absolute nor all-embracing. Virtually all coastal countries had both flag interests and coastal interests and the weight they attached to one or other of them could vary from time to time. Nevertheless, the history of the law of the sea was that of the conflict between the two interests in question, and the current crisis in the law of the sea arose from the intensification of that conflict as a result of technological and political developments which had upset the traditional balance of interests. In redressing the balance, the Committee would, as a first step, have to reappraise the interests involved, stripped of any protective coloration that they might have assumed in the past, with particular reference to the extent to which they approximated to national or community interests.

The current radical evolution - practically revolution - in the law of the sea bore a striking resemblance to what had happened in the seventeenth and eighteenth centuries, when the then major maritime Powers were attempting to decide whether their interests were best served by narrow marginal belts over which they had full sovereignty, or by wider belts in which they could exercise a more limited jurisdiction on the basis of a functional approach to practical problems. The conflict of views at that period so closely resembled the present conflict that it was both relevant and worthwhile to examine it briefly in an attempt to find guidelines for the law of the future.

The classic conflict between Selden and Grotius had been ultimately resolved in favour of the latter, namely in favour of the freedom of the high seas. Unfortunately, the concept of the freedom of the high seas, as it had developed over the succeeding centuries, had become tantamount to a roving jurisdiction - sovereignty following the flag - for those who were powerful enough to make their wishes felt.

The ingenious doctrine of flag State jurisdiction was one example of the "tyranny" of the traditional concept, but an equally compelling example was the manner in which the freedom of the high seas had been transformed into a licence to pollute and a right to over-fish. Nobody could still be unaware of the dangers of continuing to condone laissez-faire on the high seas. Even so, however, flag interests were protected by the limits imposed upon the sovereignty of the coastal State by the doctrine of innocent passage. The developing concept of the contiguous zone - a potential basis of accommodation between coastal State sovereignty in the territorial sea and exclusive flag State jurisdiction on the high seas - had largely disappeared in theory, but it had nevertheless remained very evident in practice for some, if not

all, States. According to Lauterpacht in 1950, there were two parallel streams in the history of the freedom of the seas over the previous three centuries: first, the strict insistence, based on established international law, on full freedom from interference by other States on the high seas and, secondly, the unilateral assertion of jurisdiction of various kinds by the coastal States resulting in the concept of contiguous zones - which in 1950 had approximated to a customary rule of international law.1/

Buckminster Fuller had pointed out that the advent of the first "spherical" empires in human history had been accompanied by a conflict between what he called the "in pirates" and the "out pirates", which in his view had occurred between the First and Second World Wars and mutatis mutandis was recurring once again today. The question that arose therefore was whether the world could still afford, as a method of settling international law, a renewal of that battle. Neither power nor numbers could constitute an effective yardstick by which to measure the efficiency of the law, particularly if the problems to be resolved were those of the future rather than of the past. The Committee should seek to determine the issues which united countries rather than those which divided them.

The great overriding community interests in the uses of the sea were freedom of communication; the rational exploitation and conservation of the living and mineral resources of the sea; the protection of the marine environment; the reservation of the sea-bed beyond the limits of national jurisdiction exclusively for peaceful purposes; and the use of its resources for the benefit of all mankind, particularly the developing countries. Legitimate national interests could not only be reconciled with such community interests; they were complementary to and even dependent upon them. The way to the future accommodation of interests lay, therefore, in an imaginative adaptation of certain old concepts, plus the creation of some new and radical concepts.

A Canadian scholar, Professor Douglas Johnston, had suggested that the law of the sea over the last three centuries could be divided into three phases. The first phase, during which the law had been essentially and exclusively based on commercial, colonial

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1/ H. Lauterpacht, "Sovereignty over submarine areas", The British Yearbook of International Law, 1950 (London, Oxford University Press, 1951) pp. 374-433.

and military interests, had lasted from the time of Grotius up to approximately the Second World War. During the period after the Second World War and lasting until very recently, the law had evolved and had become resource law as much as commercial and military law. The world was now, however, well into a third phase in which the law had necessarily to continue to recognize legitimate commercial interests and the freedom of communication and had to remain resource-oriented in recognizing the rights of coastal States to certain marine resources, but at the same time had to be environment-oriented in that it was seeking to protect the maritime environment on which mankind and many other species were dependent for life itself.

While the interests of the land-locked States must clearly be adequately taken care of, the primary interests of the coastal States in all activities in the marine environment, particularly those adjacent to its shores, had to be reflected in the law. His Government strongly doubted whether the States Members of the United Nations would agree to some kind of super-agency with powers surpassing the combined powers of the Security Council, the World Health Organization (WHO), the International Civil Aviation Organization (ICAO), the International Telecommunication Union (ITU), the World Meteorological Organization (WMO) and the Inter-Governmental Maritime Consultative Organization (IMCO) and the General Agreement on Tariffs and Trade (GATT) and the International Atomic Energy Agency (IAEA). Consequently, much of the administration of the law of the future would have to be delegated to the coastal States, and would have to be based on resource-management concepts. The trend was already present in the existing law of the sea, albeit in an inchoate and inconsistent manner. In addition to the concept of the delegation of powers - and, indeed, to the exercise of powers already enjoyed by the coastal States - consideration would also have to be given to the concomitant notion of responsibilities and duties and the idea that coastal States should act not only in their own interests but also as custodians of the vital interests of the international community.

It was those concepts of resource management and delegation of powers on the basis of custodianship that he had had in mind when he had spoken of old concepts which, given imaginative adaptation and application, could form the essential basis for an accommodation of interests. For example, the concept of delegation of powers to all the States concerned already applied on the high seas with regard to the suppression of the slave trade and piracy. It should not be impossible, therefore, to develop an effective system for the management of "free-swimming" fish in areas

beyond exclusive national jurisdiction. There was no reason why the concept of delegation of powers to, and assumption of responsibility by, a particular class of States could not be applied, for instance, to the protection of fisheries and the prevention of marine pollution. If the law of the sea was not sufficiently instructive in that context, it should not be impossible to learn from the air lawyers who had had no difficulty in establishing a system of delegation of powers through ICAO to its member States. To sea lawyers, however, the mere idea that any State other than the flag State might exert any form of control over a vessel was anathema.

In more precise terms, the question arose how the concepts of delegation of powers and resource management could be applied to the outstanding issues of the law of the sea. One of the most important areas in which those concepts could be applied was that of fisheries. It would surely be possible to develop an effective resource-management system, under which the coastal State would assume responsibility, as custodian for the international community, for the conservation and management of free-swimming fishery resources far beyond the limits of exclusive national jurisdiction. The system would not include the exclusive right to exploit those species, although provision would be made for according preferential rights to the coastal States, in recognition of their admitted special interests.

As for pollution, it was possible to envisage a comprehensive treaty laying down certain minimum rules of general application, together with related multilateral treaties of regional application laying down special, and possibly stricter, rules. The powers and related duties required for the effective prevention of pollution of their environment would be delegated to the coastal States. The threat to the marine environment could not, of course, be met entirely and exclusively in that way. Other approaches would also have to be considered. Something like the concept of universal jurisdiction should perhaps be applied to the suppression of certain types of polluting activities.

As for the question of marine scientific research, the concepts of custodianship, delegation of powers and resource management were of direct relevance in that case also. He was suggesting not that the rights of States concerning scientific research should be determined unilaterally, but that general rules of behaviour should be agreed upon, taking account both of the special interests of the coastal State and the essential interests of the international scientific community. Difficulties which had arisen in the interpretation of the rules laid down for scientific research in the Convention on the Continental Shelf[2/] stemmed not only from lack of clarity in those rules, but

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2/ United Nations, Treaty Series, vol.499, p.311.

also from the fact that the proper relationship between power and responsibility had not yet been established in the law of the sea. The elaboration of clearer, more specific rules, and the wedding of responsibility to power should make it possible to achieve a better balance between the protection of coastal interests and the protection of community interests.

With regard to the continental shelf, another respect in which the concept of custodianship might have some validity, was the proposal his Government had put forward for a voluntary international development tax on off-shore mineral resources within the limits of national jurisidiction. The idea underlying the proposal was that since a coastal State enjoyed special rights and privileges with regard to the resources of the continental shelf, it might well recognize a certain duty towards the international community as a whole, and more particularly the developing countries, to make available to them some at least of the benefits derived from those rights and privileges. Of course, the decision of the International Court of Justice in the North Sea Continental Shelf cases[3/] made it quite clear that the rights of coastal States over the continental shelf arose by virtue of the fact that the shelf was an extension of their land mass. Nevertheless, the concept of the coastal States' duty to the international community had potential application in that sphere also and, of course, a much more direct one in the case of the various types of trusteeship proposals which were being discussed.

The concepts of delegation of powers and resource-management had, of course, very little direct relevance to questions concerning the territorial sea and innocent passage, including passage through international straits. If those concepts were applied to fishery matters, however, many of the problems connected with the extension of the territorial sea might well be resolved. States claiming very wide belts of territorial sea might possibly be willing to give up their claims to total sovereignty in return for recognition of their right to exercise certain forms of jurisdiction. The concept of custodianship was certainly directly applicable to the problems of innocent passage and international straits. Coastal States should accept that their sovereignty over the territorial sea was allied with a positive duty to ensure free, safe, secure and uninterrupted passage. To that end, it would undoubtedly be necessary to modernize the notion of "innocence" with a view to protecting both community interests in the freedom of communication and coastal interests in territorial and

3/ ICJ Reports 1969, p.3.

environmental integrity. A better definition of international straits might well be needed, together with an improved definition of what coastal States and flag States were or were not entitled to do in the straits so defined. The authority left to coastal States could then constitute not so much an exercise of sovereignty as the discharge of an international obligation.

Valuable statements, based on rather different approaches to the problem of straits, had been made by the representative of New Zealand at the sixty-second meeting of the Committee and by the representative of Turkey at the fifth meeting of Sub-Committee II. It was encouraging that States other than the major maritime Powers were beginning to face up to that problem. Much would undoubtedly be heard in the future concerning the danger of "creeping jurisdiction". That problem existed because of the historic departure from the functional approach to practical problems, as embodied in the concept of contiguous zones, and the insistence instead of the two extremes of coastal State sovereignty over territorial sea and the exclusive jurisdiction of the flag State on the high seas.

The opposition between those two extremes had resulted in strongly held and deeply divergent views as to the need for, and the desirability and legality of, various limits for various types of national jurisdiction. That situation was, in turn, both a consequence and a cause of the lack of any universally acceptable rules on limits. If a solution could be found to each of the problems involved, there would be no danger of a return to the situation whereby States considered themselves obliged to take unilateral action to assert various types of jurisdiction on account of the inadequacies of existing law. It should be remembered that, if any single major issue were left unresolved, States might take unilateral action to protect their own national interests and the theory of creeping jurisdiction would become a self-fulfilling prophesy.

Two alternatives were open to the Committee in approaching the future development of the law of the sea. It would be possible to follow the precedent of the law of outer space which had been developed essentially by unilateral action by certain powers, later sanctioned in multilateral forums although still unilaterally implemented. Canada was prepared to follow such a course, albeit reluctantly, if it should become absolutely necessary. The other alternative was to achieve a comprehensive and lasting accommodation on all the new and outstanding problems of the law of the sea through the multilateral forum of the 1973 conference on the law of the sea. His delegation would prefer the latter course but to achieve such an accommodation, outmoded concepts would have to be abandoned and legal doctrine adapted to a multi-disciplinary and inter-disciplinary approach to the problems associated with the uses of the sea.

He had referred several times to the concept of the delegation of rights and powers and the concomitant assumption of responsibility and duties. International law was no different from any other system of law in that rights necessarily carried with them certain responsibilities. Every law system differentiated between freedom and licence and imposed responsibilities where it admitted rights. That concept was central to his Government's whole approach to the problem. International law was based on consent and the element of consent was present not only in conventional international law but even in the development of customary law. Development of the law of the sea required the consent of States which should be sought by a process of accommodation and should not be imposed by power or by numbers. In the absence of any effective sanctions procedure, good faith was equally important in the field of international law and was indeed essential to the negotiation process.

Whether the law developed along the lines he had suggested or not, his delegation would play its full part in every effort to seek accommodation by consent and would do so with good will and in good faith. His Government would bear in mind the fact that if Canada, as a coastal State, had already acquired or would in the future acquire certain rights, it would then be prepared to take on the appropriate responsibilities and undertake certain duties to the international community as a whole, particularly to the developing countries.

Mr. PARDO (Malta) said that during the course of the meeting a working paper containing the draft of an ocean space treaty submitted by his delegation would be distributed to members of the Committee. It was only in English and was not at present in the form of an official document of the Committee; there were also a number of omissions and typing errors in it. When the necessary corrections had been made, his delegation would request the Secretariat to issue it as a Committee document.4/

The draft had been introduced in substance, if not formally, in the statement made by his delegation in the Committee at its fifty-sixth meeting, on 23 March 1971. He would not repeat or expand on what had been said on that occasion, but would merely explain the reasons why his Government had authorized the submission of the draft to the Committee.

4/ Subsequently distributed as document A/AC.138/53.

If the Committee was to carry out the mandate given to it by the General Assembly in operative paragraph 6 of General Assembly resolution 2750 C (XXV), a very considerable part of the existing law of the sea, as incorporated in the 1958 Geneva Conventions, would have to be reviewed. At the same time the somewhat divergent views and wishes expressed by delegations with regard to items which should be included in the comprehensive list of subjects and issues referred to in General Assembly resolution 2750 C (XXV) might well cause serious delay in the actual preparation of draft treaty articles, since it was necessary to reach agreement first on the subjects and issues to be covered by them.

Whatever the results of the exchange of views on a list of subjects and issues, it was certain that it would be necessary not only to establish an international régime for the sea-bed beyond the limits of national jurisdiction but also, as he had said, to revise or review major portions of the existing law of the sea. The danger was that that revision would be carried out unsystematically, while, as the representative of Japan had noted some days earlier, no action could be effective unless co-ordinated measures were taken within the framework of international co-operation.

In those circumstances his delegation had felt that it might be useful to submit to the Committee a document containing a draft treaty which, while preserving what was viable in the existing law of the sea, attempted to construct a new international order in the ocean to replace the four existing basic Conventions on the law of the sea and related régimes,[5/] and also dealt systematically with almost all subjects and issues which might be relevant to international regulation of the marine environment.

The draft treaty has been drawn up in accordance with the basic concept which his delegation had explained at the March 1971 session (A/AC.138/SR.56-57) and it adopted a comprehensive and consistent approach to the many inter-linked problems of the marine environment. Although it represented no more than a first approximation to an eventual treaty, the approach adopted in the working paper would pave the way for a serious attempt to balance equitably, in the over-all framework of the marine environment, the diverse interests of individual States and national and international interests, and at the same time it presented a general picture of one type of updated and largely new international régime for the sea-bed and the superjacent waters.

His delegation hoped that, because of its comprehensive approach, the draft treaty might simplify consideration of the comprehensive list of subjects and issues or even be accepted as that list and be used as such by the Committee as a point of reference for the actual work of drafting articles.

5/ United Nations Conference on the Law of the Sea, Official Record (United Nations publication, Sales No. 58.V.4, vol.II), p.132 et seq.

The working paper took the form of a draft treaty and was divided into five parts. Part I dealt with ocean space and was on the whole merely an updating of the 1958 Geneva Convention on the High Seas.[6/] Part II dealt with the limits of coastal State jurisidiction in ocean space. Part III was concerned with ocean space under national jurisdiction and with the rights and duties of the coastal State. Part IV dealt with basic principles governing ocean space beyond the limits of national jurisdiction and mainly reproduced the provisions of General Assembly resolution 2749 (XXV). Part V related to the international institutions which it was proposed should govern ocean space beyond the limits of national jurisdiction. The working paper could thus be considered together with any corresponding provisions in the draft treaties submitted by other delegations by the Committee itself and its three Sub-Committees. If the terms of reference of Sub-Committee I were extended to include consideration of an international régime and machinery for ocean space, parts IV and V of the working paper could be considered by that Sub-Committee; parts II and III could be considered by Sub-Committee II; part I, together with the few articles in the other parts dealing with peaceful uses, could be discussed in plenary, while Sub-Committee III could discuss those draft articles in all five parts which concerned pollution of the marine environment and scientific research.

He wished to make it clear that the draft treaty which his delegation was submitting did not necessarily reflect the final views of the Government of Malta on all the very difficult issues dealt with in it. It might wish to propose alternative solutions to some of them. The draft treaty had been submitted as a possible basis for discussion in an effort to make a constructive contribution to the work of the Committee.

Mr. FATTAL (Lebanon) asked whether, in order to simplify the Committee's consideration of the many sets of draft articles that had been submitted, it would be possible for the Secretariat to prepare a document setting them out, - together with the relevant articles of the 1958 Conventions - in the form of a comparative and synoptic table.

Mr. STAVROPOULOS (Legal Counsel) said that the Secretariat could certainly do so, but that it would take some time.

The meeting rose at 1.15 p.m.

6/ United Nations, Treaty Series, vol.450, p.82.

SUMMARY RECORD OF THE SIXTY-FOURTH MEETING

held on Thursday, 12 August 1971, at 11.25 a.m.

Chairman: Mr. AMERASINGHE Ceylon

GENERAL DEBATE (continued)

Mr. AGUILAR (Venezuela) said he had some preliminary comments of a general nature to make on the solution which might be found to the varied and complex problems before the Committee. Any such solution would have to be comprehensive, covering every aspect of the issues involved, although it would not necessarily be embodied in a single convention. It would have to reconcile the general interests of the international community with the individual interests of States and take account of the established rights of States under existing international law. It would have to be universal in character, without excluding the possibility of regional arrangements. It would have to be a durable agreement that would remain in force for a considerable period of time and contain clear and precise provisions to prevent a State or minority of States from attempting to alter the balance of interests through unilateral decisions. Lastly, it would have to be adopted with all due dispatch.

Apart from the supreme interest of maintaining peace on the high seas, the main interests of the international community fell into three broad categories: free, easy and economic traffic on the high seas and oceans; protection of the marine environment, and orderly utilization and rational management of marine resources. Coastal States shared those interests as members of the international community, but they also had certain specific interests of their own. The general interest in freedom of navigation and overflight had to be reconciled with the legitimate interest of coastal States in exercising full jurisdiction and exclusive sovereignty over the sea adjacent to their shores, up to a reasonable distance, for purposes of defence and security and the protection of other vital interests. The interests of the international community also had to be harmonized with the individual interests of coastal States with respect to the protection of the marine environment since, though it might be convenient to divide the seas and oceans into areas over which States exercised rights of a differing nature and content, it should not be forgotten that they constituted an inseparable whole and that, consequently, activities in any one area could affect those in others.

Any solution would have to start from a careful examination of the international law in force and the legitimate interests and claims of the various States.

If a stable and lasting system was to be established for the seas and oceans, it would have to be acceptable to most, if not all, States. A solution imposed on the rest by a relative majority which did not take account of existing realities and the interests of different States would not be satisfactory. The principles underlying the demarcation of the various areas and their maximum limits would have to be determined on a universal basis. The convention embodying the agreement should contain provisions expressly setting forth the principle of the unity and indivisibility of the system, together with rules for its revision, so as to achieve the aim of durability.

Lastly, the solution would have to be adopted with all due dispatch. The necessary measures should be taken without excessive haste but without delay. The process had already begun and a conference had been scheduled for 1973. It might be hoped, therefore, that an agreement satisfying all the conditions he had listed might be achieved by 1973 or 1974 at the latest.

His Government had already stated its position that rights acquired by States under existing international law could not be violated or ignored. For States which were parties to them, the four 1958 Geneva Conventions[1/] constituted a body of rules and standards which could not cease to be in force without their consent. In particular, he wished to reiterate that no alteration of the legal régime now in force could in any way modify the legal position of Venezuela with respect to any demarcation line or any dispute concerning what now constituted its marine domain.

It was clear that any agreement would mean compromise and that no positive results could be achieved without reciprocal concessions. A good compromise agreement might envisage the following marine spaces:

(1) A territorial sea under the coastal State's exclusive sovereignty and jurisdiction, with a reasonable breadth of, say, twelve miles;

(2) An economic zone, called the patrimonial sea, not more than 200 miles in breadth from the base line of the territorial sea. In that zone, there would be freedom of navigation and overflight but the coastal State would have an exclusive right to all resources;

(3) That part of the continental shelf not covered by the patrimonial sea which would extend to a depth not exceeding 200 metres and over which the various States concerned would maintain their existing rights.

1/ See United Nations Conference on the Law of the Sea, Official Records (United Nations publication, Sales No.58.V.4, vol.II) p.132 et seq.

It might be argued that the establishment of a patrimonial sea would mean inadequate exploitation of living resources, since a great number of coastal States lacked the financial means and technical knowledge to exploit them properly. In their own interests, however, such States would surely reach agreement with individuals or bodies from other States for the utilization of those resources.

It might also be said that, under the system he had outlined, age-old principles and practices would be altered. It was necessary, however, to bear in mind the evolution which had taken place in the world over the past 25 years and the new philosophy in international relations. One of the most dangerous divisions in the world today was that between the minority of highly industrialized countries and the great majority of developing countries. If the gap was to be narrowed, it was necessary to stimulate the development of the developing countries in every possible way. Moreover, it was evident that the system now in force tended to encourage a disproportionate investment of human and material resources and over-fishing, which endangered the conservation of fishing resources. It should be remembered that in addition to having their own patrimonial seas, the highly developed countries would initially have the advantage of being best placed to exploit the fishing resources of the high seas, and for some time at least would be able to use their fishing fleets, through agreements with the developing coastal countries, to exploit the living resources of the latter's patrimonial seas. There would thus be a transitional period between the present situation and the stage at which the developing countries would be in a position to exploit the resources of their patrimonial seas and of the high seas on their account.

Another problem arose in that connexion: that of the land-locked countries. While it was true that the lack of a sea-coast was not in itself an insuperable obstacle to development, it entailed certain disadvantages which placed land-locked States in a position of inequality vis à vis coastal States. It might therefore be appropriate to consider a compensatory system for the land-locked developing States within a regional framework. It might, for instance, be agreed that part of the resources extracted from the areas of patrimonial sea belonging to the other States and territories of the continent in question would be paid into a fund for the development of the land-locked countries in the same continent.

The coastal State had a right and a duty to prevent any threat of pollution and to take all necessary measures to ensure the implementation of its domestic legislation in the maritime areas over which it had jurisdiction. It should also have the right to take any measures it deemed necessary to protect such areas from any threat of pollution or other hazard resulting from activities carried out in the international area.

Although in theory one might argue in favour of absolute freedom of scientific research in the entire marine area outside territorial waters, there were strong reasons for subjecting that freedom to certain limitations in those areas over which individual States had or would have rights. In practice, it was very difficult to distinguish between pure research and research with lucrative or non-peaceful aims.

As for the international area, all the freedoms of the high seas would continue to apply with the few slight limitations resulting from the adoption of the proposed system for the area and its resources. Venezuela was a sponsor of the Latin-American working paper on the régime for the sea-bed and ocean floor and its subsoil beyond the limits of national jurisdiction (A/AC.138/49) submitted to Sub-Committee I and subscribed to the underlying philosophy of that paper. It believed that the authority should have the power to undertake, on its own account, scientific research, exploration and exploitation of the area and its resources and to engage in processing and marketing activities. That was the system most closely in line with the concept of the common heritage of mankind and the one which could best ensure implementation of that and the other principles contained in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)).

The proposed authority would be democratically organized, since all States would be entitled to membership and there would be neither domination by the great Powers nor individual or plural vetoes. The States would set general policy lines through an assembly, in which they would all be represented, and would adopt the rules and regulations necessary for their implementation. The council of thirty-five member States would have some very important powers and responsibilities. Lastly, any individuals or bodies with which the authority might enter into service contracts or joint ventures would require State sponsorship, while of course States might themselves be parties to such contracts.

That system seemed in many ways preferable to an arrangement under which the machinery would be limited to registering claims or granting concessions to individuals, private bodies or States. In practice, such an arrangement could well entail a division of the seas and oceans which, though possibly more efficient in the short term, could become a source of rivalry and discord in the long term. The supreme interest of peace would be better ensured by an authority composed of and managed by all States and by a system of utilization of resources which would benefit all countries, particularly the developing countries, whether coastal or not.

On the basis of the system proposed in the Latin American working paper, coastal States could be expected to consent to a revision of their present rights, whether derived from ordinary international law, international conventions or their own special circumstances. Lastly, since the proposed limits of national jurisdiction would be maximum ones, States would be able to establish regional agreements whereby the areas within the 200-mile limit to which they were entitled would be used in common or to enter into bilateral or multilateral agreements granting each other reciprocal rights in their respective patrimonial seas.

Mr. ESPINOSA (Colombia) said that significant progress had been made since the March 1971 session, when much time had been wasted on procedural debates and when many delegations had been reluctant to take an active part in the Committee's work. That situation had been reversed at the current session. Far-reaching proposals had been placed before the Committee, while others were under discussion at the regional group level. Above all, there had been a frank and comprehensive exchange of views, and gradual but definite progress had been made towards reaching agreement on the major issues.

Progress was not, of course, apparent everywhere. It was not always easy to discard the deep-rooted ideas of the past, and some people still tended to behave as if nothing had changed. The human mind was endowed with a measure of inertia and did not always adapt itself easily to changed circumstances, as was the case with those who, in the space age, still thought in terms of cannon shot. It was therefore incumbent on those who had not fashioned the old ideas and who had not benefited from them to put forward new concepts and to canvass them energetically.

The modern idea that the sea-bed and ocean floor beyond the limits of national jurisdiction were the common heritage of mankind would have to be viewed in that light. Everybody knew the difficulties with which it had met and the initial resistance that had had to be overcome. However, since international law was evolving fast, the idea had soon gained acceptance. Indeed, so quickly had that happened that the implications were only beginning to be realized and the institutions to which the new idea would inevitably give rise were only beginning to take shape.

The concept of the common heritage of mankind was part of that radical, almost revolutionary, development of international law. It was even more important than the idea of the continental shelf. It implied ownership, and hence property which someone would have to administer and to which someone would have to apply the pertinent law.

That in turn implied that an agency of international law would have to be set up to represent mankind, with functions and powers of its own. Otherwise the common heritage would be something purely theoretical, and General Assembly resolutions 2749 (XXV) and 2750 (XXV) would remain in the realms of fantasy. That had certainly not been the intention of the Assembly, which had wished to decide upon something new, to create real law.

Several members of the Committee had drawn attention to the inadvisability of extending the areas under national jurisdiction unduly, because to do so would reduce the international area. His country was a signatory of the 1958 Convention on the Continental Shelf[2/] and had long advocated a breadth of twelve miles for the territorial sea. Great care must be taken to ensure that the common heritage concept was correctly interpreted, that its scope was recognized, and that its full consequences were accepted; it should not be emasculated, as in the USSR draft articles (A/AC.138/43), which reduced it to less than nothing.

It would not be possible to reverse the trend towards very broad areas of national jurisdiction on the grounds that they reduced the common heritage area unless it was intended that the common heritage should be fully respected. The common heritage concept must not be advanced solely for the purpose of consolidating the long-established advantages of the present industrial and maritime Powers. If the limits of the international area were to be defended, the first step should be to agree that mankind was to be represented, not by just a few countries, but by all. There could no longer be privileged countries. Mankind, through the organs with which it must be provided, would administer its own property, which meant that the régime's function could not be restricted to mere co-ordination and the granting of licenses, enabling the same few countries to continue their old activities.

His delegation was sure that those who advocated broad areas of national jurisdiction would be open to persuasion if they could be convinced that the international area would be as extensive as possible and administered in such a way that nobody enjoyed advantages, vetoes or anachronistic privileges. Otherwise they would fear the domination of those who held industrial and maritime power.

2/ United Nations, Treaty Series, vol.499, p.311.

Moreover, as the debate was to cover all aspects of maritime law, it was imperative to agree on the meaning of the terms used in it. If, for instance, the Committee could not agree on what the different areas of the sea were, it would be a waste of time to try to define them, let alone delimit them. The words "sovereignty", "control" and "jurisdiction" were interpreted in different ways in different places, and their meaning had for long past been confused. A number of ideas had been put forward at the current session and if the Committee was to consider them it would have to know just what they meant. They included the international trusteeship area proposed by the United States 3/ and the areas of special jurisdiction referred to by a number of delegations. Others were the controlled fishing area suggested by New Zealand, the Mexican idea of special jurisdictions, the fishery conservation and exploitation area defended by Iceland, the economic jurisdiction up to 200 miles from the coast supported by Spain, the Australian proposal for continuous jurisdiction up to 100 miles in distance and 200 metres in depth, the area of national jurisdiction up to 200 miles from the coast referred to by the representative of Malta in his comprehensive draft, the extensive area of jurisdiction granted in the Tanzanian draft statute, the well-known claim of various Latin American countries to 200 miles, and the economic area or patrimonial sea just mentioned by the Venezuelan representative.

Were all those views utterly irreconcilable? Some of the statements made in the Committee and the very way in which the drafts and proposals had been presented indicated that an understanding could be arrived at. The United States representative, in his statement at the 3rd meeting of Sub-Committee II, had said that in most of the cases in which claims to a more extensive national jurisdiction had been made, the reasons advanced had been resource-oriented, and that his delegation believed that the real interests of the few States which had claimed broader limits for the territorial sea could be accommodated.

As a start, it might be ascertained whether all the claims to extensive or broad jurisdiction were based on the concept of the territorial sea. The Canadian delegation had suggested that if the right to exercise certain forms of jurisdiction were recognized the idea of full sovereignty over very extensive territorial seas might be abandoned. The proposals on special forms of jurisdiction made by a number of delegations left intact the freedoms of navigation, overflight and cable-laying; that brought them closer to the continental shelf idea and, strange as it might seem, to the

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3/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No.21 (A/8021), annex V, chap.III.

international trusteeship area idea, since such special-purpose jurisdictions, clearly determined, would not be radically different from the powers which coastal States would exercise under the international trusteeship idea.

Thus, by a process of elimination, it could be seen that the fundamental differences between the views of the United States and the other positions referred to were connected with jurisdiction over fisheries. The United States proposals had also been resource-oriented. Even if the exploitability criterion was dropped, the United States, with its continental shelf and the immense area to which it would be entitled as an international trusteeship area, would control and administer the hydrocarbons and very important minerals. It would also control the fish resources in those areas by virtue of its economic and military power, even if that was not recognized in a treaty or convention, and it would maintain its right to fish in every sea in the world with its enormous fleet.

Those opportunities, however, were not available to the developing countries, which knew that the only way they could get equality and justice was through the protection of international law. Thus they could not but be concerned with the development of international law, particularly now that it was not just being codified - as in the 1958 Geneva Conventions - but also created, and created in order to last for years to come. If the ideas of the powerful countries were resource-oriented, why should not the same hold good for the countries which had no industrial and sea power?

In the same statement the United States representative had denounced what he called the historical tendency to establish more and more kinds of control in areas over which jurisdiction had been granted for specific purposes. But there were treaties whose jurisdiction had not been extended or generalized in the way implied by the United States representative.

Colombia's position was very clear. Although his country had not been a party to the proclamation of a 200-mile limit made by some Latin American States, it understood their motives: there was a link between the sea, the earth and man who inhabited it. Colombia admired those States' efforts to promote the wellbeing of their people and hoped that their views would be fully studied and suitable provision ultimately made in international law. His delegation had also suggested that the idea of a zone contiguous to the high seas should be explored, with a view to giving coastal States, because of their special interest, preferential rights in the use of those resources and the power to lay down regulatory measures which would recognize their specific economic jurisdiction. It was not in the Colombian legal tradition to fix its maritime -

or land - limit unilaterally but it recognized that the idea of the 200-mile limit had gained ground in Latin America and now predominated. It was a new idea of the rights of the developing countries over the resources of the sea off their coasts. Formerly it had been a question of security; today the sea was regarded as a provider of economic resources. It was unjust that the great Powers should send whalers and factory ships off the Pacific Coast to exploit the resources of the sea without permission from the Pacific coastal States and without taking into account their needs.

In May 1971 the Ministers for External Affairs of Colombia and Chile had drawn up a declaration at Bogota stating that an exchange of views on the coming United Nations conference on the law of the sea had brought out the need for all Latin American countries to adopt a common position at the conference on the basis of their right to exploit the resources of the sea necessary for their development. The Colombian Minister had subsequently visited Brazil, Ecuador and Peru, where similar declarations had been agreed upon, with particular emphasis on the preservation and rational use of the resources of the sea and the rights of coastal States.

Those rights must be affirmed in international instruments and their observance assured. It did not matter whether they were described as control, administration, or economic jurisdiction; what was important was that the law should be stated clearly and unequivocally.

There was not a single declaration or draft submitted at the previous or the present sessions which had not repeated the words of General Assembly resolutions 2749 (XXV) and 2750 (XXV) to the effect that in exploiting the international area, special consideration should be given to the interests and needs of the developing countries. The stage of declarations was over; now it was time to adopt appropriate regulations. The developing countries were not asking for charity, but for the strict observance of what was already United Nations law and had now to be converted into treaties and conventions of the international community.

The Colombian delegation was a sponsor of the Latin American draft submitted to Sub-Committee I. That draft was based on a faithful interpretation of the definition of the common heritage of mankind. It demonstrated the spirit of co-operation of the Latin American group of countries. His delegation would comment on it in Sub-Committee I.

It would also comment in Sub-Committee I on the other important drafts submitted to the Committee. All of them had much of value and much in common, but there were also discrepancies. His delegation had spoken against vetoes, privileges, the maintenance of anachronistic methods - and it must be said that some of those were to be

found in all the drafts. He was confident, however, that with the co-operation of all the members of the Committee equity would ultimately prevail so as to assure the success of the 1973 conference.

His delegation had also taken part in the preliminary work of the Latin American group on the list of subjects and issues provided for in General Assembly resolution 2750 (XXV) on the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and was at present working in the contact groups with African and Asian countries on a comprehensive list, which would shortly be submitted to Sub-Committee II.

His country was particularly interested in scientific research and in the problems of pollution and would have something to say on the subject in Sub-Committee III.

Mr. ZAFERA (Madagascar) said that although the adoption of the Geneva Conventions had marked an important stage in the development of the law of the sea, international law had not yet become universal in character and had serious shortcomings which would have to be remedied. The Conventions had not resolved a number of urgent questions and were vague and imprecise on basic issues. As the number of problems grew and the appetite for gain increased, uncertainty and confusion were likely to result. In addition, a number of States which were now independent had not participated in the 1958 and 1960 United Nations Conferences on the Law of the Sea and had not been able to put forward their views and protect their interests. For all those reasons, and also because of the recent advances in technology, it was necessary to review existing international law and to introduce new general standards for the sea-bed. That did not mean that existing legal rights should be abolished: they should, on the contrary be adapted to the new circumstances.

His country attached great importance to the Committee's work, for two main reasons. In the first place, Madagascar was an island and thus naturally interested in the delimitation of the territorial sea and the area of the sea-bed under national jurisdiction. Secondly, as a developing country it had great hopes of exploiting the abundant resources of the seas around it.

His country had welcomed the adoption of the Declaration of Principles as an important step towards a new law of the sea. It particularly welcomed the principle that the area beyond the limits of national jurisdiction belonged to mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal.

His delegation was convinced that the creation of an international régime able to assure the exploration and exploitation of the sea-bed to the benefit of all, taking

account of the special interests and needs of the economically weaker countries would open up new possibilities for international co-operation and would help to reduce the gap between rich and poor. The new régime should enable the developing countries to participate in the exploration and exploitation of the sea-bed and to be associated with development operations. Training of nationals of the developing countries in techniques and sciences relating to exploration and exploitation of the sea-bed would be essential in the early stages. The international machinery should not be too bureaucratic, too complicated or too costly. His delegation shared the view expressed by other delegations that to be effective the machinery would need wide powers.

Apart from the problem of international machinery, two of the most important questions were the delimitation of the territorial seas and the extent of the area of the sea-bed under national jurisdiction, including preferential fishing zones. On the first question, his delegation would favour a limit of 12 miles. Divergencies between national legislations were not in the interests of the international community and a uniform limit would be best. On the second point, his delegation was in favour of the revision of the Geneva Convention on the Territorial Sea and the Contiguous Zone[4/] and advocated the criterion of distance from the base line. Its reasons had already been explained in Sub-Committee II. His country also thought there should be a zone contiguous to the territorial sea in which the coastal State would have preferential fishing rights.

Madagascar was concerned about pollution since it was on the route of the giant tankers, and it had participated in the work of various organizations on that subject. Although the question was to be dealt with at the United Nations conference on the human environment, in Stockholm, it could usefully be discussed in Sub-Committee III, together with the question of liability.

In conclusion, he stressed the importance of freedom for scientific research on peaceful uses of the sea-bed and the need for training nationals of the developing countries in that sphere. He hoped that programmes of research and their results would be widely publicized.

The meeting rose at 12.45 p.m.

4/ United Nations, Treaty Series, vol. 516, p.205.

SUMMARY RECORD OF THE SIXTY-FIFTH MEETING

Held on Wednesday, 18 August 1971, at 11.15 a.m.

Chairman: Mr. AMERASINGHE Ceylon

GENERAL DEBATE (continued)

Mr. DEUSTUA (Peru) said that the debates in the Committee and its three sub-committees to some extent strengthened the hope that the pressing needs of the developing countries would be taken into account. A growing number of delegations had realized the inequity of the systems devised to promote the interests of the more advanced States and had supported the distance criterion or a combination of criteria for defining the limits of national jurisdiction. Other delegations, however, mainly representing the great Powers, had supported old systems under new guises, designed to maintain their own economic and political control.

The Committee had been entrusted by the General Assembly, in its resolution 2467A (XXIII) supplemented by resolution 2750C (XXV), with the task of preparing draft standards and articles for a Convention which would establish rights and obligations for all States. Its basic purpose was to prepare for a political conference which was designed to lay the foundations of future international coexistence. The present-day world contained a few prosperous countries and a much larger number of countries in which conditions were unsatisfactory, sometimes desperate, for vast masses of people. Those people were entitled to hope for an easier and brighter future.

It was essential, therefore, that the new standards prepared by the Committee should not merely accommodate opposing criteria and interests, but should apply the principles of social justice to the law of the sea. The order of priorities should be a natural one with the service of mankind as the primary objective. Thus in the event of a conflict between rules intended to facilitate the military purposes of certain Powers and rules designed to safeguard the development rights of the other countries, the latter would take precedence; or again, rules designed to promote the survival and wellbeing of people would take precedence over rules to protect the gainful interests of certain enterprises. The new law of the sea should not be used as an instrument of domination by a small number of nations; it should be an instrument of harmony, peace and equity, which would help the developing countries to attain the same degree of progress as the more advanced nations and would improve the living conditions of the less advanced among the developing countries.

In order to establish a lasting and satisfactory international régime of the seas, it would be necessary to take into account the rights, interests and conditions of the different countries of the world community and avoid adopting universal rules which ignored their obvious diversity. It must be recognized frankly that only a plurality of régimes could accommodate the different situations of the different States. Any attempt to ignore or defy that fact by arbitrary simplification would be doomed to failure.

One of the most important points to bear in mind was that the new law of the sea must be divorced from outdated concepts which had been superseded by changing conditions. The old systems had been established in the seventeenth and eighteenth centuries to meet conditions and interests which were very different from those of today. New thinking and new decisions were needed, both on the part of the more advanced Powers and of those still in the process of development.

Peru, along with many Latin American countries, supported the right of coastal States to jurisdiction and sovereignty over the seas adjacent to their coasts up to a limit of 200 miles. That principle, together with the principle of plurality of maritime régimes, would enable each State to fix its maritime jurisdiction in accordance with the geographical, geological, ecological, social and economic characteristics of its own territory and the ocean space off its coasts. International law was a living discipline, evolving continuously in the light of new situations. There was no reason why it should not develop to include the idea of a broad territorial sea with a plurality of régimes, in which the coastal State would retain its sovereign right to regulate the conservation and exploitation of living and non-living resources, without detriment to the rights of navigation, overflight and other means of international communication, within reasonable limits, which concerned all States. That system was more reasonable that the proposal for various zones of special jurisdiction in which the coastal State would exercise similar rights to those recognized in the territorial sea. His country was confident that current differences would eventually be ironed out with the recognition of common interests and common problems whose solution must be sought jointly.

In connexion with the list of subjects and issues discussed in Sub-Committee II, 1/ he had noted a growing awareness among the developing countries of the necessity and

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1/ See A/AC.138/SR.45, p.8.

justice of extending their national jurisdiction; support for that trend by some of the more advanced countries; and a greater understanding of the interests at stake by one of the Powers which still maintained a conservative attitude. Since the March 1971 session, there had been various developments. Eleven African nations meeting in Casablanca in May 1971 had recognized that the effective conservation and administration of fisheries resources called for measures on the extension of national jurisdiction over coastal fishing. The Council of Ministers of the Organization of African Unity, at its seventeenth ordinary session, in Addis Ababa in June 1971, had urged the Governments of the African countries to take all necessary steps for the rapid extension of their sovereignty over the natural resources of the high seas adjacent to their territorial waters and up to the limits of their continental shelf. Those decisions were similar to the views expressed at the twelfth session of the Afro-Asian Legal Consultative Committee held in Colombo in January 1971. It was important, though not surprising that in the past few days an increasing number of delegations of developing African and Asian countries had advocated the 200-mile limit as the most equitable and reasonable one for defining national jurisdiction and the international area of the sea-bed.

It was significant that other nations with very different geographical situations and political systems had recognized the justice of the developing countries' cause and had supported the inevitable process towards establishing a régime of the seas which would help to reduce the imbalance caused by existing inequalities among States.

The maritime policy of the developing countries had recently been supported by Spain, in a joint statement by the Ministers for External Affairs of Spain and Peru at Lima; by Yugoslavia, in a statement by its Deputy Minister for External Relations during a visit to Peru; and by the People's Republic of China in a joint statement signed at Lima by the Deputy Minister for External Trade of that country and the Secretary-General for External Relations of Peru, in which the 200-mile limit was supported. Those statements underlined the importance of the developing countries' problems and the need for just and appropriate measures to resolve them.

It was also reassuring to note the growing understanding in the United States of America of the extent of the conflicts of interest between certain maritime Powers and the other coastal States, as evidenced by two out spoken statements. Senator Lee Metcalf of Montana, when submitting the report of the special sub-committee on the continental shelf to the United States Congress in March 1971, had recognized the efforts by coastal States to assert their rights in face of the highly mechanized fishing fleets of the advanced countries, whose interests were protected by the existing law of the sea.

Mr. John Knauss, naval expert and former officer in the United States Navy, in a paper submitted in June 1971 to the Institute of the Law of the Sea of Rhode Island University, had stated that the major naval Powers wished to maintain the freedom of the high seas in their own military interests, which were not in the best interests of the weaker Powers; that military interests, though important, were not the only interests in the sea; and that the major Powers would have to accept greater restriction of their interests which he regarded as contrary, in part, to the resource interests of most nations and the military interests of many. It was also interesting to note the increasing number of favourable statements in the United States of America on the extension of national jurisdiction, including the adoption of the 200-mile limit. Between April 1967 and February 1971, ten proposals to that effect had been made in the United States Senate or House of Representatives.

The 200-mile limit was also rapidly gaining ground in the Latin American countries, since the comparatively recent time when it had been confined to three countries on the Pacific.

Mr. BEEBY (New Zealand) said he wished to make a brief statement on behalf and at the request of the Governments of five developing South Pacific countries not members of the Committee, namely, Fiji, Nauru, Tonga, Western Samoa and the Cook Islands. The representatives of those Governments had met representatives of Australia and New Zealand early in the current month to discuss a range of political questions of significance for the area. Among the topics discussed was the work of the Committee and, since they were all island nations surrounded by the Pacific Ocean, they had asked Australia and New Zealand to keep them informed of the progress of the Committee's work and to draw the attention of the Committee to the special importance of marine resources to the islands of the South Pacific.

Those countries were small and isolated, with limited land resources and narrowly based economies. The sea and ocean floor were for them a significant source of food and, in the case of the smaller islands, the principal source of protein. Moreover, their ability to control the development of their marine environment and to reserve a reasonable share of its resources for their own people would be of major importance for their economic development. The South Pacific islands were accordingly anxious that their needs should be taken into account by the Committee and the forthcoming conference on the law of the sea.

Many statements by the representatives of developing countries concerning the need of the coastal State to have extended control over marine resources, particularly fishery resources, would strike a sympathetic chord in the South Pacific islands, while any suggestion that small island nations should not be entitled to make the same kind of claims as larger land areas or should otherwise suffer from legal disabilities because of their geographical situation would be most unwelcome to them.

The South Pacific Governments would follow the future work of the Committee with close attention and would certainly wish to make their voices heard in one way or another at the 1973 conference.

Mr. HARRY (Australia) said that his delegation had also been requested by the Governments of the five South Pacific island nations to bring the needs of that group to the attention of the Committee, in the hope that they would be borne in mind during both the preparatory stage and the later stages of the Committee' work.

Fiji had a population of more than 520,000 people inhabiting islands with a total land area of 7,000 square miles, much of it uncultivable. The other four countries had some 200,000 people inhabiting a land area of less than 700 square miles. Most of the islands were either typical atolls of very low fertility or volcanic islands with arid lava fields. Virtually their only exportable crops were bananas, coconut products, cocoa and, in the case of Fiji, sugar. Apart from the phosphates of Nauru, there was little hope of finding minerals on land. Their only chance of broadening their economic base was to exploit more fully the fisheries and other resources of the ocean and its floor.

He felt confident that the Committee would give full weight to the claim of those South Pacific island nations, like other countries particularly dependent on the marine environment, for a reasonably extensive right to control and exploit the resources of their national heritage, the sea which surrounded their homelands.

Mr. MESLOUB (Algeria) said that his delegation had been pleased to note that a number of statements made to the Committee revealed positions identical with its own. In that connexion, it thought that some of the countries of Africa, Asia and especially Latin America had played a very positive part in clarifying and identifying the problems to be considered at the current session.

The Committee was approaching the end of the session and, if it had not succeeded in reaching decisions or preparing draft articles concerning various aspects of the problems contained in its terms of reference, it was nevertheless true that ideas had been exchanged and a dialogue begun. Greater progress

might reasonably be expected at the next stage of the Committee' work, that of negotiation proper. For that to be the case, however, the interests of the international community as a whole would have to be taken into consideration or, in other words, some countries would have to moderate their claims and the needs and interests of the developing countries would have to be more effectively satisfied.

His delegation believed that the concept of the common heritage of mankind was a revolutionary one. It did not share the opinion expressed by some delegations that, for the sake of clarity, it should be replaced by the more conventional expression of "the international public domain". Far from introducing an element of confusion, the concept was a bold one which could not be fully comprehended by a traditional approach but required a healthy effort of imagination to rise to the level of a generous faith in the future of mankind. In other words, the concept formed part of the philosophy which sought to inaugurate a new international order in which equality and justice would not be vain words. At the more practical level, moreover, it covered all the resources of an area which had never been appropriated by anyone.

Various considerations should be taken into account with regard to the exploitation of the area. In no circumstances should its exploitation be a pretext for calling into question the exclusive right of States to enjoy and safeguard the resources of their respective areas of national jurisdiction. It should be carried out in an ordered and rational manner, with due regard for the legitimate interests of those developing countries which were producers of hydrocarbons and other raw materials. The Secretary-General's report and the statement by the representative of UNCTAD had brought out the harmful effects of such exploitation unless there were genuine guarantees for the countries concerned. His delegation supported a number of other developing countries in requesting that the statement by the representative of the United Nations Conference on Trade and Development (UNCTAD) should not only be circulated as an official document of the Committee but should also be regarded as an integral part of its report.

With regard to benefits, account should also be taken of the particular problems of land-locked countries and States without a continental shelf and the method of distribution adopted should be of such a kind as to correct those natural inequalities. Generally speaking, everything possible should be done to ensure the participation of each and every country at all stages of the exploration and exploitation of the resources of the international area.

That meant that the technologically backward countries should be given considerable opportunities of access to modern exploration and exploitation techniques by means, inter alia, of the establishment of institutes specializing in marine technology.

He wished to indicate his Government' views on the chief characteristics of the machinery which it was the Committee' task to devise. In the first place, his Government would have great difficulty in approving any system which, whether de jure or de facto, directly or through private companies, gave supremacy over activities in the area to a small group of countries. It considered that the concept of the common heritage of mankind signified direct participation by all countries both in the administration and management of the area and in the exploitation of its resources, and it regarded the various arguments to the contrary as unconvincing. Secondly, his delegation was in favour of strong machinery with exclusive powers over all activities in the area. Such machinery should be open to all States, including States which had been kept out of the United Nations and which could have made an appreciable contribution to the Committee's work.

From the institutional point of view, his delegation was in favour of an assembly consisting of all member States and entitled to take substantive decisions by a two-thirds majority. A council or executive board, with a more restricted composition and responsible to the assembly, could also be established. The membership of the council should respect the criterion of equitable geographical representation, with due regard for the need to give adequate representation to the land-locked countries. His delegation would, however, be receptive to any other formula which did not include any form of veto. The assembly, as the supreme organ of the machinery, should be empowered to establish other organs as necessary and the machinery would be entitled to engage in direct exploitation, either on its own account, or through the establishment of service contracts with corporations.

With regard to the settlement of disputes, which might oppose the machinery either to States or to corporations holding service contracts, it would appear logical to have recourse in such a case to the International Court of Justice, as some delegations had advocated. Nevertheless, in view of the slow nature of proceedings in the International Court, and the fact that the United Nations was currently re-considering its status, another procedure might be preferable. Consequently, his delegation would be in favour of establishing a special tribunal, while not excluding the possibility of the peaceful settlement procedures referred to in Article 33 of the Charter of the United Nations.

A further task in the Committee's terms of reference was to prepare for a new conference on the law of the sea. Two basic considerations would govern his delegation's position on the various aspects of that question. In the first place, there was the part which the countries newly arrived on the international scene could play in the development of a genuinely progressive international law and, secondly, the right of the developing countries to full enjoyment of all the resources situated in their respective areas of jurisdiction. The latter implied that those countries would have entire freedom to exploit them and to ensure their conservation.

His Government was not a party to the 1958 Conventions on the law of the sea. It did not consider itself bound by their provisions, not only because it had not been able to participate in their preparation but also because it had not decided to accede to them. Incidentally, the discussions in the Committee had shown that even those countries which upheld the importance of those Conventions were not blind to their weaknesses. Many delegations had indicated the causes of the failures of the 1958 and 1960 United Nation Conferences on the Law of the Sea so he would limit himself to pointing out certain gaps in them. Apart from the fact that they had not succeeded in reaching any decision concerning the breadth of the territorial sea, the criteria which they had adopted for the delimitation of the continental shelf seemed to be out-moded: the depth criterion met with wide opposition while the exploitability criterion had become a dead letter.

If the concept of the freedom of navigation as currently interpreted was adopted by the forthcoming conference, the result would be a grave injustice because for the weak, law meant liberation and freedom meant oppression.

The newly independent countries, though firm supporters of the principle of equality, saw no advantage in legal formalism. They were very well aware of the fact that equality was only of value if it had an economic content. In other words, though they respected the major principles of traditional international law, they were determined to give them a new content more in keeping with modern realities. Such an approach would make it possible to build a progressive system of international law and should predominate in the Committee's preparations for the coming conference on the law of the sea. One means to that end would be to consider the various aspects of the law of the sea in a global way. His delegation would be in favour of a list of topics on all aspects of the subject such as that submitted by the Latin American Group, subject to any necessary improvements.

Great importance had been attached by many speakers to the question of the limit between the international area and the area under national jurisdiction. The attitude of a number of developing countries to that question was largely justified by economic considerations. His delegation was, of course, entirely in sympathy with those under-developed countries which were attempting to safeguard their natural resources. Consequently, it could not accept any attempt, on whatever pretext, to call into question established rights which had been largely sanctioned by law. Any such attempt would also violate the provision in the Committee's terms of reference concerning the satisfaction of the particular needs of the developing countries. Consequently his delegation agreed with the suggestion made by the Canadian representative at the 58th meeting that a moratorium should be established on all future claims by States.

With regard to the outside limit of the area of national jurisdiction, his delegation considered that the 200-mile limit appeared perfectly suitable. It would make it possible for the coastal State to have exclusive rights in that area and over all the resources it contained. As for the territorial sea, as defined in the Convention on the Territorial Sea and the Contiguous Zone 2/ adopted by the 1958 Conference, with particular reference to the concept of innocent passage, it thought that the Committee should hold to the principle of a single régime.

His delegation was also very interested in the topics on the agenda of Sub-Committee III. In that connexion, it welcomed the beginning of a dialogue, if not yet of organized co-operation, on the subject of pollution and hoped that the process would extend to other fields.

Mr. STEVENSON (United States of America) said he wished to remind the representative of Peru that the various United States citizens to whose statements on the subject of the limits of the territorial sea he had referred had been speaking in their personal capacities, while his own delegation spoke on behalf of the United States Government.

He wished to clarify the principles which his Government regarded as crucial to an equitable accommodation of the various interests represented in the Committee. The basic principle was that coastal-State interests could best be accommodated with those of maritime States, land-locked States and the international community at large by establishing an intermediate zone between the two extremes of exclusive State jurisdiction and the fully international area beyond. In that intermediate zone, there should be a régime of mixed coastal and international elements, in which

2/ United Nations, Treaty Series. Vol.516, P.205 et seq.

coastal-State interests would be accommodated through international arrangements taking account of the specific interests of the coastal State or through delegation of specific and limited authority to the coastal State. As the Canadian representative had suggested at the 63rd meeting any such delegation of authority should be accompanied by the coastal State's assumption of responsibility to act in accordance with the terms of that delegation of authority, as trustee, custodian or resource manager for the international community. Moreover, as the Netherlands representative had pointed out at the 58th meeting, the coastal State's actions in that connexion should be subject to international standards and to review before international tribunals.

The concept of mixed coastal and international rights was admittedly more complex than an arbitrary line between a zone of exclusive coastal-State jurisdiction and a fully international area. It was essentially a compromise position. However, it could not be left to a last-minute negotiated deal but had to be openly and clearly presented as the broad framework on which a general agreement could be reached.

Two misconceptions had led some delegations to oppose the trusteeship or intermediate zone; they had confused the principle of such an area with the particular limits his delegation had proposed for its outer boundary and they had failed to recognize the adaptability of the concept to achieve a number of different balances between coastal and international interests so as to secure the maximum possible consensus.

His delegation had suggested that the most rational boundary for the zone would be such as to include the resources principally in dispute between coastal States and the international community and to subject substantial amounts of those resources to a mixed coastal-international régime. In the case of petroleum resources, that would be the area between the 12 mile limit or the 200-metre isobath, whichever was further seaward, and the outer limit of the continental margin. His delegation's approach to fisheries had been somewhat similar. It was generally recognized that the coastal State would exercise exclusive jurisdiction up to the 12 mile limit, and in the area beyond his delegation had proposed a mixed coastal-international régime with certain delegated authority to the coastal State, subject to international standards and international settlement of disputes. Such limits, providing for an equitable division of management and benefits between the coastal State and the international community, appeared to be the most rational and equitable solution. The efficacy and applicability of the trusteeship concept did not, however, depend upon those particular limits. It was a flexible means of reaching equitable accommodation

within several possible sets of limits, provided that they were not such as to place substantially all the resources in question within the area of exclusive coastal-State jurisdiction.

A second aspect of the relationship between the limit question and the nature of the trusteeship régime was the relatively greater significance of the inner limit establishing the extent of coastal-State sovereignty or exclusive jurisdiction. Since there would be a mixed coastal-State and international jurisdiction in the area beyond the inner limit, the particular mixture of coastal and international elements to be determined by the multilateral negotiations in course, the outer limit was of much less importance. His delegation had indicated, with respect to mineral exploitation, that it was not committed to the geological approach for establishing the outer boundary, as suggested in its draft convention, but was also prepared to consider other methods, including a mileage method or combination of methods in determining the outer boundary, if it would thereby be possible to achieve a general consensus and satisfy the countries with a narrow geological margin. His delegation's fisheries proposal indicated the relative unimportance it attached to the outer boundary, since it contemplated no fixed outer boundary.

A second misconception which had prevented many delegations from considering the utility of the trusteeship approach as a means of dealing with their respective interests was the failure to recognise that the particular mixture of coastal and international rights proposed in the United States sea-bed and fisheries proposals was not inherent in the concept. There were certain principles which were basic to the idea of a trusteeship zone and served to distinguish it from a zone of exclusive coastal jurisdiction for limited purposes such as resource management. Among those principles were the delegation of specific and limited functional authority to the coastal State rather than exclusive and plenary jurisdiction, certain international standards, impartial third-party dispute settlement, protection of other uses of the marine space in question and provision for some sharing of benefits. On the other hand, the particular mixture of coastal and international rights and duties was clearly negotiable.

There was an additional reason why the trusteeship zone would be the most effective way of accommodating coastal-State interests in off-shore resource management. Many delegations had expressed the view - which his delegation shared - that one of the international community's most important freedoms was the freedom of navigation and communication beyond very narrow territorial seas. If a coastal State

was given exclusive and plenary jurisdiction over resources in an area beyond a 12-mile territorial sea, that 12-mile limit might not be a viable one. If a coastal State had control, with absolute discretion and without international responsibility, over all foreign fishing, all sea-bed exploitation and all exploration, it would soon want to control all other activities which might have a bearing, direct or indirect, on that total and complete economic jurisdiction. That had been the case in the past and might well be the case in the future, even if a 12-mile territorial sea were accepted at the same time.

A trusteeship or comparable intermediate zone was seen by the United States as a means of accommodating the resource interests of coastal States with the concept of the common heritage of mankind, while at the same time providing a system of international checks and balances which would in practice help to protect the interests of other nations concerned with freedom of navigation and communication. If the idea was found acceptable by the Committee, his Government would be open to suggestions on the appropriate outer boundary.

Mr. TARCICI (Yemen Arab Republic) said that his delegation agreed with the view that territorial waters, defined as the submerged national territory over which the riparian State had exclusive sovereignty and jurisdiction, should be limited to 12 miles and that there should also be an economic zone of 200 miles. The basic organ of the proposed international machinery should be a general assembly in which each State had one vote and in which there was no veto. The assembly should elect a duly representative council and appoint a competent secretary-general. When the assembly or council decided to establish a body to exploit the sea-bed, adequate consideration should be given to measures to prevent marine pollution. The decisions to be adopted at the forthcoming Stockholm Conference on the Human Environment might serve as guidelines in that connexion. The income to be derived from the exploitation of the resources of the sea-bed beyond the limits of national jurisdiction - 200 miles - should be distributed with due regard for the needs of the developing countries, as provided in General Assembly resolution 2749 (XXV). Part of the income received should be transferred to the United Nations Development Programme (UNDP) to enable it to expand and diversify its activities.

Mr. BEESLEY (Canada) said that his delegation appreciated the considerable interest which had been shown in the idea of the delegation of powers and custodianship combined with entitlement to resource management as a possible basis for reconciling the interests of the coastal and non-coastal States. However,

his delegation did not interpret that idea to mean that coastal States had, or would have, no rights except those which might be specifically delegated by the international community. On the contrary, precedents such as the existing régime of the territorial sea had to be borne in mind. A coastal State currently enjoyed sovereignty over its territorial sea, subject to the right of innocent passage, of which it acted as custodian on behalf of the world community. On a similar basis, his delegation envisaged that the sovereign rights of coastal States for specific purposes in specific areas would be recognized, subject to particular limitations resulting from the assumption of various delegated powers and rights. Thus the rights themselves would not be subject to examination or review by an international tribunal, but the exercise of such rights, including the duties of custodianship, would be. The distinction might appear to be a fine one, but it was vital.

His delegation was disappointed at the lack of comment on the third part of its three-part proposal (58th meeting), namely, that every coastal State should voluntarily contribute a fixed percentage of its revenues from off-shore minerals to the international community. Views for and against had been expressed with regard both to the first part of the proposal, concerning the establishment of an effective moratorium, and to the second part, providing for the immediate establishment of transitional machinery. However, no views had been expressed concerning the third and final part, under which all coastal States - even those which might have already divided up with their neighbours all the lucrative areas of the continental shelf available to them - would be able to make a contribution to the international community, especially the developing and land-locked countries. Some States might have so small a continental shelf that they ought not to be expected to contribute anything, but that was a matter for subsequent discussion. There was no reason why any State should be denied the prerogative of asserting its rights under international law, and the objections to that part of his delegation's proposal were therefore difficult to understand. Similarly, there was no reason why any coastal State should be denied the opportunity of contributing to the international community, particularly to the developing and land-locked States; if the notion of shelf-locked States was considered relevant, the term ought to be defined. His delegation was unconvinced by the argument that transitional machinery must not be set up until all aspects of the problem had been resolved. However, even if some members of the Committee remained unpersuaded with regard to the first two parts of his delegation's proposal, there was no reason to avoid the issues raised by the third part.

It had been suggested that, since many coastal States might well be asked to renounce rights in favour of the international community, only those not asked to renounce rights should be requested to pay a voluntary development tax. His delegation would not go as far as that. However, it had made it clear that, if it was alleged that the 200-metre isobath had no contemporary validity, the logical consequence would be that shallow continental shelves - those of depths of less than 200 metres or any other arbitrary figure - were no more sacrosanct than deep shelves. That was why his delegation had suggested that a portion of every sea-bed should be reserved for the benefit of mankind, particularly of the developing countries. It was to be hoped that attention would not be focussed exclusively on the deeper areas. The principle of equity must be applied to the contributions to the international community and to the benefits to be derived from such contributions. His delegation continued to hope that those ideas would be commented on, particularly by States which had expressed reservations concerning the first two parts of its proposal.

It was essential that all States should examine their own interests, make them known, and then take an active part in the process of reconciling their national interests with those of the international community. His delegation was attempting to do that, and it would welcome any constructive suggestions from any quarter. A good working rule would be that whenever a delegation criticized a proposal, it should put forward alternative suggestions.

Mr. RUIZ MORALES (Spain), supported by Mr. DEUSTUA (Peru) and Mr. ORIBE (Uruguay), said that it seemed strange that the Spanish version of the Secretariat working paper (A/AC.138/41) containing an analytical summary of proposals and suggestions embodied in the views expressed by delegations in the debates in the First Committee of the General Assembly at the Twenty-Fifth Session and in the Sea-bed Committee in March 1971, which was dated 19 July, should have been distributed on 17 August, only a few hours before the last meeting scheduled for the general debate in the main Committee. He was also unable to find an explanation that would justify the discriminatory attitude towards the Spanish-speaking delegations, accounting for the delay of several days in the distribution of the document in Spanish.

Since his delegation had only had time to take a hurried look at the document, it would confine its substantive comments to sections C, D and E of part III.

The observations relating to the continental shelf included an erroneous reproduction of the statement by the Spanish delegation, despite the fact that the provisional summary record, A/AC.138/SR.48, which was quoted textually, had been duly corrected.

With regard to navigation on the territorial sea and through international straits, notwithstanding the desire expressed in the introduction to the document, which stated that "every effort has been made to avoid undue repetition" (paragraph 6), six of the eight paragraphs dealing with the question spoke of the need for freedom of navigation and overflight, which had been the opinion of only a fractional minority of delegations (8 of the 62 that had made general statements).

What had happened in section E, on fishing, was even more serious. The opinions of a very few had been generously represented, while the majority thesis was not reflected, or appeared only in fragmentary or diffuse form in the summary. No reference was made to the Spanish position on the matter, which was based on the following ideas, among others: criticism of the maintenance in absolute terms of the principle of freedom to fish on the high seas; the existence of a very close link between man and the marine environment; recognition of the inherent right of coastal developing States to the exploration, conservation and exploitation of the natural resources of the high seas adjacent to their coasts; the possibility of establishing special maritime jurisdictions with regard to the regulation, conservation and utilization of those resources; respect for the rights of third States to participate under reasonable conditions in fishing activities.

While the Spanish delegation did not expect to have all its ideas set forth in full, it did at least consider that its views, shared by a number of other delegations, should be more justly and adequately represented.

Mr. KABBAJ (Morocco) said that he, too, considered that the working paper did not reflect accurately and objectively the views expressed in the Committee. He recalled that he had already had occasion to stress the position of Morocco with regard to various aspects of the law of the sea; on the topic of straits in particular, he had voiced Morocco's support for the principle of innocent passage, which did not appear to be reflected in the document in question.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the Russian text of the working paper had also not been distributed until the previous day. His delegation had therefore had little time in which to study it and reserved the right to comment on it at a later stage.

The CHAIRMAN said that he would take the matter up with the Secretariat and would ask for an early reply.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE SIXTY-SIXTH MEETING

held on Friday, 27 August 1971, at 3.40 p.m.

Chairman: Mr. AMERASINGHE Ceylon

ORGANIZATION OF WORK

The CHAIRMAN noted that certain questions had been left outstanding after the agreement of 12 March 1971 on the organization of work,[1/] namely the question of the order of priority for particular subjects, including the international régime, the international machinery and the economic implications of exploitation of the resources of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, and the question of which Sub-Committee should be given the task of making recommendations to the Committee on the precise definition of the international area and the peaceful uses of that area.

He wished to inform the Committee of the agreement he had reached with the Contact Group representing the different geographical groupings in the Committee and with the delegations not members of those groupings.

The question of the international régime should be given fairly high priority, in accordance with General Assembly resolution 2750 C (XXV). More time should therefore be given to the Sub-Committee. The Committee would not take a decision on the final recommendations relating to the limits of the international area until it had before it the recommendations of Sub-Committee II on the precise definition of the area. The Committee itself would deal with the question of the peaceful uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction, but each Sub-Committee could also consider it insofar as it fell within its competence. Most of the Group had been in favour of a joint decision by the three Sub-Committees.

If there were no objections, he would take it that the agreement was adopted.

It was so decided.

ANALYTICAL SUMMARY OF PROPOSALS AND SUGGESTIONS EMBODIED IN THE VIEWS EXPRESSED BY DELEGATIONS IN THE DEBATE IN THE FIRST COMMITTEE OF THE GENERAL ASSEMBLY AT THE TWENTY-FIFTH SESSION AND IN THE SEA-BED COMMITTEE IN MARCH 1971 (A/AC.138/41)

Mr. HALL (Secretary of the Committee) had a number of comments to make on the presentation and distribution of the document.

1/ See A/AC.138/SR.45

On 14 May 1971, the officers of the Committee and its three Sub-Committees had requested the Secretariat, at a joint meeting, to make an analytical summary of the proposals and suggestions put forward by delegations in the debates in the First Committee of the General Assembly at its twenty-fifth session and of the Sea-Bed Committee at its March 1971 session. The summary was not to indicate delegations by name or reproduce any of the proposals or suggestions contained in the draft resolutions and other documents submitted to the General Assembly or the Committee.

The preparation of the summary had been a difficult and delicate task in the limited time available to the Secretariat. The document was submitted as an information paper only and did not reproduce delegations' views exactly as they had been expressed. For instance, in making their statements, delegations had discussed the questions in whatever order they wished, and the Secretariat had then placed the different questions in various different sections as appropriate. The document was in fact essentially a practical one.

The summary records of the meeting had been taken into account in preparing the document. Delegations were requested to correct any decisions that were not in accordance with the summary records.

In conclusion, he gave particulars of the document's publication dates in the different working languages.

Mr. ITURRIAGA (Spain) thanked the Secretary of the Committee for his explanation and said that he appreciated the difficulties involved in producing the document. He was not criticizing the Secretariat directly, but he did feel that it was not the best-equipped body to prepare a text of that kind. His delegation noted that the document was an unofficial working paper. Consequently, no mention should be made of it in the report.

The CHAIRMAN said that other questions had been discussed by the officers, in particular the preparation of a comparative analytical table of proposals (working papers and draft treaties) relating to the law of the sea. The Maltese draft would be the subject of an analytical note, so as to preserve the unity of the text. He asked members to submit to the Secretariat by 31 October 1971 any drafts that they wished to have included in the table.

It was so decided.

ADOPTION OF THE REPORTS OF THE SUB-COMMITTEES

Adoption of the report of Sub-Committee I (A/AC.138/60 and Add.1)

Mr. PROHASKA (Austria), Rapporteur of Sub-Committee I, said that the report of Sub-Committee I was to be found in document A/AC.138/60, except for three paragraphs adopted that morning, about which he would inform the Committee.

The document was divided into five parts. The first part, which was devoted to procedural matters (terms of reference, membership, attendance of observers, etc.), was self-explanatory. The second part concerned the work done by the Sub-Committee. Paragraph 6 listed the drafts and working papers containing proposals for an international régime for the sea-bed. The sponsors of the texts had each indicated the full title of their document, the meeting at which it had been introduced and the basic approach taken in it. Quite apart from that, the Secretariat had been asked at the 63rd meeting to draw up a comparative table of the texts by 31 October 1971. The table would be one of the main working papers for the future work of the Sub-Committee responsible for drafting articles on the law of the sea.

The third part of the report was a summary of the the general debate, in which sixty-eight members of the Sub-Committee had taken part and had given what was often a very full account of their countries' position on the questions which were before the Sub-Committee and those which it should take up. The list of subjects given in the report was not exhaustive and no attempt had been made to reproduce the views of each delegation just as they had been expressed in the course of a series of very long meetings. That part of the report had been divided into three sections dealing respectively with the international régime and the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil thereof beyond the Limits of National Jurisdiction, the international machinery and the participation of all States in the benefits to be derived from the development of the resources of the area. He would read out later paragraph 13 (a) and (b), on the international machinery, which had not yet been included in the draft report.

The fourth part was concerned with two reports of the Secretary-General, one a preliminary assessment of the possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries (A/AC.138/36) and the other a study of the question of free access to the sea of land-locked countries and of the special problems of land-locked countries relating to the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction (A/AC.138/37 and Corr. 1 and 2). As regards the first question, it was impossible to make specific

recommendations at the present stage as the questions involved would have to be examined more fully by the Sub-Committee, which would have to take into account the studies made by other United Nations bodies. The Sub-Committee had been of the same opinion with regard to the second point. It considered that both questions should be the subject of continuing study so that appropriate measures could be developed as the future régime and machinery were established.

The fifth and last part of the report containing the Sub-Committee's conclusions and indicating the future prospects for its work was contained in paragraph 21, which he read out. At the beginning of the 1972 session, Sub-Committee I would embark upon the second stage of its work and would consider certain questions in greater depth. A list of questions to be considered at that session would be drawn up by the General Assembly on the basis of a working paper.

Concerning paragraph 6, he said that a sub-paragraph (g) should be inserted, beginning as follows:

"(g) Malta 'Draft Ocean Space Treaty' (A/AC.138/53). Introduced at the 63rd meeting of the Committee held on 5 August 1971."

An account of the basic approach of the working paper would follow, as in document A/AC.138/60/Add.1 (p.1-2).

In paragraph 7, the last sentence should be deleted in view of the inclusion of the new sub-paragraph (g) above.

The new paragraph 13, sub-paragraphs (a) and (b), as reproduced on pages 2 to 3 of document A/AC.138/60/Add.1, should be inserted.

Finally, he read out the new text of paragraph 22 (A/AC.138/60/Add.1, p.3).

Mr. HARRY (Australia) said that paragraph 22 should mention the fact that the working paper in question had also been submitted by Jamaica.

The report of Sub-Committee I, as completed and amended, was adopted.

Adoption of the report of Sub-Committee II (A/AC.138/61)

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur of Sub-Committee II, said that, as the document before the Committee said, the work accomplished by the Sub-Committee in 1971 constituted an indispensable step forward towards the completion, at a later stage, of the tasks entrusted to it. Delegations had been mindful of the complexity and inter-relatedness of the subjects allocated to the Sub-Committee and had fully appreciated the fact that consultations and negotiations among delegations were important for achieving positive results and finding workable, viable and equitable solutions likely to promote the general international interest, friendly

relations among States and the economic and social progress of all States, particularly the developing countries, and to enhance international peace and security.

However, a much more detailed consideration of specific subjects and issues would be necessary at future sessions of the Sub-Committee in order to ensure adequate preparation for the conference on the law of the sea. The views exchanged at the current session had clarified the position of delegations on matters referred to the Sub-Committee and would facilitate future progress.

The first part of the report dealt with points of procedure, the second part with the consideration of questions which the Committee had referred to the Sub-Committee under the terms of the agreement on organization of work reached on 12 March 1971, particularly the preparation of a list of subjects and issues concerned with the law of the sea.

He directed the Committee's attention to paragraph 24 of the report in which it was stated that "As regards training and sharing of knowledge and transfer of technology it was proposed that the Sub-Committee through the parent Committee should recommend to the General Assembly to request the relevant United Nations Specialized Agencies and the industrial and developed States to expand or accelerate training of personnel from the developing States in all aspects of marine science and technology." He was confident that the Committee would endorse that recommendation.

In conclusion, he noted that the Sub-Committee had requested further information from the Food and Agriculture Organization of the United Nations, including country profiles indicating the status of national fishing industries, a report on international fishery regulatory bodies and additional maps indicating the distribution of fishery resources.

The CHAIRMAN invited the Chairman of the Working Group to read out the text to be added to paragraph 16 of the report.

Mr. BEESLEY (Canada), Chairman of the Working Group, read out the following text:

> "The Working Group held two meetings. Lack of time did not allow the Working Group to discharge fully its task. The Working Group was however of the view that similar efforts should be pursued as soon as practicable."

Mr. ABDEL-HAMID (United Arab Republic), Rapporteur, proposed that the text should be inserted at the end of paragraph 16.

It was so decided.

The report of Sub-Committee II, as completed, was adopted.

The CHAIRMAN said that the report of Sub-Committee III would be considered at a later stage.

ADOPTION OF THE REPORT OF THE COMMITTEE

Mr. VELLA (Malta), Rapporteur, said that the Committee's report would be found in document A/AC.138/L.4 and Corr.1 and A/AC.138/L.4/Add.1.

The introduction referred to the essential provisions of the relevant resolutions; part I dealt with the work of the Committee in 1971; the three remaining parts were concerned with the work of the three sub-committees. The reports of the sub-committees would form an integral part of the Committee's report.

Some delegations had asked the Rapporteur to give an account of the general debate in the plenary Committee. He had tried to draft that section of the report but without success. He might be in a position to provide the Committee with a text in English at the following meeting, but he was unable to give a firm assurance.

There were one or two corrections to document A/AC.138/L.4. Apart from the corrigendum to paragraph 2 in document A/AC.138/L.4/Corr.1 (English only), Mr. L. Venchard's name should be inserted opposite "Mauritius" in paragraph 20.

He planned to include two additional paragraphs on the agreement which the Chairman had read out at the beginning of the meeting. Paragraphs 21 and 22 would therefore become paragraphs 23 and 24. Three further paragraphs, dealing mainly with points of procedure, would be considered at a later stage, as would the rest of the report.

The CHAIRMAN asked the Rapporteur whether the rest of the report would include a general account of the debate.

Mr. VELLA (Malta), Rapporteur, said that it would be concerned with the proposals and drafts presented during the discussion. If the Committee agreed not to include a review of the general debate in the report, he could proceed forthwith to read out the few remaining paragraphs of the report.

The CHAIRMAN observed that the drafting of paragraphs at so late a stage would present problems. The Committee might find that it was embarking on protracted discussions and might be unable to conclude consideration of its report.

Mr. BEESLEY (Canada) congratulated the Rapporteur on his report. In his view, the introduction, in dealing with the background to the Committee's work, should have followed the same order as General Assembly resolution 2750 C (XXV). It should have mentioned the convening of the 1973 conference before the General Assembly's reaffirmation of the Committee's mandate.

Mr. VELLA (Malta), Rapporteur, said that he was prepared to reframe the introduction in the light of the Canadian representative's comments.

Mr. AGUILAR (Venezuela) said that the normal practice would be to provide a summary of the statements made by delegations in plenary. There was perhaps still time to do that and he hoped that the Rapporteur would try to draft an objective summary of the debate which would not duplicate the statements and views already summarized in the reports of the Sub-Committees. The summary could be considered at the 67th meeting.

Mr. SMALL (New Zealand) supported the Venezuelan representative's proposal, particularly since the Australian delegation and his own had made statements at the 65th plenary meeting on behalf of five Pacific countries, which did not appear in any of the Sub-Committee reports. The report should include a list of delegations which had spoken during the debate in plenary and also of observers who had spoken. The report should give a full account of the proceedings of plenary meetings, as was standard practice.

Mr. STANGHOLM (Norway) said that plenary meetings would be a waste of time if a summary of the statements made did not appear in a report.

Mr. D'ANDREA (Italy) said that he appreciated the arguments in favour of an objective and full report, as requested by previous speakers. However, the Committee could hardly expect the Rapporteur to perform the feat of producing the type of report it was asking for in a matter of hours. Moreover, he was not sure that the Committee would be able to adopt a report of that kind in one night. He suggested that a special session should be held in New York to adopt a more comprehensive report.

Mr. STEVENSON (United States of America) said that in his view the General Assembly expected to find in a report an account of the statements made by delegations at plenary meetings. However, there was a practical problem. The Committee could hardly at that late stage impose upon the Rapporteur the crushing and superhuman burden of drafting, within a few hours, a report giving a full account of the plenary discussions. His delegation therefore proposed that each head of delegation should submit in writing a summary of the statements made by his delegation in plenary. The summaries would be published in an annex to the report, each delegation being solely responsible for its own summary. The advantage of that procedure was that the report would not have to be discussed, as each delegation would be the author of the text submitted in its name. Delegations would not even have to submit their summaries that very day.

Mr. ABDEL-HAMID (United Arab Republic) suggested that a special session be held in New York to consider and adopt a more comprehensive report.

Mr. HALL (Secretariat), replying to a question put by the Chairman, said that arrangements for a special session would depend on what dates were free in the calendar of conferences and what facilities were available to the Secretariat on those dates. Headquarters might be contacted on the possibility of holding a short special session for the purpose of considering and adopting a more comprehensive report. If the Committee decided to request a special session in New York, the date could be announced in the Journal of the United Nations.

Mr. MESLOUB (Algeria) asked if the report would contain an index of summary records.

Mr. VELLA (Malta), Rapporteur, said that it would.

Mr. KHLESTOV (Union of Soviet Socialist Republics) stated that his delegation quite understood that each delegation wished to see its statement faithfully summarized and transmitted by means of the report to the General Assembly. It was, however, impossible to meet those wishes at the present stage, as to do so would require an immense amount of work from the Rapporteur and long discussion by the Committee. His delegation proposed inserting a sentence to the effect that some delegations had expressed views on the questions under discussion and that those views were recorded in the summary records. The report would then refer to the summary records, giving the symbols.

The report of Sub-Committee III had been adopted without difficulty. Many representatives who had been in Sub-Committee III were now in the plenary. It would be duplication for the Committee to discuss once again in plenary a report which had already been considered and adopted by Sub-Committee III. His delegation proposed that the report should be adopted without further discussion, and even without waiting for the text to be submitted in all the working languages.

Mr. ORIBE (Uruguay) considered that the United States' proposal was impossible to put into practice. The result would be to make the report quite unbalanced, as the summaries submitted by delegations would probably be very unequal in length.

Mr. LAPOINTE (Canada) said that his delegation would have liked to have a very full report on the plenary meetings. In view of the impossibility of obtaining such a document at that late stage, he proposed that the Committee's report should be a procedural one describing the work of the session and that it should include an annex containing summaries by delegations themselves of views which they considered particularly important, as they had stated them in plenary, the summaries being reviewed by the Rapporteur.

Mr. BRAZIL (Australia) thought it regrettable that owing to the brevity of the Committee's report delegations would get unequal treatment, depending on whether they had chosen to express their views in plenary or in one of the Sub-Committees. If, however, circumstances made it impossible to follow the usual procedure for drafting reports, his delegation would support the proposal by the representative of Canada.

Mr. GOWLAND (Argentina) supported the proposal by the Soviet delegation.

Mr. AGUILAR (Venezuela) considered that if the report only recorded the procedural aspects of the work of the plenary, it would not be balanced. His delegation therefore urged that it should also record the substantive debate which had taken place in the Committee. The Rapporteur had said that he already had a fairly well-advanced draft along those lines. That text should be examined by the 67th meeting.

Should the text not be adopted, the Committee could state in its report that an additional section summarizing the discussion on substantive issues dealt with during the session would be drafted and submitted in New York at a specified date.

That procedure would be preferable to the procedure proposed by the United States representative, for if delegations summarized their own statement they would only be able to give the General Assembly an incomplete and fragmentary impression of the debate.

Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that his delegation was sympathetic towards the efforts made to ensure that the final report would reflect the work done by the Committee, but in view of past experience and the short time left for discussion, he doubted whether those efforts could lead to satisfactory results.

It had been proposed that the various statements made in the Committee should be summarized by delegations themselves and that the summaries should constitute an annex to the report. But the various statements had already been circulated, and they had been duly reported in the summary records. The proposed summaries would be less useful than the summary records, and they would make the report considerably longer, without making it any better. Sub-Committee I, moreover, had adopted a similar method with regard to statements of the principles behind the proposals submitted by the various delegations, and the results had not been satisfactory.

Finally, there had been talk of a resumption of the session in New York to discuss a supplement to the report. But some delegations which had taken part in the present session would be unable to attend the meeting in New York; others would be

unable to send representatives competent to decide what had to be decided. It was therefore not certain that it would be possible to adopt the proposed addition to the report when the time came.

Mr. de SOTO (Peru) said that in general he favoured the view of those delegations who wanted the report to summarize the substantive debates in plenary and considered that the Committee should decide immediately whether it accepted that view or rejected it.

It might therefore be helpful if the Rapporteur would indicate at the present meeting the main outlines of the draft report which he would present at the 67th meeting.

He considered that the proposal to annex summaries by delegations themselves to the report would be an encroachment on the prerogatives of the Rapporteur; in addition, the summaries would duplicate the summary records.

In short, his delegation shared the views of the representative of Venezuela, but reserved its opinion until it had seen the text to be submitted by the Rapporteur.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation had made very detailed statements in plenary on a number of important issues. It would very much like those statements to be reflected in the report and it was sure that the other delegations which had spoken in plenary felt the same. It would therefore not oppose the proposal by the representative of Venezuela if it won general support. But it feared that the proposal was unrealistic.

The United States representative had proposed that summaries by delegations themselves should be annexed to the report. That would not serve much purpose, as it would simply mean repeating what was already in the summary records.

His delegation did not support the proposal that there should be an addition to the report to be adopted in New York, because the report must be drawn up with the participation of all the delegations which had taken part in the debate, which would very likely not be the case if that proposal was accepted.

Mr. YANKOV (Bulgaria) also thought that the Committee, like the Sub-Committees, ought to have a record of its debate in its report and regretted that the Bureau had decided otherwise.

He would therefore not oppose consideration of the text to be submitted by the Rapporteur at the 67th meeting. In view of the circumstances, however, and bearing in mind the experience of the Sub-Committees, the Committee should not expect too much from such a last minute effort.

As to the summaries which delegations might be asked to draft of their statements, they would not be equivalent to an analysis of the main trends which had emerged during the session. His delegation considered that there was already a lack of balance in the report of Sub-Committee I in the statements drafted by delegations to explain the principles behind the proposals they had submitted. It was afraid that a new attempt along those lines would prove equally disappointing.

If the report was to contain an analysis, it would be preferable for it to be part of the report itself and not merely an annex. However, if the Committee decided in favour of the latter procedure, his delegation would be willing to accept it.

Mr. SIMPSON (United Kingdom) fully understood that delegations should wish the statements they had made in plenary to be reflected in the Committee's report. He therefore considered that the Committee should consider and if satisfied adopt the text which the Rapporteur had said he would be able to present at the 67th meeting. If that text was not adopted, a new draft could be prepared and adopted at a resumed session in New York.

The Committee's report should be a collective product. For that reason one or other of those procedures would be preferable to the procedure proposed by the representative of the United States.

Mr. JAGOTA (India) said that it should have been decided long ago what the report was to contain and that the report should have been presented in the same way as the reports of the Sub-Committees.

At the present stage, there were two possibilities open to the Committee: to discuss the Rapporteur's text at a night meeting, or to decide to resume the session in New York in order to produce a supplement to the report, taking into account the discussion at the current meeting.

Mr. MESLOUB (Algeria) considered that, in view of the importance of the statements made in the Committee and the fact that some delegations had not spoken in the Sub-Committees, the Committee itself should have a summary of the substantive debate in its report. It would therefore be advisable to consider the text which the Rapporteur could submit.

Mr. VELLA (Malta), Rapporteur, said that it had been originally intended that the Committee's report would simply be an account of its procedure, to which would be added the reports of the Sub-Committees.

Just two days before the end of the session it had been decided otherwise. He had then set to work to draft a text giving an account of the debates in the Committee at its session in March 1971 and at its present session. In doing so he had made every effort to produce a balanced and objective text. He would of course welcome any suggestions from delegations.

The CHAIRMAN suggested that the Committee should hold a night meeting to consider the text to be prepared by the Rapporteur and should now take up the report of Sub-Committee III.

It was so decided.

Adoption of the report of Sub-Committee III (A/AC.138/62)

The draft report of Sub-Committee III (A/AC.138/62) was adopted.

The meeting rose at 6.15 p.m.

SUMMARY RECORD OF THE SIXTY-SEVENTH MEETING

held on Friday, 27 August 1971, at 9.20 p.m.

Chairman: Mr. AMERASINGHE Ceylon

ADOPTION OF THE REPORT (A/AC.138/L.4 and Corr.1 and A/AC.138/L.4/Add.1 and 2)

The CHAIRMAN suggested that the report should be considered paragraph by paragraph, starting with document A/AC.138/L.4 and Corr.1.

Paragraph 1

Paragraph 1 was adopted.

Paragraph 2

Mr. BEESLEY (Canada) said that his delegation had no substantive changes to suggest, but would prefer the paragraphs to appear in the same order as the corresponding provisions of General Assembly resolution 2750 (XXV). The task of changing the order could be left to the Rapporteur.

It was so decided.

Paragraph 2, as amended, was adopted.

Paragraph 3

Mr. McINTYRE (United States of America) proposed that, in the second line of the paragraph, the word "report" should be in the plural.

It was so decided.

Paragraph 3, as amended, was adopted.

Paragraphs 4 to 20

Paragraphs 4 to 20 were adopted.

Paragraphs 21 and 22

Mr. VELLA (Malta), Rapporteur, said that paragraphs 21 and 22 were to be found in document A/AC.138/L.4/Add.1.

Paragraphs 21 and 22 were adopted.

Paragraphs 23 and 24

Mr. VELLA (Malta), Rapporteur, said that paragraphs 21 and 22 in document A/AC.138/L.4 should be renumbered 23 and 24.

Paragraphs 23 and 24 were adopted.

Paragraph 25

Mr. VELLA (Malta), Rapporteur, said that paragraph 25 was to be found in document A/AC.138/L.4/Add.1.

In reply to a question from Mr. PARDO (Malta), the CHAIRMAN said that the Maltese Working Paper (A/AC.138/53) would be annexed to the report.

Paragraph 25 was adopted.

Paragraph 26

The CHAIRMAN read out the following new paragraph to be inserted after paragraph 25:

"26. On 27 August, the Committee decided to request the Secretariat to prepare a comparative analytical table to cover all draft treaties, working papers and draft articles relating to the international régime or other related issues of the law of the sea, as well as to request delegations to submit the texts to be so covered by 31 October 1971."

Paragraph 26 was adopted.

Paragraph 27

Mr. VELLA (Malta), Rapporteur, said that paragraph 26 in document A/AC.138/L.4/Add.1 should be renumbered paragraph 27.

Paragraph 27 was adopted.

Mr. de SOTO (Peru) suggested that since document A/AC.138/L.4/Add.2 had just been circulated, members should be given some time to consider it.

The meeting was suspended at 9.45 p.m. and resumed at 10.15 p.m.

Mr. VELLA (Malta), Rapporteur, said that the portion of the report contained in document A/AC.138/L.4/Add.2 had been prepared in response to the request made at the 66th meeting for a summary of the general statements made at the 1971 spring and summer sessions. It had of necessity been drafted very hastily and the consultations he had had during the recess suggested that it was unlikely to win the Committee's approval. He therefore wished to withdraw it and replace it by another version at a later date.

Mr. AGUILAR (Venezuela) suggested that consideration of the draft report should be suspended and that the Rapporteur should be requested to prepare a new version of document A/AC.138/L.4/Add.2 by 15 September 1971 at the latest, for consideration at a meeting to be held in New York in the first half of October.

Mr. BEESLEY (Canada) supported the Venezuelan proposal. There was a considerable amount of material in document A/AC.138/L.4/Add.2 which could be included in the new version, but a different approach was needed.

Mr. YANKOV (Bulgaria) said the efforts made by the Rapporteur would have been much more fruitful if the Committee had given him instructions at a much earlier date as to the kind of report it wanted. The report should indicate the main trends in the general debate and the positions adopted. Those who had attended the debate would be able to understand the account in document A/AC.138/L.4/Add.2, but those who had not, would not. He supported the proposal that a new version of that

document should be prepared, but thought that the Committee should adopt the procedural portion of the report forthwith. He therefore suggested that the Committee should adopt the parts it had already approved, adding the proviso that the report was not complete and that an addition would be made to it in September or October 1971.

The CHAIRMAN pointed out that since document A/AC.138/L.4/Add.2 had been withdrawn, the Committee could not discuss it. He thought it would be inadvisable to present to the General Assembly an incomplete report consisting of a mere chronicle of events.

Mr. KHLESTOV (Union of Soviet Socialist Republics) considered that the existing portion of the report should be adopted and the Rapporteur requested to prepare a new second part.

Mr. PARDO (Malta) shared that view. If every delegation assisted the Rapporteur by communicating its views on what the second part of the report should be like, it should be possible to complete it for circulation in a month's time.

Mr. de SOTO (Peru) said that it was extremely important that the report should contain a section reflecting the substantive debate and that his delegation was opposed to the idea of adopting the report before that section was ready. While his delegation would have preferred not to have a further meeting in New York, it was prepared to consider that possibility on the understanding that the meeting would be concerned exclusively with consideration of the report. The meeting should, if possible, be held before the opening of the General Assembly.

Mr. HOLDER (Liberia) said he agreed with the Canadian representative regarding the substance of document A/AC.138/L.4/Add.2 and hoped that much of it could be retained. His delegation was opposed to the idea of adopting a merely procedural report rather than the substantive report expected of the Committee, and therefore wholeheartedly supported the Venezuelan proposal.

After some further discussion, in which Mr. ZEGERS (Chile), Mr. MESLOUB (Algeria) Mr. BACKES (Austria) and Mr. FRANCIS (Jamaica) took part, Mr. NATORF (Poland) said it was clear that some delegations, like the Venezuelan delegation, wished to ensure that the Committee's report to the General Assembly would contain an account of the substance of the general debate while others were afraid that, if the first part of the report was not adopted immediately, there was a danger that no report at all would be submitted to the General Assembly. He therefore proposed, as a compromise, that the Committee should add a sentence requesting the Rapporteur to prepare a résumé of the general debate held during the spring and summer sessions and to submit it for consideration and approval by the Committee at its first session in 1972. The report could then be adopted.

Mr. STEVENSON (United States of America) said his delegation attached great importance to the part of the report dealing with the general debate in the Committee. In particular, it was extremely important that there should be an account of that debate for the information of delegations that were not members of the Committee. Arrangements could be made for the First Committee of the General Assembly to consider the item on the sea-bed late in its twenty-sixth session. He wished to urge, therefore, that the Committee should be cautious about setting a rigid deadline and should give the Rapporteur sufficient time to prepare the kind of report that all the members of the Committee wanted.

Mr. DE LA GUARDIA (Argentina) said that his delegation could not accept the suggestion made by the Polish representative. The only solution was to accept the proposal by the Venezuelan representative that a special meeting of the Committee should be called during the General Assembly to complete its consideration of its report. The first part of the report should be adopted immediately, on the understanding that it contained a commitment regarding the special meeting.

Mr. MOTT (Australia) agreed.

Mr. AGUILAR (Venezuela) said that his delegation's main concern was that the report should contain a faithful and complete account of the Committee's work. It was willing to agree to the formal adoption of the part of the report already approved by the Committee, on the understanding that the special meeting should be devoted exclusively to consideration of the second part of the report and that both parts of the report would be submitted together to the General Assembly. The Rapporteur must be given sufficient ime, say until 15 Septe ber, to redraft the second part of the report, and members of the Committee must also be given sufficient time, say until 15 October, to study it in detail. It therefore seemed desirable to hold the special meeting of the Committee in mid-October.

Mr. PARDO (Malta) said that, while he had no objection to the proposal just made by the Venezuelan representative, he felt that members of the Committee should have at least six weeks in which to study the new second part of the report and he doubted whether it would be possible for the Committee to meet before the end of October. To save time, he suggested that members of the Committee should be invited to submit observations in writing on the new draft as soon as possible, so that a revised draft could be issued before the Committee met.

Mr. ZEGERS (Chile), proposed the addition of the following new paragraph at the end of the first part of the Committee's report:

> "The first part of the report of the Committee was adopted, on the understanding that at a special session, to be held for this purpose in New York at an early date of the General Assembly, the second part of this report, which should reflect the general debate, would be approved. The draft report would be made available to delegations before 15 September."

Mr. DE LA GUARDIA (Argentina) suggested that the word "solely" should be inserted after the words "to be held" in the first sentence of the proposed new paragraph.

It was so agreed.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said he had doubts regarding the phrase "at an early date of the General Assembly". It would be preferable to say "during the General Assembly", so that the decision concerning the appropriate date could be taken during the Assembly's session.

Mr. de SOTO (Peru) said it was extremely important to hold the meeting at an early date, whereas it was not important that members should have as much as six weeks in which to consider the report.

The CHAIRMAN suggested that the words "at an early date of the General Assembly" should be replaced by the words "as early as possible during the General Assembly".

It was so agreed.

The CHAIRMAN said that the new paragraph proposed by Chile, as amended, read as follows:

> "The first part of the report of the Committee was adopted, on the understanding that at a special session, to be held solely for this purpose in New York as early as possible during the General Assembly, the second part of this report, which should reflect the general debate, would be approved. The draft report would be made available to delegations before 15 September".

He suggested that that paragraph should be included as paragraph 28 of the first part of the Committee's report.

It was so decided.

The first part of the report, as amended, was adopted.

Mr. VELLA (Malta), Rapporteur, said he was at a loss to know how the Committee wanted him to reformulate the account of the general debate. The Committee had not made it clear whether it wished him merely to reproduce the various positions as stated during the general debate or to attempt a more analytical approach.

The CHAIRMAN said he would take it upon himself to discuss that question with the Rapporteur and to give him appropriate directions.

CLOSURE OF THE SESSION

After the customary exchange of courtesies, the Chairman declared the session closed.

The meeting rose at 12 midnight