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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 SEVENTY-SEVENTH TO EIGHTY-NINTH MEETINGS

Held at the Palais des Nations, Geneva, from
17 July to 18 August 1972

Chairman:	Mr. AMERASINGHE	Sri Lanka
Rapporteur:	Mr. VELLA	Malta

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

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ABBREVIATIONS

IAEA	International Atomic Energy Agency
ICES	International Council for the Exploration of the Sea
ICNAF	International Commission for the North-west Atlantic Fisheries
IMCO	Inter-Governmental Maritime Consultative Organization
IOC	Intergovernmental Oceanographic Commission
OAS	Organization of American States
OAU	Organization of African Unity
OCAMM	African, Malagasy and Mauritian Common Organization
UNCTAD	United Nations Conference on Trade and Development
WMO	World Meteorological Organization

SUMMARY RECORD OF THE SEVENTY-SEVENTH (OPENING) MEETING

held on Monday, 17 July 1972, at 11.45 a.m.

Chairman: Mr. AMERASINGHE Sri Lanka

OPENING OF THE SESSION

The CHAIRMAN declared open the second 1972 session of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and welcomed all participants to it. The present session would be of crucial importance, since the progress achieved would determine whether or not the Conference on the law of the sea could be held in 1973.

ORGANIZATION OF WORK

The CHAIRMAN read out a letter from Mr. Galindo Pohl, Chairman of Sub-Committee II, apologizing for his unavoidable absence from the present session. He suggested that Sub-Committee II should meet at 4 p.m. to decide what arrangements should be made in Mr. Galindo Pohl's absence.

It was so decided.

The CHAIRMAN said that at that morning's meeting of the Bureau he had told its members that the highest priority during the present session should be given to the question of the list of subjects and issues relating to the law of the sea, which should be settled by the end of the present week. He suggested a programme of work for the next few days which would enable Sub-Committee II to discuss the draft list of subjects and issues with the utmost dispatch.

After drawing attention to the comprehensive list of subjects and issues relating to the law of the sea to be submitted to the Conference on the law of the sea, sponsored by 56 Powers (A/AC.138/66 and Corr.2), and to the various amendments proposed thereto (A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1), he said he had had consultations with the sponsors of the comprehensive list, with delegations which had submitted amendments to the list and with several other delegations; on the basis of those consultations, he suggested that the question of the list of subjects and issues should now be left to Sub-Committee II.

In his view, the Committee's work had reached a stage where it was essential for the main Committee to meet, more often than it had done hitherto, to review the progress made by the Sub-Committees. He considered - and hoped the Committee would agree - that it should meet twice a week.

At the meeting of the Bureau that morning, a number of questions had been raised. The first concerned General Assembly resolution 2846 (XXVI) of 20 December 1971 on the question of the creation of an intergovernmental sea service. The Committee had been asked to report on that question to the General Assembly through the Economic and Social Council. It would be necessary to decide at an appropriate stage whether that question should be considered by one of the Sub-Committees or by the main Committee. The opinion had been expressed that, as the question was closely connected with scientific research, it should be assigned to Sub-Committee III. However, the matter would have to be discussed with the Chairman of Sub-Committee III before a decision was

Another question, raised by the representative of Malta, related to the proposal made by the Maltese delegation earlier in the Committee's deliberations that there should be a discussion on the adoption of a comprehensive approach to the law of the sea. His own opinion was that the Committee had passed beyond the stage of general debate. Whether the approach to be adopted would be comprehensive or not would depend on the approved list of subjects and issues, and the question could therefore be considered later.

The representative of Malta, in his capacity as Rapporteur of the main Committee, had raised the question of the type of report which should be submitted to the General Assembly. He asked members of the Committee to reflect on that question, which would be discussed at a later stage.

He wished next to report on the informal consultations he had had with members of the Committee, either in groups or individually between the last session and the beginning of the present session - in accordance with the instructions he had been given at the final meeting (76th meeting) of the Committee's first 1972 session - in order, if possible to reach some agreement on the list of subjects and issues. Unfortunately, the results had not been good; no agreement had been reached. Members of the Committee would have received the note which he had circulated to them on the subject in June 1972.

In 1971, Turkey had submitted to the Committee a proposal 1/ to include in the list of subjects a new item entitled "Relationship of the draft articles and conventions prepared in pursuance of resolution 2750 C (XXV) to, and their effects on, the 1958 Conventions on the law of the sea". In his view, that question would arise only after the draft articles and treaty or treaties had been approved and the full implications were known. Therefore, a discussion at the present stage seemed unnecessary.

Mr. VELLA (Malta) said that he was convinced that the time had come for the Committee to consider the question of the approach which it should adopt to the problems facing it. While different approaches were possible, Malta had always advocated a comprehensive approach. Statements had been made in support of that approach, but there had been no discussion of it in the Committee. He hoped the Committee would therefore agree to discuss the subject fairly early in the session. He had given his reasons for advocating a comprehensive approach at the Committee's first 1972 session 2/ and had submitted a concrete example of what the approach should comprise. A discussion on that question would give members of the Committee a better idea of the different viewpoints held, even if it was not possible to reach any decision.

1/ See the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction for 1971 (Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421)), annex I.7 "Proposal by Turkey to include a question in the list of subjects" (A/AC.138/48), p.92.

2/ See, in particular, the summary records of the 36th and 44th meetings of Sub-Committee I.

Mr. BEESLEY (Canada) said that his delegation fully shared the views of the Maltese delegation regarding the need to take a comprehensive approach to the whole question.

Indeed, as his delegation recalled, decisions in favour of that approach had already been taken at the twenty-fifth and twenty-sixth sessions of the General Assembly, which had endorsed the Committee's views in that respect.

Mr. SANTA CRUZ (Chile) said that he, too, supported the proposal by the representative of Malta. As he saw it, what the Maltese representative was proposing was not simply that a broad and comprehensive view should be taken of the whole problem but also that consideration should be given to the question of whether sea areas should be the subject of several régimes or of only one régime.

That issue was a fundamental one. It was worth noting that, at a recent meeting held under the auspices of the Stanley Foundation, the overwhelming majority of participants had agreed that the only rational approach was to have one single international régime, and one single institutional régime, for all sea and ocean areas.

He fully understood the Chairman's anxiety to avoid a general debate, in order to accelerate the work of the Committee, but he nevertheless felt that it would be extremely useful to allocate one or two plenary meetings to the discussion requested by the representative of Malta. He therefore fully supported that request.

Mr. ARIAS SCHREIBER (Peru) said that he fully supported the proposal by the representative of Malta. A comprehensive consideration of the whole question was not only the most logical course to adopt, but would also facilitate the work and the negotiations in the three Sub-Committees.

Mr. KHLESTOV (Union of Soviet Socialist Republics) commended the Chairman for the efforts he had made during the inter-sessional period, which would help the Committee to complete its task in time and thereby contribute to the success of the future Conference on the law of the sea.

His delegation wished to express its general support for the programme of work outlined by the Chairman and it welcomed the statements by a number of representatives reflecting a desire to begin active work immediately both in the Sub-Committees and in the plenary Committee.

His delegation endorsed the Chairman's view that the question of the creation of an intergovernmental sea service, referred to the Committee by General Assembly resolution 2846 (XXVI), should be referred to Sub-Committee III.

Mr. TUNCEL (Turkey), referring to the proposal by Malta, said that the proposal which the Turkish delegation had submitted to the Committee in 1971 and which the Chairman had just mentioned had been designed to achieve a similar purpose.

There were many legal and other reasons in favour of a comprehensive approach. It was, for example, particularly significant that the International Law Commission, in its draft articles 3/ which had been the basis for the work of the 1958 United Nations

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3/ See Yearbook of the International Law Commission, 1956 (United Nations publication, Sales No.: 1956.V.3, vol.II), "Articles concerning the law of the sea", pp.256-264.

Conference on the Law of the Sea, had dealt comprehensively with the whole subject of the law of the sea. The Conference itself had subsequently drawn up four separate Conventions on the different aspects of the law of the sea; 4/ but the comprehensive approach originally adopted by the International Law Commission had been similar to the one now recommended by the Maltese delegation.

The main reason which had moved the 1958 Conference to adopt four Conventions instead of one had been the desire to facilitate the acceptance of the rules embodied in those international instruments. It had been felt that if all the rules were included in a single convention, some States might hesitate to ratify it. Each of the four 1958 Conventions, on the other hand, had by now been ratified by between 40 and 50 States. The Turkish proposal took into account the legal situation thus created.

His delegation accordingly supported the proposal by Malta, and was also fully prepared to discuss the question whether the whole matter of the peaceful uses of the sea-bed should be covered by one single convention. At the same time, he believed that it was still too early to discuss that question; the Committee should concentrate on the adoption of a list of subjects and issues and on settling the order of priorities. It could then discuss, in one or two meetings, the question raised by the representative of Malta. He belived, however, that it would not be possible to reach a decision on that question at the present session.

In any case, he urged that the item proposed by the Turkish delegation should be included in the list of subjects to be adopted by the Committee.

Mr. CASTANEDA (Mexico) said that he felt that the Committee might be embarking on a discussion which could not lead to fruitful results.

If the meaning of a comprehensive approach was simply that the various questions of the law of the sea were interrelated, his delegation and many others had been in favour of such an approach from the outset. Indeed, that basic unity had been recognized when the various questions of the law of the sea had been considered by the 1958 United Nations Conference on the Law of the Sea. It had also been acknowledged by the General Assembly in resolution 2750 C (XXV) of 17 December 1970 on the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and indeed by the Committee itself, as was clear from its decision that progress on other questions was necessary before the list of subjects could be agreed upon.

Unfortunately, as had been indicated by the Chilean representative, the present Maltese proposal seemed to imply something more. The fact of the matter was that Malta had put forward its own special view on the law of the sea. The "draft ocean space treaty" contained in the interesting working paper 5/ submitted by Malta to the Committee divided the sea into two areas - an area under national jurisdiction and an area under international jurisdiction.

4/ See United Nations Conference on the Law of the Sea, Official Records, vol. II, Plenary Meetings, summary records of meetings and annexes (United Nations publication, Sales No.: 58.V.4.vol.II), documents A/CONF.13/L.52-L.55, pp.132-143.

5/ See the Committee's report to the General Assembly for 1971 (Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421)), annex I.11 (A/AC.138/53), p.105.

For a scholar, the simple system thus proposed had undoubtedly its attractions and its merits. The representatives of States, however, had to consider it otherwise than from the purely academic angle. The proposal by Malta would have the effect of doing away with the fundamental concepts of the territorial sea, the high seas, the continental shelf and the sea areas under special jurisdiction. Such a radical change in the whole basis of the existing law of the sea could, however, be adopted by Governments only after many years of discussion and negotiation, if at all. A discussion at one or two meetings of the present session could hardly be expected to achieve any significant results in that direction.

It was worth remembering that the various proposals made by Governments, including the 56-Power proposed list of subjects and issues, were based on a concept of the law of the sea that was completely different from that adopted by the delegation of Malta in its working paper.

For those reasons, it was essential not to confuse the idea of taking a comprehensive view of the whole subject with the specific approach adopted by Malta in its working paper.

It would not serve any useful purpose for the Committee to embark now on a discussion of the basic issues of the law of the sea raised by that working paper; the only fruitful course at the present stage was for delegations to make concrete proposals.

Mr. BEESLEY (Canada) said that he understood the "question of the comprehensive approach" was merely whether the Committee, in preparing for a new conference on the law of the sea, should embark on a comprehensive examination of the unresolved issues, or whether it should concern itself with only some of those issues. That question had surely been settled by the adoption of General Assembly resolution 2750 C (XXV), as was borne out by the continuing negotiations on the list of issues, which would be a pointless exercise if the Committee was not attempting a comprehensive examination.

The question whether the Committee should prepare one or several conventions was a different, though related, question, on which it would be premature to take a decision at the present time, and on which his delegation intended to keep an open mind. It was important, however, to ensure that the Committee's work on any one of the issues under study should be closely integrated with its work on other issues, in view of the interpenetration between them.

He hoped that the Committee would not reopen the discussion on the question of priorities, since after long negotiations it had been generally agreed to give priority to the international régime for the sea-bed and the ocean floor and the subsoil thereof. It might, on the other hand, prove useful to discuss the implications for the Committee and other United Nations bodies of the adoption of a comprehensive approach. It was important to be aware of what was going on in other forums, such as IMCO, IOC, the regional economic commissions and the secretariat of the United Nations Conference on the Human Environment, so as to ensure that work was proceeding in an effective and efficient way that did not prejudice the Committee's fundamental aims.

Mr. VELLA (Malta) said that his delegation was not, of course, attempting to impose its own interpretation of the concept of the comprehensive approach. It would seem, however, that different delegations interpreted that concept in different ways, and it would therefore be useful to discuss the question further in order to clarify

exactly what the Committee understood by the term "comprehensive approach". His delegation had already made it clear that it would prefer to have a single treaty, but it was still open to persuasion that it might be preferable to have several treaties, on the understanding that the comprehensive approach as defined in General Assembly resolution 2750 C (XXV) would be safeguarded.

Mr. ALCIVAR (Ecuador) said that the problems of ocean space were closely interrelated and needed to be considered as a whole, as indicated in the fourth preambular paragraph of General Assembly resolution 2750 C (XXV), and the Committee could adopt no other approach. It was, however, still open to discussion whether the Committee should work towards a single comprehensive convention or several conventions. He did not find any inconsistency between the Maltese delegation's interpretation of the comprehensive approach and the decisions already taken by the Committee, and wished therefore to support the Maltese proposal that the Committee should discuss the matter briefly.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE SEVENTY-EIGHTH MEETING

held on Thursday, 20 July 1972, at 11 a.m.

Chairman: Mr. AMERASINGHE Sri Lanka

STATEMENTS ON REGIONAL MEETINGS

The CHAIRMAN, before inviting the Venezuelan representative to make a statement on the sub-regional Conference held at Santo Domingo, announced that the Netherlands delegation had joined France and the United Kingdom as a sponsor of the amendments (A/AC.138/76) to the list of subjects and issues relating to the law of the sea to be submitted to the Conference on the law of the sea (A/AC.138/66 and Corr.2).

Mr. AGUILAR (Venezuela) said that a number of States which had participated in the Specialized Conference of the Caribbean Countries on Problems of the Sea, held at Santo Domingo (Dominican Republic), at the level of Ministers of Foreign Affairs, from 6 to 9 June 1972, felt that it would be useful for the Committee to hear a statement on the results of that Conference. His country shared that view, since it believed that the efforts made to reconcile viewpoints at the regional or sub-regional level could greatly facilitate the work of the Committee.

His statement would have an objective character and he would refrain from referring to the position either of Venezuela or of any other individual country represented at the Conference. Nevertheless, he wished to stress that he was speaking only in the name of his delegation and that other participants in the Conference might wish to make their own additional comments on the decisions taken at Santo Domingo.

The Conference at Santo Domingo had been held pursuant to resolution No.1 unanimously adopted by the informal consultative meeting of Ministers of Foreign Affairs of the Caribbean countries, held at Caracas from 24 to 26 November 1971. It had been preceded by the meeting of a Preparatory Commission, held at Bogotá from 2 to 10 February 1972.

The Conference itself had been held in two stages: the first, a preparatory stage, at the level of ambassadors, from 31 May to 5 June, and the second, at the level of Ministers of Foreign Affairs, from 6 to 9 June 1972.

In accordance with the decisions taken at Caracas and Bogotá, 15 States had participated in the Conference as full members. They included 13 coastal States of the Caribbean - Barbados, Colombia, Costa Rica, the Dominican Republic, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Trinidad-and-Tobago and Venezuela - and, in addition, El Salvador and Guyana, which, although themselves not coastal States of the Caribbean, were closely bound to those coastal States by various economic integration processes.

The Conference had also been attended by observers from all other interested Latin American States and from a number of international organizations.

It would be noted that the participants, whether full members or observers, were all sovereign States, developing countries and members of the Latin American group.

The purpose of the Conference had been to harmonize the positions of participating States on the fundamental issues and subjects of the law of the sea, bearing in mind the special conditions of the Caribbean area and the community of interests among the countries of that area.

It had been made clear from the outset that the aim of the Conference was not, and could not be, to create a bloc in opposition to other Latin American countries which had been maintaining certain very clear positions on the law of the sea. On the contrary, the objective of the Caribbean countries had been, and still was, to put forward solutions likely to attract the support of all the countries of Latin America, in the hope that they would also be supported by the other developing countries and accepted by the international community at large. It would be seen that the formulations adopted at the Conference did not depart fundamentally from those advocated by other Latin American countries, so that it was possible to hope that sooner or later a common position would be arrived at. Indeed, the Conference had agreed to call for a meeting of all the Latin American countries precisely for that purpose.

On 9 June 1972, the Conference had adopted the Declaration of Santo Domingo by 10 votes in favour (Colombia, Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Trinidad-and-Tobago and Venezuela), none against and 5 abstentions (Barbados, El Salvador, Guyana, Jamaica and Panama).6/

As was clear from the wording of the preamble, the Declaration was based on the following main ideas: first, the need for a progressive development of the law of the sea in the light of scientific and technological progress and of the new political realities; secondly, the idea that the new law of the sea should take the form of rules of world-wide application, without prejudice to regional or sub-regional agreements based on those rules; thirdly, the idea that, in the formulation of those new rules, it was essential to bear in mind the need to bridge and in due course close the existing gap between the developing and the developed countries; fourthly, the idea that the new law of the sea should reconcile the needs and interests of individual States with those of the international community at large; fifthly, the idea that it was necessary to define, through the adoption of generally accepted rules, not only the rights but also the obligations and responsibilities of States in respect of the various sea areas; and sixthly, the idea that the new rules on the subject should promote international co-operation for the adequate protection of the marine environment and the proper utilization of its resources.

The operative part of the Declaration contained the texts of the agreements reached on the territorial sea, the patrimonial sea, the continental shelf, the international sea-bed, the high seas, marine pollution and regional co-operation.

The section on the territorial sea began with a provision which defined the concept of the territorial sea in terms substantially identical with those used in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.7/ The traditional or classical concept of the territorial sea was thus accepted.

6/ The text of the Declaration was subsequently circulated under the symbol A/AC.138/80.

7/ United Nations, Treaty Series, vol.516 (1964), No.7477, p.205.

It went on to declare that the breadth of the territorial sea and the manner of its delimitation must be the subject of international agreement, preferably of world-wide scope, and that, meanwhile, each State had the right to "establish the breadth of its territorial sea up to a limit of 12 nautical miles to be measured from the applicable baseline". That last provision was based on the indisputable fact that a large number of States had already established a 12-mile limit in their national legislation and that many others had expressed their agreement with a 12-mile limit. Lastly, the section on the territorial sea proclaimed the right of innocent passage through the territorial sea for the ships of all States, whether coastal or not, in accordance with international law.

The second section of the Declaration defined the patrimonial sea as a belt which was adjacent to the territorial sea and in which the coastal State would exercise sovereign rights over all the natural resources. It should be stressed that the rights referred to were sovereign rights over the resources and not over the belt itself. The term "sovereign rights" had been used precisely in order to indicate that the coastal State would, with respect to the resources of the belt, enjoy the same fullness of powers as it did with respect to the resources of its own territory. The same term had been used with the same meaning and scope in article 2, paragraph 1, of the 1958 Geneva Convention on the Continental Shelf.8/

With regard to the scope of the rights, the Declaration clearly specified that they would be exercised over all the natural resources, renewable and non-renewable, whether they were to be found in the waters, on the sea-bed or in the subsoil of the belt, without any distinction; it was therefore a marine zone in which the coastal State would exercise exclusive rights over all resources, without distinction.

With regard to scientific research in that zone, the Declaration laid it down that the coastal State would have not only the right to regulate it, but also the duty to encourage it. It would likewise have the right to take necessary measures to avoid pollution of the marine environment and to ensure its sovereignty over the resources in the zone.

The Declaration did not establish a precise and uniform breadth for the patrimonial sea - any more than it did for the territorial sea - but laid down the following two principles: first, that the breadth of the patrimonial sea must be the subject of international agreement, preferably of world-wide scope, and secondly, that the whole width of the territorial sea and the patrimonial sea, taking into account the geographical factors, should not exceed a total of 200 nautical miles.

In the case of the patrimonial sea - unlike that of the territorial sea - the Declaration neither authorized nor encouraged the creation by unilateral measures of that belt or marine zone. The reason for the difference was, of course, that the concept of the patrimonial sea was a new concept of the law of the sea which, as clearly pointed out in the Declaration itself, would require international agreement.

The Declaration provided that the delimitation of that zone between two or more States would be effected in conformity with the peaceful means envisaged in the Charter of the United Nations.

8/ Ibid., vol.499 (1964), No.7302, p.312.

The last paragraph of the section on the patrimonial sea stated that in the patrimonial sea ships and aircraft of all States, whether or not they had a coastline, should enjoy the right of freedom of navigation and overflight, without any restrictions other than those which might result from the exercise by the coastal State of its rights in that sea. There would also be freedom to lay submarine cables and pipelines, subject to those sole limitations. The limitations in question would be, mutatis mutandis, the same as those specified in article 5 of the 1958 Geneva Convention on the Continental Shelf.9/

The creation of a new zone called the "patrimonial sea" would render unnecessary the "contiguous zone" provided for in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. The Declaration of Santo Domingo made no reference whatsoever to the contiguous zone and the omission was deliberate.

The Declaration did not, however, imply in any way the suppression of the rights already enjoyed by coastal States over the continental shelf, in accordance with international law. The effect of the provisions of the Declaration on the patrimonial sea was simply that the rules on the continental shelf would apply only where the shelf extended beyond the limit of the patrimonial sea. The reason was obvious: within the 200-mile limit, any existing continental shelf would be covered by the régime of the patrimonial sea, which gave the coastal State more extensive rights than the 1958 régime for the continental shelf. Paragraph 4 of the Declaration on the subject of the continental shelf contained a specific provision to that effect.

With regard to the concept and the limits of the continental shelf, the Declaration reproduced almost unchanged the pertinent provisions of the 1958 Geneva Convention on the Continental Shelf.

However, in the third paragraph of the section of the Declaration in question, it was stated that the Latin American delegations in the Committee should "promote a study concerning the advisability and timing for the establishment of precise outer limits of the continental shelf, taking into account the outer limits of the continental rise".

The next section of the Declaration dealt with the international sea-bed and stated that the sea-bed and ocean floor and its resources, beyond the patrimonial sea and beyond the continental shelf not covered by that sea, were the common heritage of mankind, in accordance with the Declaration adopted by the General Assembly in its resolution 2749 (XXV). It further stated that the régime for that area should be established by international agreement, which should create an international authority empowered to undertake all activities in the area either on its own or through third parties. The fundamental concept of the working paper on the régime for the area, submitted by a group of Latin American countries members of the Committee at its first 1971 session,10/ had thus been accepted.

The section of the Declaration dealing with the high seas stated that the waters situated beyond the outer limit of the patrimonial sea constituted "an international area designated as [the] high seas, in which there exists freedom of navigation, of overflight and of laying submarine cables and pipelines", thereby unreservedly

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9/ Ibid., p.314.

10/ See the Committee's 1971 report to the General Assembly (Official Records of the General Assembly, Twenty-sixth Session, Supplement No.21 (A/8421)), annex I.14 (document A/AC.138/56), pp.197-200.

endorsing three of the four freedoms enunciated in article 2 of the 1958 Geneva Convention on the High Seas.11/ The fourth of those freedoms, namely freedom of fishing, was not recognized as unlimited. The Declaration specified that fishing in the high seas must be "neither unrestricted nor exercised indiscriminately" and must be "the subject of adequate international regulation, preferably of world-wide scope".

There followed a section on marine pollution, which stated that it was the duty of every State to refrain from acts which might pollute the sea, the sea-bed or the ocean floor, and recognized the international responsibility of physical or juridical persons who damage the marine environment. The desirability was also stressed of drawing up an international agreement, preferably of world-wide scope, on the subject.

In the last section of the Declaration, concerning regional co-operation, the signatories recognized the need for the countries in the area to adopt a common policy vis-à-vis the distinctive problems of the Caribbean Sea. For that purpose, it had been agreed to hold periodic meetings of high-level government officials, if possible once a year, for the purpose of co-ordinating and harmonizing national efforts and policies in all matters relating to ocean space.

The concluding paragraph of the Declaration reaffirmed the "respect for international law which [has] always inspired the Latin American countries".

He felt sure that it would be of assistance for members of the Committee to have the full text of the Declaration of Santo Domingo, and he therefore requested that it be circulated as a Committee document.

Mr. ESPINOSA VALDERRAMA (Colombia) said that, as a participant in the Specialized Conference of the Caribbean Countries on Problems of the Sea and as the representative of a signatory country of the Declaration of Santo Domingo, he wished to express his appreciation of and full support for the faithful and complete presentation made by the Venezuelan representative. He wished also to support the proposal that the Declaration of Santo Domingo should be circulated as soon as possible as an official document of the Committee in all working languages, since in his view it would be a very useful contribution to the work of the Committee. The participants in the Conference had tried to bear constantly in mind the interests of the other Latin American countries and of the developing countries in general, and had attempted to find solutions to common problems and to overcome the differences separating the various countries. He hoped that the work of the Committee would proceed in a similar constructive spirit.

Mr. NJENGA (Kenya) said that the Declaration of Santo Domingo clearly represented a significant development that was very relevant to the work of the Committee. He supported the proposal that it should be circulated as an official document of the Committee.

He wished to inform the Committee of the recommendations adopted by the African States' Regional Seminar on the Law of the Sea.12/ The Seminar had been held under the auspices of the International Relations Institute of Cameroon, with the assistance of

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11/ United Nations, Treaty Series, vol.450 (1963), No.6465, p.82.

12/ See document A/AC.138/79, circulated subsequently, entitled "Conclusions in the general report of the African States' Regional Seminar on the Law of the Sea, held at Yaoundé from 20 to 30 June 1972".

the Carnegie Endowment for International Peace. It had been attended by representatives from Algeria, Cameroon, the Central African Republic, Dahomey, Egypt, Ethiopia, Equatorial Guinea, the Ivory Coast, Kenya, Mauritius, Nigeria, Senegal, Sierra Leone, Togo, Tunisia, the United Republic of Tanzania and Zaire, and also by representatives of OAU and OCAMM and by observers from Canada, Israel, Spain, Switzerland, the Union of Soviet Socialist Republics and the United States of America. A number of well-known international experts had addressed the Seminar and had then assisted the four working groups set up to deal with special areas of study. The first had been concerned with the territorial sea, the contiguous zone and the high seas; the second with the living resources of the sea (particularly fisheries) and marine pollution; the third with the continental shelf and the sea-bed; and the fourth with the settlement of conflicts that might arise between coastal States with regard to the law of the sea. The four working groups had reported back to the plenary and made recommendations that were discussed, amended and unanimously adopted by the Seminar as a whole there being no reservations on the basic provisions.

He then read out the conclusions and recommendations adopted by the Seminar, and proposed that the text of those conclusions and recommendations should be circulated as an official document of the Committee.

Mr. BEESLEY (Canada) said that, in view of the interest and importance of the statements which had just been made by the representatives of Venezuela and Kenya, he thought it would be useful if they could be circulated in extenso as official documents of the Committee. If that were not possible, he hoped that the representatives concerned would be able to arrange for their circulation to members of the Committee.

While the slow pace at which the Committee's work was proceeding was discouraging, the serious work which was being undertaken outside the Committee would in due course help to solve the difficulties which it faced.

Although many delegations would find it difficult to agree with all the proposals made at Santo Domingo and Yaoundé, he was most impressed by the work which had been done at those two meetings. While some of the issues dealt with were still very contentious, the approaches were not as doctrinaire or as rigid as they had sometimes been in the past.

The CHAIRMAN said that, in the interests of economy, he hoped that the Canadian representative would not press his request. The introductory statements would be covered quite extensively in the summary record of the meeting.

Mr. HARRY (Australia) said that the Declaration of Santo Domingo was an important contribution to the law of the sea, as was the work done by other regional groups. They would be invaluable in assisting the Committee to decide upon universal principles for incorporation in the international instrument or instruments which had to be drawn up. He therefore welcomed the requests for the circulation of the text of the Declaration of Santo Domingo and of the report of the Yaoundé Seminar.

Mr. ENGO (Cameroon) said that the African States' Regional Seminar on the Law of the Sea, for which his country had acted as host, had been the first step taken by African countries towards codifying their views on the future law of the sea. The recommendations made at Yaoundé would greatly assist them in deciding on their common stand. He supported the proposal that the conclusions of the Seminar should be circulated as an official document. It might also be useful if the delegations which

had introduced the very important Declaration of Santo Domingo and the report of the Yaoundé Seminar were authorized to make short summaries of their introductory statements for circulation to the members of the Committee. It was essential that the Committee be informed of the views of regional groups.

The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished the text of the Declaration of Santo Domingo and the conclusions of the Yaoundé Seminar to be circulated as official documents of the Committee.

It was so decided.

STATEMENTS BY THE CHAIRMEN OF SUB-COMMITTEES I, II and III

Mr. ENGO (Cameroon), Chairman of Sub-Committee I, said that since the end of the Sub-Committee's last session in New York, held from 29 February to 29 March 1972, the work of Sub-Committee I had been mainly conducted on an informal basis. The working group set up in New York would report to the Sub-Committee early in the following week, at which time he would be able to inform the Committee of any progress which had been made.

All delegations were co-operating in a most helpful spirit.

Mr. MARTÍNEZ MORENO (El Salvador), Chairman of Sub-Committee II, said that Sub-Committee II had begun its very difficult work on the preparation of the list of subjects and issues. The Sub-Committee had agreed that the deadline for the submission of amendments to the 56-Power proposal (A/AC.138/66 and Corr.2) should be 8 p.m. on 20 July. Meanwhile, informal consultations between groups had made some progress. In view of the spirit of co-operation shown by all delegations, he was optimistic concerning the outcome.

Mr. van der ESSEN (Belgium), Chairman of Sub-Committee III, said that Sub-Committee III would hold its first meeting that afternoon. He hoped that it would be able to have a fruitful debate on the results of the United Nations Conference on the Human Environment and then proceed with the drafting of treaty articles.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE SEVENTY-NINTH MEETING

held on Monday, 24 July 1972, at 10.55 a.m.

Chairman: Mr. AMERASINGHE Sri Lanka

GENERAL DEBATE

Mr. SANTA CRUZ (Chile) said that the statements made at the 78th meeting by the representatives of Venezuela and Kenya, who had described agreements recently reached by the Caribbean countries and by a large group of African countries, indicated that those agreements contained elements, including economic and social considerations, that would be most valuable in achieving an international solution of the problems of the law of the sea. In 1973, there was to be a Latin American Conference on the same subject and he hoped that the Republic of Cuba, which had been absent from the Specialized Conference of the Caribbean Countries on Problems of the Sea, but whose views were not incompatible with those agreed upon by its Caribbean neighbours, would be a participant.

There was no doubt that the law of the sea was out of date. The old doctrine of freedom of the seas benefited the developed, industrialized countries to the prejudice of new States that had acquired their independence in recent years. It was now known that the waters of the high seas could not be used and abused ad infinitum. Two-thirds of the globe - the actual area of the oceans - could not be subject to the outdated concept of "might is right". That was tantamount to anarchy, which was leading to the destruction of valuable and irreplaceable species and permanent damage to the marine environment. Dissatisfied with such a state of affairs, the international community had decided to prepare a new conference on the law of the sea, which was to adopt a unitary and comprehensive approach to all the relevant problems. That conference should establish a régime that would contribute to international social justice and to the economic development of the peoples. Indeed, its conclusions should be a major factor in strengthening the International Development Strategy for the Second United Nations Development Decade, adopted by the General Assembly in its resolution 2626 (XXV) of 24 October 1970.

The third session of the United Nations Conference on Trade and Development, which was the highest and most representative international forum dealing with economic development, had included in its resolution 46 (III) an important new principle13/ among those it had proclaimed. That principle asserted the right of coastal States to dispose of marine resources of the sea within the limits of their national jurisdiction and called for an international régime to ensure the equitable sharing - with due regard for the needs of the developing countries, including those of the land-locked States - of the benefits of the exploitation of the resources of the sea-bed, the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, which were the common heritage of mankind.

13/ See Proceedings of the United Nations Conference on Trade and Development, Third Session, vol. I, Report and Annexes (to be issued as a United Nations publication), annex I, resolution 46 (III), "Steps to achieve a greater measure of agreement on principles governing international trade relations and trade policies conducive to development", para. 1, principle XI.

The concept of administering the area beyond national jurisdiction through an international régime and agency for the benefit of all States - large and small, coastal and land-locked - was a revolutionary concept, as was also the idea of a "common heritage", which opened up new horizons in international co-operation. The resources of the area beyond national jurisdiction were enormous and, with the help of technological progress, could be of great benefit to the developing world. No longer would the exploitation of the resources of the sea be the prerogative of a few industrialized nations. At the same time, the Conference had reaffirmed the logical right of coastal States to use for their own development the biological and mineral resources of the waters adjacent to their coasts. In doing so, it was echoing the dictum of the English jurist Welwood in the seventeenth century. When properly exercised, that right could have significant effects. Chile and Peru, for instance, had increased their total fishing catch by 20 to 200 times in recent years.

The sovereign right to exploit off-shore resources was related to the principle of national sovereignty over natural resources generally, proclaimed by many international bodies and reaffirmed by the Conference at its third session. In that connexion, he wished to express his country's solidarity with Peru and Ecuador, which had been subjected, contrary to principles solemnly proclaimed in the Charter of the United Nations and the Charter of OAS, to improper pressures and sanctions.

He then referred the Committee to paragraph 1 of Conference resolution 51 (III) and recalled the statement of the Under-Secretary-General for Economic and Social Affairs in Sub-Committee I (48th meeting)15/ concerning the importance of ensuring that the damage suffered by the economies of the developing countries from the exploitation of the sea-bed should not be greater than the benefits they derived therefrom. The future international body that was to be created as part of the régime for the sea-bed beyond national jurisdiction should be empowered to control and regulate production so as to prevent fluctuations in the markets and prices of the raw materials produced by developing countries. Only in such a manner could the concept of a common heritage be properly interpreted. The United Nations Conference on Trade and Development, like the United Nations General Assembly, had rightly decided to keep that aspect of the sea-bed problem under constant review.

It was much to be regretted that the moratorium on the exploitation of the sea-bed, implicit in General Assembly resolution 2749 (XXV) entitled "Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction", expressly proclaimed in General Assembly resolution 2574 D (XXIV) entitled "Question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind", and reaffirmed in

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14/ Ibid., annex I, resolution 51 (III), "The exploitation, for commercial purposes, of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction".

15/ A/AC.138/SC.I/L.12

resolution 52 (III) of the United Nations Conference on Trade and Development,[16] was being violated by a number of industrialized States which were entering into private agreements at a time when the international community was endeavouring to establish an international régime. His delegation had already denounced that state of affairs at the Committee's first 1972 session, at the third session of the United Nations Conference on Trade and Development and in the Trade and Development Board's Committee on Commodities. The facts cited on those occasions had now been confirmed in the report of the Secretary-General entitled "Additional notes on the possible economic implications of mineral production from the international sea-bed area" (A/AC.138/73). He referred to the efforts of a consortium of 25 Western companies, which was using the Japanese continuous-line bucket system to extract manganese nodules from the Pacific near Samoa and also to bill S 2801 now before the United States Senate to grant licences for operations in the international area with reciprocity with other producing countries, in other words to establish a régime of developed countries without consideration for the developing countries and in violation of principles proclaimed by many United Nations bodies. While it was true that the manganese operation was only a test and that the United States Government had not taken any decision on the Senate bill, the situation certainly called for the attention of the Committee. Nor were those two examples isolated, for still other companies were making investments in marine exploitation. The United Nations Conference on Trade and Development had therefore been entirely right in reiterating the importance of the moratorium, and the representative of Kuwait had done well in raising the question in the Committee (76th meeting).

The common denominator of all the resolutions of UNCTAD bodies on the subject was that the future law of the sea should take full account of the underlying economic and social aspects of sea-bed problems and of the economic development component. He expressed the hope that the important agreements reached by the Conference at its third session would provide a most valuable basis for the Committee's discussions and help to inspire the legal norms which it was the Committee's duty to prepare.

Although his delegation believed that the Conference on the law of the sea should be convened as early as possible, preferably in a developing country with an interest in the sea, he warned against the danger of holding such a conference before a political agreement in principle on the general lines of an international, comprehensive solution had been reached. Without such an agreement in principle, it would be not only very difficult but also extremely dangerous for the success of the international negotiations to convene the Conference hastily. The view that it would be dangerous to hold the Conference in 1973 unless the conditions to which he had referred existed did not conflict with his delegation's great interest in holding the Conference as early as possible. The reasons he had given, and particularly the violation of principles which was taking place, showed that the developing countries required an immediate decision to protect them.

16/ See Proceedings of the United Nations Conference on Trade and Development, Third Session, vol. I, Report and Annexes (to be issued as a United Nations publication), annex I, resolution 52 (III), "The exploitation, for commercial purposes, of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction".

The solution to be sought by the Conference should comprise an economic development component which would suitably manifest the progressive development of international law and adapt the law of the sea to the realities and aspirations of the present age. It would have to give serious, practical and faithful expression, without intolerable elements of deception, to the concept of the sea-bed and the ocean floor as a common heritage, and that presupposed an international régime and international machinery with adequate powers. It should also, if a single régime for the ocean was not possible, at least regulate the production of fisheries, ensure the preservation of species and the protection of the environment in the area beyond the limits of national jurisdiction. Furthermore, it should make provision for a maritime belt of national jurisdiction, within which a coastal State would be entitled to dispose of the resources, up to 200 nautical miles, without prejudice to freedom of navigation and overflight. That element in the international solution - with its economic development content - underlay principle XI contained in paragraph 1 of resolution 46 (III) of the United Nations Conference on Trade and Development, as well as the recommendations of the African States' Regional Seminar on the Law of the Sea, held at Yaoundé in June 1972 (A/AC.138/79), those of the Afro-Asian Legal Consultative Committee, the provisions of the Declaration of Santo Domingo (A/AC.138/80) and many earlier statements representative of the Latin American region, the individual proposals of the representative of Malta, and the statements and proclamations of some 50 States.

The international solution would have to deal with the problems of the land-locked countries, their access to the sea and the international area of the sea-bed and the ocean floor, and their participation in the international régime applicable thereto. It would also have to deal with the problem of the continental shelf and many others included in the list of issues and questions to be drawn up and, it was to be hoped, approved at the Committee's current session.

In short, the international solution should be realistic and take into account the interests of countries which had recently become independent and had not been able to participate in the past development of the law of the sea, scientific and technological progress, and regional practices which were acquiring the force of law and which expressed the concept of progressive development of international law advanced in General Assembly resolution 2750 C (XXV) on the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea. It should also manifest the economic and social content, the content of development and of justice which all of that implied.

It was only that just, dynamic and realistic vision, expressing and combining the needs and aspirations of the present-day international community, which would ensure the success of the Conference on the law of the sea and make it possible to formulate legal norms which would establish for the future a stable, equitable and harmonious order for the sea.

Mr. GROS ESPIELL (Uruguay) said that he was convinced that, after the Committee's long years of work, it would now reach the stage of positive achievement, so that the Conference on the law of the sea could be convened in 1973.

His Government would co-operate fully in the effort to complete the preparatory work in time. He was certain that if sufficient account was taken of international realities, if the members of the Committee adopted a balanced and serious approach, endeavoured to reach concrete agreements, and respected the criteria supported by the vast majority - provided that they were not imposed automatically or irrationally - there was every reason for optimism.

It should not be forgotten, however, that the Committee's work was of a preparatory nature, that it was not adopting final texts and that everything which it did could be revised, amplified, reduced or modified by the Conference. Therefore, it was neither logical nor correct to try to impose a particular thesis by means of a procedural triumph at the preparatory stage. Awareness of the limited and non-decisive nature of the Committee's work would help to avoid endless procedural discussions.

He wished to refer to two events which had occurred since the Committee's last session in February and March 1972.

The first was the third session of the United Nations Conference on Trade and Development and the decisions it had adopted, which the Committee should consider as relevant to the forthcoming Conference on the law of the sea, and to which the representative of Chile had just referred. Resolution 46 (III), entitled "Steps to achieve a greater measure of agreement on principles governing international trade relations and trade policies conducive to development", set out in its paragraph 1 a number of principles, of which principle XI had been put forward by all the developing countries, having had its origin in the meeting of the Group of 77 at Lima in November 1971.

The text of principle XI, in fact, comprised two parts. The first stated that "Coastal States have the right to dispose of marine resources within the limits of their national jurisdiction, which must take duly into account the development and welfare needs of their peoples". Thus, any restrictive criterion that attempted to reduce the limits of legitimate national jurisdictions, thereby preventing coastal States from meeting the development and welfare needs of their peoples, constituted a violation of that principle. From that, it followed automatically that coastal States had a right to establish the limits of their national jurisdictions, in conformity with international law, recognizing that the criterion adopted to establish those limits should be rationally capable of meeting the development and welfare needs of their peoples.

It was worth noting that the first part of principle XI coincided in substance with article 1 of the Montevideo Declaration on the Law of the Sea of 8 May 1970[17] and article 1 of the Declaration of Latin American States on the Law of the Sea, adopted at Lima on 8 August 1970.[18]

17/ A/AC.138/34. See also American Society of International Law, International Legal Materials (Washington, D.C., September 1970), vol. IX, No. 5, p. 1081.

18/ See A/AC.138/28.

The second part of principle XI was based on the concept of the common heritage of mankind and reflected and co-ordinated the guidelines on the legal status and the future international regulation of the sea-bed, ocean floor and the subsoil thereof beyond the limits of national jurisdiction laid down in paragraphs 1, 4, 5, 7 and 9 of General Assembly resolution 2749 (XXV). It was particularly significant that the text stressed the need to take into account the special interests and needs of developing countries and, among them, the land-locked countries, thereby reaffirming and clarifying the provisions of paragraphs 7 and 9 of the same General Assembly resolution.

In its resolution 51 (III) on the exploitation for commercial purposes of the resources of the international area, the United Nations Conference on Trade and Development decided that the question of the economic consequences and implications for the economies of the developing countries resulting from the exploitation of mineral resources be kept constantly under review; it requested the Secretary-General of UNCTAD to study the possible adverse impact on fishery resources of such exploitation, and the measures necessary to avoid adverse economic effects from it. That resolution constituted the first concrete application of paragraph 3 of General Assembly resolution 2750 A (XXV) which expressly requested the Secretary-General of the United Nations to co-operate with UNCTAD in the analysis of that question. The work on the studies to be prepared by the Secretary-General of the United Nations and the Secretary-General of UNCTAD, and on the formulation by the latter of specific proposals to be examined by the Trade and Development Board, had not yet been completed. He expressed the hope that that task would be actively pursued, and in that connexion he referred to the statement made by the Secretary-General of UNCTAD[19] and the Under-Secretary-General for Economic and Social Affairs to Sub-Committee I (48th meeting).

As to the Conference resolution 52 (III), it called upon all States engaged in activities in the sea-bed area beyond the limits of national jurisdiction to cease all activities aiming at commercial exploitation in the area and to refrain from engaging either directly or through their nationals in such exploitation before the establishment of the international régime; it also reaffirmed that prior to the establishment of that régime, no legal claims on any part of the area or its resources would be recognized.

That decision was based on express provisions of General Assembly resolution 2574 D (XXIV) and on paragraphs 2 and 3 of General Assembly resolution 2749 (XXV). The decision was adopted after a number of delegations, including that of Chile, had supplied information to the effect that economic activities constituting breaches of the rules laid down by the General Assembly had actually taken place in the international area. Accordingly, although those activities were undoubtedly already illicit by virtue of the aforementioned General Assembly resolutions, and a declaration on the subject would add nothing to the legal position, it had been considered desirable to issue a solemn warning to international opinion, reaffirming the principles applicable in the matter, by virtue of which any claims or alleged appropriations in the area were null and void.

19/ A/AC.138/SC.I/L.13

The second event to which he wished to refer was that of the Specialized Conference of the Caribbean Countries on Problems of the Sea and the Declaration of Santo Domingo of June 1972, which had been so well analysed by the representative of Venezuela at the 78th meeting. That Declaration constituted a contribution to the unanimous reaffirmation by all the countries of Latin America of their sovereign rights over a broad belt of the sea reaching up to 200 nautical miles. Beyond certain terminological differences and possible variations in the national and sub-regional régimes in force, there was a unanimous will on the part of the developing countries of Latin America to define their sovereign rights over all the resources of their seas and sea-bed within the limits of national jurisdiction.

A new law was in the making and the fact that certain terms were not always used with the same meanings was not a major difficulty; the fundamental problem was that of defining and adequately delimiting the various zones of the sea by means of international negotiation. As far as the zone or zones under the sovereign jurisdiction of the coastal State were concerned, what really mattered was not the terms used to describe them but agreement on the specific powers exercised in them by the coastal State. His delegation hoped that the negotiations under way would make it possible to reach an international agreement which would give adequate recognition to the rights of the coastal State over a wide zone of the sea which would take into account geographical and geological considerations, and all the factors affecting the resources of the sea and their utilization.

Without prejudice to the results of such future negotiations, his country reaffirmed that the régime adopted by it, and described and explained to the Committee in August 1971 by the representative of his country, the late Ambassador Oribe, with regard to the outer limits of its territorial sea, was fully in accord with international law.

Mr. FRANCIS (Jamaica) said that, in his excellent statement at the 78th meeting on the Declaration of Santo Domingo, the Venezuelan representative had mentioned Jamaica among the countries which had abstained from voting on that Declaration. He therefore wished to place on record the reasons for that abstention, reasons which had been set forth very clearly to the Specialized Conference of the Caribbean Countries on Problems of the Sea by the Minister for Foreign Affairs of Jamaica, with special reference to the concept of the "patrimonial sea", which constituted an integral part of the Declaration.

The Minister had summarized as follows the more important reasons for Jamaica's lack of enthusiasm over the patrimonial sea as a concept for municipal application:

(a) Jamaica was a country in the Caribbean Sea, with Cuba 90 miles to the north, Haiti approximately 100 miles to the east; to the south-west, it was flanked by many small islands belonging to Honduras, Nicaragua and Colombia;

(b) Economic resources in terms of fish were very sparse, except in the south-western region, in which the territorial claims of Honduras, Nicaragua and Colombia would, on the basis of the concept of the patrimonial sea, deny Jamaica rights it now enjoyed;

(c) On the basis of technical data now available, in the most extensive free area to the south-east, the waters were very deep, biologically poor and devoid of existing fishing resources or real potential;

(d) It was not possible to isolate the patrimonial sea from its impact on the sea-bed beyond the limits of national jurisdiction, in that, to the extent that extensive claims were made and multiplied, the heritage of the sea-bed would become less valuable;

(e) In terms of mineralogical resources, it was doubtful whether an extension of 200 miles in appropriate regions would yield resources which Jamaica could not already claim under the 1958 Convention on the Continental Shelf.

Having thus explained Jamaica's particular circumstances, the Minister had made the following important declaration with regard to the concept of the patrimonial sea: "Whilst we could not on the available data, at present apply it with advantage to our own municipal situation, we would not go to the extent of summarily rejecting it, in view of the growing acceptance of the concept among our colleagues in Latin America". His conclusion had therefore been: "We wish to keep our position open while we ponder a little more over it".

In his interesting statement, made at the 78th meeting, on the African States' Regional Seminar on the Law of the Sea, the representative of Kenya had said that the African coastal States which claimed an economic zone would extend very special and preferential treatment to the less well-endowed African countries. It was worth noting that similar thoughts had been expressed by the Minister for Foreign Affairs of Jamaica at the Specialized Conference, in the following terms: "In this spirit, we are in considerable sympathy with the point raised by the delegation of Barbados dealing with the possibility of extending some form of preferential treatment to Caribbean States in the spirit of regional solidarity and co-operation".

The placing on record of that explanation of his country's position was all the more necessary since the Declaration of Santo Domingo was to be circulated as a document of the Committee.

STATEMENTS BY THE CHAIRMEN OF SUB-COMMITTEES I, II and III

The CHAIRMAN said that, pursuant to the Committee's decision (77th meeting), he would invite the Chairmen of Sub-Committees I, II and III to report on the progress of the work of those Sub-Committees.

Mr. ENGO (Cameroon), Chairman of Sub-Committee I, said that the first working group of Sub-Committee I had not yet met, because it was awaiting the translation of a very important document. Sub-Committee I itself would meet again shortly to hold a brief debate on the statement made by the Secretary-General of UNCTAD at the 48th meeting of the Sub-Committee (A/AC.138/SC.I/L.13). Later, Sub-Committee I would discuss the statement made at the same meeting by the Under-Secretary-General for Economic and Social Affairs (A/AC.138/SC.I/L.12).

Mr. MARTÍNEZ MORENO (El Salvador), Chairman of Sub-Committee II, said that Sub-Committee II had held a further meeting, at which a number of general statements had been made.

The essential work on the formulation of a list of subjects and issues was being done by an informal working group and it was hoped that that work would be concluded by Friday, 28 July 1972.

Mr. van der ESSEN (Belgium), Chairman of Sub-Committee III, said that Sub-Committee III had held its first meeting and had agreed to divide its task into two parts. The first concerned general principles on the subject of marine pollution; that work would be based on documents emerging from the United Nations Conference on the Human Environment and from other sources. It would begin with a discussion to which three meetings had been tentatively allocated; it was hoped that the discussion would lead to the establishment of a working group to formulate specific articles on the subject.

The second part of the work of Sub-Committee III would concern consideration of the principles governing scientific research.

The meeting rose at 12.40 p.m.

SUMMARY RECORD OF THE EIGHTIETH MEETING

held on Thursday, 27 July 1972, at 11.25 a.m.

Chairman: Mr. AMERASINGHE Sri Lanka

GENERAL DEBATE (continued)

Mr. BENITES (Ecuador) said that it augured well that two somewhat similar positions had been put before the Committee by representatives of important groups of States. Although those positions did not represent the united thinking of their respective regions, both consisting of developing countries, they ought to serve as starting-points for the unification of ideas regarding the content of a new law of the sea, which would have to respond both to the new needs resulting from technological progress and to the inexorable and likewise new demands of international social justice.

The statement by the representative of Venezuela (78th meeting) introducing the Declaration of Santo Domingo had made it very clear that the Declaration was the outcome of a specialized conference of largely Caribbean countries and did not reflect the viewpoint of Latin America. It had been perfectly clear that, as the product of a sub-regional conference, the Declaration of Santo Domingo could not be deemed applicable to the oceanic States of Latin America which had not taken part in the Specialized Conference of Caribbean Countries on Problems of the Sea, and it could be inferred that the Declaration was in harmony with the geographical, political and sociological characteristics of a practically closed sea containing highly differentiated insular States, living in close geographical proximity.

In the light of that introductory statement, the expression "each State" when used in the Declaration in relation to the possible breadth of its territorial sea was to be interpreted as referring to the States in the Caribbean area and not to States in general.

There was no doubt that the Declaration contained new concepts of great importance which, as the representative of Venezuela had said, should be considered at a regional meeting of Latin American countries where the similarities and differences in existing régimes of the sea could be discussed in a fraternal spirit with a view to the unification of the ideas that were to serve as a basis for a new law of the sea.

He did not intend to make any value judgement on the Declaration but merely to recognize its importance and the fact that it contained ideas which should be considered at a future Latin American meeting, along with the Declaration of Santiago, 20/ signed by Chile, Ecuador and Peru on 18 August 1952, and the Declarations of Montevideo and Lima of 1970. The representative of Uruguay had shown (79th meeting) that, with regard to the protection of the resources of the sea, the latter two Declarations had some things in common both with the Declaration of Santo Domingo and with the decisions taken by the United Nations Conference on Trade and Development at its third session.

20/ The text of the Declaration of Santiago was published in Instrumentos Nacionales e Internacionales sobre el Derecho del Mar (Lima, Ministry of Foreign Affairs of Peru, 1971).

Turning to the results of the African States' Regional Seminar on the Law of the Sea, held at Yaoundé, which had been described by the representative of Kenya (78th meeting), he said that, while they were of unquestionable value and should be carefully studied, there again - as the representative of Cameroon had explained - they did not represent the African regional point of view, since OAU at its meeting at Rabat had decided to meet again later to determine its policy with respect to the régime of the sea.

It was a known fact that the maritime countries had been colonial Powers, or States which had acquired the spoils of colonial Powers or which had created neo-colonialist spheres of influence with their own isolationist doctrines based on an alleged need for continental or regional protection. All the great Powers, with the sole exception of China, which had been a victim of colonialism, had been colonial Powers and had consequently had to be naval Powers.

A study of the evolution of the classical doctrines of the law of the sea would show that the colonial Powers had initially manipulated the concepts, alternately adopted and denounced, of Selden's mare clausum and Grotius's mare liberum, as they had done when the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor began its work with concepts derived from Roman law, explaining that the sea-bed and the ocean floor beyond the limits of national jurisdiction were res nullius or res communis or, in more modern terms, res extra commercium, which from time to time had given rise to such doctrines as the law of the flag, the median line and preferential rights.

It should not be forgotten that classical international law related to the surface of the sea and came into being because the colonial Powers needed to have freedom of the seas in order to carry on their trade without hindrance. As far as freedom to fish was concerned, it was thought that the fisheries were inexhaustible. That optimistic view had been disproved by the predatory activities of the naval Powers which wished to establish a new colonialism of the sea.

In contrast to the general principle of freedom of the seas, the naval Powers had had to accept the principle of the extension of sovereignty over a belt of the sea adjacent to the coast of a State based on the needs of defence; at the outset, that had been fixed at three miles - i.e. the range of a cannon ball.

With the passage of time, the three-mile limit had become inadequate and many different solutions had come into being. There was no juridical or logical basis for a 12-mile limit. Technological progress had made it necessary to modify the two zones into which the sea had traditionally been divided - the territorial sea and the high seas. The possibility of exploiting petroleum deposits at depths of up to 200 metres had led President Truman to enunciate in September 1945 the doctrine of sovereign rights over that part of the sea-bed known as the continental shelf. The United States of America, while maintaining the three-mile limit, thus had available a set of different criteria. Another United States criterion was that of strengthened Customs protection up to a limit of 50 miles and, for defensive purposes, that of the continental sea (defined in the Declaration of Panama of 1939 and subsequently embodied in the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro on 2 September 1947), which at many places was over 600 miles wide.

Thus, it had not been the Latin American countries, but the United States of America which had altered the traditional principles of the law of the sea; the former had merely drawn the logical and legal consequences of the Truman Declaration. The first

Latin American State to react had been Argentina, which had a very wide continental shelf and which in a 1946 decree had added to the restrictive concept of the Truman Declaration the broader concept of sovereignty over epicontinental waters.

The doctrine of sovereign rights over a contiguous zone of the sea for the conservation and protection of the natural resources, independently of the bathymetric characteristics of the sea-bed, had been expounded by the President of Chile in his Official Declaration of 14 June 1947, in which he had laid down the principle of the right of the State to dispose of the resources of the sea within the limits of national jurisdiction, a right subsequently recognized in the "Principles of Mexico on the Juridical Régime of the Sea"21/ of 1956, the Montevideo and Lima Declarations of 1970 and, substantially, in principle XI contained in paragraph 1 of resolution 46 (III) of the United Nations Conference on Trade and Development.

After quoting the most important articles in the Declaration of the President of Chile, which, inter alia, established the limit of the contiguous zone at 200 miles, and which had been followed by a similar decree of the President of Peru, also in 1947, he observed that it was not until 18 August 1952 that Ecuador had joined Chile and Peru in the Declaration of Santiago, in which the three States had proclaimed that in the interests of the conservation, development and use of the sea's resources, the width of the territorial sea and the contiguous zone over which their States had sovereignty and exclusive jurisdiction had been extended to a minimum distance of 200 nautical miles from their respective coasts. The Declaration of Santiago had been supplemented by a Convention signed at Lima on 8 October 1954 by Chile, Ecuador and Peru.

In its domestic legislation, Ecuador had held that the traditional international law of the sea provided that the territorial sea was a belt of sea adjacent to the coast of a State over which that State exercised full sovereign rights and that, since there was no legal norm determining the breadth of that sea, it had the right to extend it up to 200 miles.

Ecuador considered that sovereignty was indivisible, although self-limitation was possible. At the same time, it did not overlook the fact that the traditional concepts of the law of the sea had become anachronisms, as the representative of Chile had put it in his excellent statement (79th meeting) and that technological requirements and the demands of development made necessary a new conception of the law of the sea, concerning which it was not possible to forecast whether it might not shatter the old framework.

He had engaged in that long historical analysis in order to show the boomerang effect produced by the various doctrines invoked by the United States. He only wished to add his gratitude to the Chilean representative for his expression of solidarity in the face of the effort by the United States to impose its views on Ecuador by certain vexatious sanctions which recalled the policies of the "big stick" and dollar diplomacy thought to have been abandoned.

21/ See Yearbook of the International Law Commission, 1956 (United Nations publication, Sales No.: 1956.V.3, vol.II), p.249.

The United States sanctions were in contradiction with the rules of public international law and with obligations arising from the 1947 Rio de Janeiro Treaty, and he wished to state that, so long as those sanctions continued, Ecuador could not negotiate any change in its maritime policy and would continue unalterably its action against private vessels which violated the sovereign provisions of Ecuadorian municipal legislation.

The events in question were perhaps an expression of a transitional phase in the broader struggle between the developing world, which, as Mr. Robert MacNamara had said at the United Nations Conference on the Human Environment at Stockholm, embraced three quarters of mankind, and the great industrial Powers, which had built their economic strength on colonial or neo-colonial exploitation. The seafaring Powers wished to exploit for their own benefit the wealth of the sea-bed; they accordingly defended the antiquated doctrine which upheld the absolute freedom of the high seas and endeavoured to confine within narrow limits the sea areas under national jurisdiction.

Bearing in mind their common objective, primarily that of a link between the problems of development and the need for a new law of the sea, the developing countries had a broad basis for agreement covering, first, the need for a broad belt characterized by sovereign rights and national jurisdiction over natural resources - a belt not necessarily identical with the territorial sea as construed by traditional international law - and, secondly, the need to establish a legal régime for the sea-bed and the ocean floor beyond the limits of that national jurisdiction which recognized that the area should be exploited for the benefit of the dispossessed three quarters of humanity living mainly in the developing countries, with special regard for the land-locked countries. Lastly, they could agree on the need for setting up machinery to ensure that the exploitation in question should really be carried out for the benefit of mankind.

After recalling the observation he had made in 1968, in an opening statement he had made as Chairman of the Legal Working Group of the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,22/ he pointed out that four years had elapsed and the position was still as he had described it. On the one hand, principles were invoked which were embodied in the 1958 Geneva Conventions in whose formulation more than half the present membership of the United Nations had not participated, and which, if treated as rules of positive law, would be incompatible with recent technological developments. On the other hand, there were those who aspired to a new law of the sea. It was in those circumstances, and at a time when commercial enterprises were already preparing to exploit the resources of the sea-bed, that suggestions were heard in favour of confirming the obsolete rules or of adopting as universal rules proposals emanating from the two super-Powers. Meanwhile, the appointed date for the Conference on the law of the sea was approaching and his country hoped that the Conference would take place on that date, provided always that the preparatory work was completed and that the developing countries could agree on criteria.

22/ A/AC.135/WG.1/R.3. See also the report of the Ad Hoc Committee to the General Assembly (Official Records of the General Assembly, Twenty-third Session (A/7230)), annex II, para.5.

The developing countries had reached a crucial stage in their history and only unity could save them. They must close their ears to the imperialist sirens who were trying to sow suspicion and mistrust in their ranks. The need to hold separate regional meetings should not deter them from striving for the unity and understanding they must attain prior to the Conference. The peoples of the third world could not mortgage their future in return for ephemeral arrangements in the present.

STATEMENTS BY THE CHAIRMEN OF SUB-COMMITTEES I, II and III

The CHAIRMAN said that, in accordance with the now established practice, he would invite the Chairmen of Sub-Committees I, II and III to report on the progress of the work of those bodies.

Mr. ENGO (Cameroon), Chairman of Sub-Committee I, said that Sub-Committee I had just completed its debate on the economic implications of the exploitation of the resources of the sea-bed, following statements made by the Under-Secretary-General for Economic and Social Affairs and the Secretary-General of UNCTAD. That same afternoon, it would hold the first of four meetings to be devoted to the study of the international machinery.

Mr. MARTÍNEZ MORENO (El Salvador), Chairman of Sub-Committee II, said that the work of Sub-Committee II was being carried out by means of an informal working group which had now completed the first reading of a table of amendments to the 56-Power proposed list of subjects and issues (A/AC.138/66 and Corr.2). A meeting of the 56 sponsors of that proposal was at present in progress, and its results should advance the work of the informal working group. In the circumstances, it would be difficult for the Sub-Committee to meet the time limit of Friday, 28 July 1972.

Mr. van der ESSEN (Belgium), Chairman of Sub-Committee III, said that, since he had last reported to the Committee, Sub-Committee III had held two meetings at which it had heard statements on the work of IMCO. It was hoped that Sub-Committee III would soon be able to set up a working group to prepare a draft on the subject of marine pollution. When work on that subject was completed, Sub-Committee III would consider the subject of scientific research.

STATEMENT BY THE LEGAL COUNSEL

Mr. STAVROPOULOS (Under-Secretary-General for Legal Affairs, Legal Counsel of the United Nations) drew the Committee's attention to the document just issued in three parts in the United Nations Legislative Series and entitled "National Legislation and Treaties relating to the Law of the Sea".23/ It would be recalled that four volumes on the law of the sea had been issued in that series 24/ prior to the 1958 and 1960 United Nations Conferences on the Law of the Sea.

23/ ST/LEG/SER.B/16 (vol.I) and (vol.II), ST/LEG/SER.B/16/Add.1.

24/ United Nations, Laws and Regulations on the Régime of the High Seas, vol.I and vol.II (United Nations publications, Sales Nos.: 1951.V.2 and 1952.V.1); Supplement to Laws and Regulations on the Régime of the High Seas (United Nations publication, Sales No.: 59.V.2); Laws and Regulations on the Régime of the Territorial Sea (United Nations publication, Sales No.: 1957.V.2).

A further volume in the same series had been printed in 1970,[25] containing the texts of the legislation adopted and the treaties concluded since the earlier volumes had been issued, i.e. approximately between 1959 and 1968.

The three-part document now distributed had been prepared in response to a request by the Committee in 1971 (60th meeting) and it contained the texts of legislation enacted and treaties adopted during 1969, 1970 and 1971. The fact that the material received in response to the Secretary-General's note amounted to some 550 pages indicated the extent of the attention given by States to the subject in recent years. The names of the States which had forwarded material were given in the introduction.[26] As in the 1970 volume, the material had been arranged in two parts, which reproduced the texts of national legislation and regulations and the texts of treaty provisions respectively.

A further note had been circulated by the Secretary-General in May 1972 requesting Member States to submit the texts of any further legislation adopted or treaties concluded. The material received would be issued in mimeographed form in 1973. The members of the Committee would thus continue to have before them information which was as complete and up-to-date as possible and which, it was hoped, would prove of value in the Committee's work.

The meeting rose at 12.20 p.m.

25/ United Nations National Legislation and Treaties relating to the Territorial Sea, the Contiguous Zone, the Continental Shelf, the High Seas and to Fishing and Conservation of the Living Resources of the Sea (United Nations publication, Sales No.: E/F.70.V.9).

26/ See ST/LEG/SER.B/16 (vol.I), p.iv, foot-note 2.

SUMMARY RECORD OF THE EIGHTY-FIRST MEETING

held on Monday, 31 July 1972, at 10.55 a.m.

Chairman: Mr. AMERASINGHE Sri Lanka

GENERAL DEBATE (continued)

Mr. CASTAÑEDA (Mexico) said that he wished to refer to a matter which his Government regarded as serious, namely the unilateral and - in the Mexican view - illicit exploitation of sea-bed resources which was being carried out or envisaged without any international authorization, on the fringes of the area to be governed by the international régime that the Committee was endeavouring to establish. All delegations had heard the information given by the representative of Chile, and by other representatives, concerning the granting of State licences for the exploitation of the sea-bed beyond the limits of national jurisdiction, i.e., in the area which, as all were agreed, belonged to mankind as a whole. His delegation believed that any exploitation of the sea-bed in that area at the present time was damaging to the interests of all other members of the international community, and was incompatible with the very essence of the régime which should govern the area. If such activities were not terminated, the existence of the proposed international régime would be jeopardized, and the creation of a new international legal order for the seas could not begin under worse auspices.

His Government could not accept the validity of the argument that such unilateral activities were permissible merely because there was no existing rule of international law which prohibited them. It was, of course, true that the Geneva Conventions of 1958 did not contain any rules concerning the exploitation of the sea-bed, and that there was no other treaty, custom or general principle of law which could be regarded as applicable to the exploitation of the sea-bed beyond the limits of national jurisdiction. However, the General Assembly, in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, contained in its resolution 2749 (XXV), which reflected the will of the international community, had affirmed categorically that the area concerned was the common heritage or property of all mankind and that an international legal régime should be established for it. The international character of the area derived not only from its actual nature or location, but also from the consensus achieved on the matter. It was true that some States had abstained from voting on the Declaration, but their abstention had not been due to the reference to the international character of the sea-bed beyond the limits of national jurisdiction. In fact, all the different preliminary drafts of the Declaration had affirmed the international character of the area in almost identical terms. Also, one of the few achievements of the Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction established by the General Assembly in its resolution 2340 (XXII) had been the recognition of the existence of an international area of the sea-bed, and of the fact that article 1 of the 1958 Geneva Convention on the Continental Shelf 27/ did not authorize States to extend their jurisdiction into the middle of the oceans but rather granted a limited area to coastal States for specific purposes.

27/ United Nations, Treaty Series, vol.499 (1964), No. 7302, p.312.

Equally misleading was the analogy which had been drawn with the situation prevailing in the waters of the deep oceans, in which all States had the right to appropriate the living resources. That right was based on a long-standing custom; but there was no customary law which could be invoked as permitting appropriation of the resources of the ocean floor. In the absence of customary law or legal title providing for or permitting the unilateral exploitation of the sea-bed beyond the limits of national jurisdiction, the Declaration by the General Assembly, which specifically prohibited such exploitation, acquired special force, since it was the only authentic legal expression of the will of States on the matter. States which had been opposed to the adoption of the resolution could not argue that General Assembly resolutions were not binding. Any State which violated the Declaration would be flouting the legally expressed will of the international community and violating the principle of law that the international area of the sea-bed was the common heritage of mankind - a principle stated in paragraph 1 and whose application was clearly explained in paragraphs 2, 3 and 4 of the Declaration.

The exploitation of the resources of the international area of the sea-bed by one or more States, without the permission of the authority which would one day be established, and solely for the benefit of the States concerned and not for all mankind, was tantamount to the illicit appropriation of property belonging to all States. The almost unanimous adoption of the Declaration meant that all national legislative, administrative or judicial authorities were henceforward denied the power to regulate the exploitation of the international area of the sea-bed or to grant licences for such exploitation. It could not be argued that, if the industrialized States had not hitherto granted licences for the exploitation for the international area of the sea-bed, that had merely been a generous act of forbearance on their part. Any State granting licences without permission from the international authority to be established would be acting ultra vires.

It followed that the moratorium imposed by the General Assembly had legal force, not because it was contained in a resolution which was formally of a recommendatory nature, but because it was the inevitable legal corollary of the undisputed principle that there was an international area of the sea-bed beyond the limits of national jurisdiction. Coastal States had no right freely to dispose of the resources of the international area, when the unrestricted exploitation thereof had been expressly prohibited by the international community in the form of an unequivocal legal pronouncement by the General Assembly.

In conclusion, his delegation was glad to note the attitude of prudence - or even reserve - displayed by the United States executive towards Bill S 2801 which was at present being studied by the United States legislature. Evidence of that attitude was to be found in the letter from Mr. Stevenson, Legal Adviser to the Department of State and representative of the United States in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, addressed to the Chairman of the United States Senate Committee on Foreign Relations. He hoped that that prudent attitude would be maintained, and that the principles which the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction had adopted, and which were to serve as a basis for the new law of the sea, would be strictly observed.

STATEMENTS BY THE CHAIRMEN OF SUB-COMMITTEES I, II and III

Mr. THOMPSON-FLORES (Brazil), Vice-Chairman of Sub-Committee I, speaking on behalf of its Chairman, said that the Sub-Committee had held only a few meetings and that the main work was being carried out by the Working Group it had established (23rd meeting) under the chairmanship of the representative of Sri Lanka, who was best qualified to report on progress.

Mr. PINTO (Sri Lanka), Chairman of the Working Group, said that the Working Group now had before it a working paper containing several texts dealing with the status and scope of the international régime. Preparation of the paper, which should be available in all working languages on the following day, had involved the Group in a considerable amount of work and it could be said that fair progress had been made in the exchange of views and the definition of areas of agreement and disagreement. It was now hoped that it would be possible to narrow the areas of disagreement and eventually eliminate them.

Mr. MARTÍNEZ-MORENO (El Salvador), Chairman of Sub-Committee II, expressed regret that Sub-Committee II had failed to complete its work as scheduled on Friday, 28 July. The reason for that failure was that consultations between the group of 56 Powers and delegations which had submitted amendments (A/AC.138/67-71, A/AC.138/72 and Corr.1, A/AC.138/74 and Corr.1, A/AC.138/76-78) to that group's proposals (A/AC.138/66 and Corr.2) had not yet been successfully concluded. He appealed to all members of the Sub-Committee, the group of 56 Powers and delegations which had submitted amendments to endeavour to reconcile their differences and reach a successful conclusion, so that the Sub-Committee could consider the decisions and submit them to the Committee.

Mr. van der ESSEN (Belgium), Chairman of Sub-Committee III, said that the Sub-Committee had held only one meeting since the 80th plenary meeting and had heard statements from the representatives of IMCO (22nd meeting of the Sub-Committee) and IOC (23rd meeting). It had also agreed to set up a working group to deal with the principles of marine pollution, which would function on the same basis as that established by Sub-Committee I. The working group would have 33 members, but its meetings would be open to any delegation that wished to follow the discussion on a particular point.

He informed the Committee that the list of speakers on the principles concerning marine pollution was now closed and that the debate would be concluded on 2 August 1972, after which the Sub-Committee would take up the question of scientific research.

The CHAIRMAN said that, though good progress was being made in Sub-Committees I and III, the position with regard to Sub-Committee II was far from satisfactory. The group of 56 Powers had already had sufficient time to conclude negotiations on the amendments to its proposals, but the Bureau felt that it should be given one last chance to bring its work to fruition. He regretted the inflexibility displayed by certain groups of delegations, since no negotiations could be successful without an element of give-and-take. The group of 56 Powers should now decide which amendments were acceptable to it, which were not acceptable and which of those in the latter category it might be

able to accept if they were re-drafted. Sub-Committee II should then submit its report to the plenary, which would decide how the areas of disagreement could be settled. Originally, it had been thought that the procedure of direct negotiations between the group of 56 Powers and delegations submitting amendments to its proposals would accelerate the work of Sub-Committee II; but if that was not the case, the procedure would have to be abandoned and Sub-Committee II would have to assume full responsibility itself.

Mr. YANGO (Philippines) said that, as Chairman of the group of 56 Powers, he had taken note of the Chairman's comments and could assure the Committee that the group was well aware of its responsibility and had been working very hard to reach agreement on the list of subjects and issues. However, it was not easy for so large a group to come to quick decisions, particularly when members were conscious that the various formulations they were discussing might determine the success or failure of the Conference on the law of the sea. The group was holding regular consultations with delegations that had sponsored amendments, and it was hoped that those consultations might soon bear fruit. Some sponsors of amendments had asked that the group should defer consideration of their amendments.

The CHAIRMAN said that amendments could not simply be left in abeyance by the group of 56 Powers, which would have to refer all the proposals, whether agreed upon or not, to Sub-Committee II.

He reminded the Committee that it had agreed to take its decisions, as far as possible, by consensus. If, therefore, as a result of a stalemate, one of the Sub-Committees felt it might be obliged to put certain questions to the vote, it could not decide on such a procedure on its own. There was nothing to prevent a Sub-Committee from taking an informal count of delegations for and against a proposal, but the main Committee could not treat such counts as a formal vote.

The meeting rose at 11.50 p.m.

SUMMARY RECORD OF THE EIGHTY-SECOND MEETING

held on Thursday, 10 August, at 10.30 a.m.

Chairman: Mr. AMF ASINGHE Sri Lanka

VENUE OF THE THIRD CONFERENCE ON THE LAW OF THE SEA

Mr. SANTA CRUZ (Chile) said that, acting on the instructions of his Government, he had the honour and pleasure to extend an official invitation for the holding of the Conference on the law of the sea referred to in General Assembly resolution 2750 C (XXV) at Santiago de Chile. That invitation was issued in keeping with the terms of General Assembly resolution 2609 (XXIV), on the pattern of conferences, paragraph 10 of which related to the defrayal by the host Government of the additional costs involved in holding a session away from established headquarters.

His Government was extending that invitation for a variety of reasons. First, it was convinced that a conference of such importance, which was so directly related to the economic and social development of the countries of the third world, which comprised the majority of the States that would attend it, should take place in one of those countries. His delegation thought that that feeling was shared by all the delegations of the developing countries. Secondly, it considered that Latin America was a region which was particularly well qualified to serve as the setting for the discussion of questions relating to the sea-bed and the ocean floor and their resources, not only because of the length of its coastline, its varied conformation and the great diversity of situations and conditions, but also because it had experience of many of the situations and conditions which would be of concern to the Conference and would be representative of the developing world as a whole. Nobody could deny that Latin America, both outside and within the United Nations, had made a major contribution to the analysis of those problems and to their solution and had enriched international law on the subject with new juridical and political concepts.

As for Chile itself, he felt he could truthfully claim that it had made a special contribution to Latin American achievements in that field. Chile had a very long coast line; it was a mineral-producing country depending heavily on its copper exports and had a long history as a maritime nation with extensive fishing interests. For all those reasons, it was particularly concerned with the problems to which the Conference would have to find solutions. While Chile had been an uncompromising supporter of the view that the problems of the sea-bed and the ocean floor and the sub-soil thereof should be considered with a view to accelerating and intensifying the economic development of the third world, it was primarily concerned with reaching a general agreement which would take into account the interests of all countries. That was not only perfectly possible but indeed essential, since the world had to face its future in complete solidarity and to become ever more integrated in coping with the conditions imposed by scientific and technical progress. That implied narrowing the economic and technological gap between rich and poor countries, not by making the rich poorer but by making the poor richer. That was why his delegation was in favour of holding a conference as soon as possible to reach such a general agreement, which would be of benefit to all mankind.

His delegation looked forward to those international negotiations with confidence, because it recognized their great importance for the future. Chile had afforded evidence of its impartiality and consideration for others in the past and would do so in the future. It was convinced that it could play its part in achieving new and important results in the field of international co-operation. Moreover, Chile maintained very good relations with all the countries of the world. That was a cornerstone of its international policy, and in keeping with the role desired by its people.

Lastly, his delegation believed that Chile could offer a suitable material and human setting for the Conference, as it had demonstrated by organizing the third session of the United Nations Conference on Trade and Development, and as many representatives on the Committee who had attended it could testify.

As to the question whether the Chilean invitation was opportune, he reminded the Committee that in paragraph 3 of its resolution 2750 C (XXV) the General Assembly had decided to review, at its twenty-sixth and twenty-seventh sessions, the reports of the Committee on the progress of its preparatory work, with a view to determining the precise agenda of the Conference on the law of the sea, its definitive date, location and duration, and related arrangements. Irrespective of the date which the General Assembly might fix for the holding of the Conference, it would have to decide on its location at its twenty-seventh session. For that purpose, the Committee, which was best qualified to do so, should make a recommendation. It had to be remembered that, in order to organize a conference of such magnitude adequately, a host country would require reasonable advance warning.

He wished to add that the Chilean invitation was in respect of meetings which took place within the period of one year; if the Conference should be extended beyond that period in the form of an additional session, another country from any region of the world could offer to act as host for the additional period.

He hoped that his country's invitation would receive the support of the Committee and said that he would be interested to hear the views of its members on the question of the desirability of making a recommendation to the General Assembly before the end of the present session of the Committee and the form that such a recommendation might take.

The CHAIRMAN suggested that speakers confine their observations to the Chilean invitation and not refer to the question of a possible recommendation to the General Assembly. That aspect could be taken up later.

Mr. EVENSEN (Norway) said he had listened with great interest to the Chilean representative's statement. The kind invitation to hold the forthcoming Conference on the law of the sea at Santiago de Chile should be considered with the respect and gratitude it rightly deserved. He had been moved by the appeal to hold the Conference in a developing country. He agreed with the Chilean representative that it might be unrealistic to assume that the Conference would be able to complete its work in one session.

Mr. BACKES (Austria) also expressed appreciation of the Chilean Government's offer to act as host to the Conference for one year. The invitation deserved special consideration, since it came from a developing country but he felt bound to remind the Committee of his delegation's previous declaration that the Austrian Government was prepared to invite the Conference to Vienna, which had been made at Geneva some years earlier and had been followed by a formal invitation on 15 December 1971 at the twenty-sixth session of the General Assembly. As the Chilean representative had made it quite clear that the invitation from his Government covered a period of one year, he personnaly saw ample possibilities for a compromise solution as far as the two invitations were concerned.

Mr. NJENGA (Kenya) expressed gratitude for the generous offer made by the Chilean Government. His delegation attached great importance to holding the Conference elsewhere than at Geneva; it had been the site of the 1958 and 1960 United Nations Conferences on the Law of the Sea, from the results of which the developing countries wished to break away in many respects, although it was not their aim to jettison all the principles embodied in the Conventions drawn up at those Conferences. Whereas the new law of the sea must serve the interests of all mankind, the existing law of the sea did not serve the interests of developing countries. To emphasize the fact, it was most appropriate that the third Conference should be held in a developing country.

Chile was particularly well placed to be the host of such a Conference, since the necessary facilities already existed at Santiago, which was moreover a very friendly city. Chile had a long tradition of upholding the principles of the law of the sea and had made a major contribution to its development, in particular towards ensuring that the rights of developing countries were recognized. His delegation was therefore in favour of the venue proposed by the Chilean representative. He also very much appreciated the Austrian Government's invitation and felt that the two offers were not mutually exclusive.

Mr. MARTINEZ MORENO (El Salvador) welcomed the Chilean Government's kind invitation and expressed his delegation's official support for holding the Conference at Santiago. Among the many reasons which justified that choice was the community of interests of the countries of the third world, which were fighting against past injustices. Should the Conference continue into a second year, his delegation would be happy to see it resumed at Vienna; Austria was a country which had over the years made a valuable contribution to the formulation and codification of international law.

Mr. CASTAÑEDA (Mexico) said he fully supported the invitation of the Chilean Government not only because of the close friendship between his country and Chile but also because all the necessary facilities already existed in Santiago, and the Chilean Government had had experience in organizing similar conferences. Furthermore, the Conference would be preparing a law of the sea which would represent a point of convergence between the interests of the different groups of States. The main reason for the sequence of new developments in the law of the sea was the strenuous efforts of the developing countries to achieve greater recognition of their rights, particularly in respect of the exploitation of their resources. Therefore, it was only just that the Conference should be held in a developing country and he could not think of a better place than Chile.

In his delegation's view, the Conference should start in 1973 with a brief meeting of a procedural nature to deal with organizational problems, followed by quite a long session in 1974, which would be held in Chile, to elaborate the new law of the sea. If the Conference did not conclude its work in 1974, a further session could be held elsewhere.

Mr. YANKOV (Bulgaria) said he greatly appreciated the kind invitation extended by the representative of Chile, a country which had made great efforts to develop an independent and constructive policy and was engaged in the task of national reconstruction. Chile had also made a significant contribution to the deliberations of the Committee. He was well aware that the invitation called for careful consideration because of its financial, organizational and technical implications both as far as the United Nations itself and the delegations which would be represented there were concerned. His Government would certainly give positive and sympathetic consideration to the invitation. His delegation also greatly appreciated the Austrian invitation. Bulgaria had very good relations with Austria, a country which had been the host of many international gatherings, and his Government would consider its invitation with sympathy.

The most important point at the present juncture, however, was to speed up the work on the preparation of the agenda for the Conference, which should be given top priority.

Mr. de la GUARDIA (Argentina) said that he endorsed all the observations made by the representative of Chile. The Conference should certainly be held in a developing country and he would be very happy if it were a Latin American country. It would be an act of justice if it were held in Chile, which had made a most significant contribution to the development of the new law of the sea over the past 30 years, that had broken old links and opened up new relationships. In that field, the contribution of the Latin American region as a whole had been very impressive.

He also thanked the Austrian Government for its kind invitation, which would be duly taken into account by his Government.

Mr. ABDEL-HAMID (Egypt) welcomed the invitation by the representative of Chile, a socialist developing country. The invitation was significant from two points of view. It was proof of Chile's devotion to the ideals and goals of the United Nations and it showed its determination to serve those purposes. For those reasons and because of Egypt's friendship with Chile, as well as Chile's experience in organizing international conferences, his delegation would transmit the invitation to his Government with a positive recommendation. He would also transmit the Austrian Government's kind invitation to his Government.

He endorsed the Bulgarian representative's statement that it was essential for the Committee to speed up its work.

Mr. BALLAH (Trinidad and Tobago) said his delegation was very grateful to the Chilean Government for its kind invitation and had carefully noted everything the Chilean representative had said. He was convinced that the Conference should be held in a developing country; it was necessary to clarify the problems of development in an atmosphere where they were a living reality. All the Latin American countries, and

Chile in particular, had played a significant part in the progressive development of the law of the sea. His delegation would transmit the invitation to its Government with a positive recommendation. It would also transmit the kind invitation by Austria to its Government; Austria too was a country which had played a significant role in the development of international law.

Mr. RANGANATHAN (India) said that the offer of the Chilean Government to act as host to one of the sessions of the Conference on the law of the sea was received with pleasure and gratitude by his delegation. The success of the third session of the United Nations Conference on Trade and Development had proved that the Chilean Government and people could make satisfactory arrangements for important multilateral conferences. He associated himself with previous speakers who had referred to the various merits of Chile. His delegation believed that one or more sessions of the Conference would be necessary since the subjects to be covered ranged over a wide canvas. Since that was the case, he hoped that if and when Governments of other developing countries offered the capitals of their countries for the holding of subsequent sessions, those offers too would be considered sympathetically by the Committee.

He would also transmit the kind invitation of the Austrian Government, offering Vienna as a venue, to his Government. He was convinced that a satisfactory compromise, depending upon the phase of the Conference and the preparations for it, could be reached concerning the venues for the Conference.

Mr. VALDIVIESO (Peru) said that his Government warmly welcomed the Chilean invitation. It was just 20 years since the historic Declaration of Santiago proclaiming the 200-mile limit of the territorial sea had been signed, on 18 August 1952. Chile had shown the world how the values of humanity and the needs of the world could be reconciled. Moreover, Peru had many interests in common with Chile.

However, in the light of the slow progress being made with the preparatory work for the Conference, he felt that it was premature to consider its venue and other procedural details. If the Committee were to make a recommendation to the General Assembly concerning the venue of the Conference, the Assembly would be entitled to assume that the Committee's preparatory work was well advanced. Moreover, under the terms of General Assembly resolution 2750 C (XXV), the initiative for convening the Conference was to be taken by the General Assembly itself. He suggested, however, that the Chilean offer should be mentioned in the Committee's report to the General Assembly.

Mr. GROS ESPIELL (Uruguay) said that his Government was in favour of accepting the very kind offer of the Chilean Government not only because of Uruguay's close ties with Chile but also because of the symbolic value of holding the Conference in a developing country. The new law of the sea which was being elaborated and would be codified by the Conference would be of a universal nature intended to regulate relations between all States in the world. It would not be a law of the developed or of the developing countries, but would have to take into account the requirements and needs of the developing countries and the development which had taken place since the 1958 and 1960 United Nations Conferences on the Law of the Sea. He

also considered that it was only right that the Conference should take place in a Latin American country, a region which had done so much towards the restructuring of the law of the sea. There was no doubt of Chile's ability to organize such a conference both from the human and technical points of view.

Since it was likely that the Conference would extend over a period of more than one year, he felt that it should be possible to reconcile the Chilean offer with other offers that might be made or had already been made. He viewed the Austrian offer with great sympathy; Vienna had noble traditions in the field of international law.

Mr. PERIŠIĆ (Yugoslavia) said that his delegation agreed with others that the forthcoming Conference or Conferences on the law of the sea should be held in a developing country and that Santiago was a very appropriate venue for the Conference, in view of Chile's remarkable achievements as a non-aligned and socialist country and the hospitality and organizational capacity which it had shown on the occasion of the third session of the United Nations Conference on Trade and Development. The Yugoslavian Government would no doubt give sympathetic consideration to that invitation.

Mr. GHARBI (Morocco) expressed his delegation's appreciation of the spontaneous generosity with which the Chilean Government had expressed its willingness to act as host to a highly important conference at the most difficult phase of its deliberations. Morocco also appreciated the reiterated proposal of the Austrian Government that part of the Conference should be held in Vienna.

Mr. YANGO (Philippines) said that his delegation appreciated the Chilean Government's invitation and would convey it to its Government with a favourable recommendation. At its most recent meeting, the Asian Group had considered the venue of the Conference and had agreed that it would be desirable to hold it in a developing country; the Group could not, however, give unqualified support to the Chilean offer for the time being, although it was to be hoped that it could consolidate its position in the very near future. Finally, the Group had taken note of the Austrian invitation and would give it due consideration.

Mr. RUIZ MORALES (Spain) associated his delegation with others which had expressed their thanks to the Chilean Government for its generous offer and to the Austrian Government for renewing its invitation. Both offers would be forwarded to his Government.

Mr. HARRY (Australia) expressed his delegation's gratitude to the Chilean delegation for its offer and to the Austrian Government for its invitation. Those offers would be transmitted to the Australian Government with an account of the views expressed by other delegations. However, Australia had traditionally favoured holding United Nations conferences either at Headquarters in New York or at the United Nations Office at Geneva. It should be borne in mind that the 1958 Geneva Conventions had been regarded as progressive and even revolutionary in their day; and he agreed with earlier speakers that the task of the forthcoming Conference was not to jettison existing Conventions, but to make them as generally acceptable as possible.

Mr. BENITES (Ecuador) said that his delegation was very grateful to the Chilean Government for its invitation and that Ecuador would certainly support that offer in the General Assembly. His delegation also thanked the Austrian Government for its invitation, which would be considered sympathetically by the Government of Ecuador.

Mr. SHITTA-BEY (Nigeria) also thanked the Chilean delegation for its generous offer, pointing out the desirability of holding the Conference in a developing country. The Nigerian Government would give the offer due consideration and would state its decision at the appropriate time.

Mr. VAZQUEZ (Observer for Cuba), speaking at the invitation of the Chairman, said he would gladly support the acceptance of the Chilean invitation, particularly since that country already had experience of large international gatherings. He also thanked the Austrian Government for its offer and said that both invitations would be forwarded to the Cuban Government.

Mr. JEANNEL (France) said that his delegation was very grateful to the Chilean Government for its invitation, particularly in view of Chile's special qualifications to act as host to a conference on the law of the sea. Nevertheless, he wondered whether fixed positions could be taken at the current stage of the Committee's work, especially since the final decision must be made by the General Assembly. The question of replying to the Chilean Government and the problem of when the Conference should be held must be separated. Nevertheless, the French delegation would commend to its Government Chile's offer to act as host to a first session of the Conference; it already seemed obvious that further sessions would have to be held, in which case the kind invitation of the Austrian Government might be accepted.

Mr. ESPINOSA VALDERRAMA (Colombia) said that his delegation's first reaction to the offer of Chile was to welcome its initiative for the holding of the Conference in a developing Latin American country. His delegation was also grateful to the Austrian Government; the statements of the representatives of both proposed host countries obviously did not rule out a compromise solution, since the Chilean offer held good for one year only.

Mr. SANTA CRUZ (Chile) expressed his delegation's gratification at the Committee's reaction to the Chilean Government's invitation. He wished to extend special thanks to the Austrian representative's spirit of understanding; it would obviously be quite easy to find a formula for meeting the wishes of both the Austrian and the Chilean Governments and, as the Indian representative had indicated, perhaps those of other countries as well. Most speakers had expressed the view that the Conference should be held in a developing country; to that he would add that there was a great need for the United Nations to associate as many regions as possible with its activities. With regard to the argument that it was for the General Assembly to decide on the venue of the Conference, he drew attention to the precedent of the third session of the United Nations Conference on Trade and Development. The date and place of that Conference had been decided by the General Assembly, on the recommendation of the Trade and Development Board.

Mr. BACKES (Austria) expressed his gratitude to all the delegations which had taken a favourable view of the Austrian Government's offer and his appreciation of the understanding shown by the Chilean delegation.

GENERAL DEBATE (continued)

Mr. ESPINOSA VALDERRAMA (Colombia) said that his delegation whole-heartedly endorsed the statement by the Venezuelan representative at the 78th meeting concerning the Declaration of Santo Domingo, and welcomed the constructive comments that had been made in that regard. The Declaration undoubtedly represented a step forward in efforts to find a solution to important problems confronting the Committee. Despite the promising results achieved at the Specialized Conference of the Caribbean Committies on Problems of the Sea, however, there was little cause for equal optimism concerning the preparations for the Conference on the law of the sea; no list of subjects and issues to be discussed at the Conference was yet available; on the question of the international régime for the sea-bed, only principles had been discussed; no working group had yet been established to consider the various proposals concerning the international machinery; and little progress had been made in forming the first working group on pollution and scientific research.

There was a contrast between the positions of the major maritime Powers and the developing countries. Whereas the latter were actively engaged in consultations and preparations for the formulation of a new law of the sea, the industrialized countries were still clinging to their old theories as if history had stood still. The proposal concerning fisheries recently submitted by the USSR delegation (A/AC.138/SC.II/L.6), for example, was completely unrealistic. The millions who lived in the developing regions of the world were well able to distinguish between what was in their interests and what was not, and were determined to assert their rights.

At the present time, there was undoubtedly a consensus on certain questions which had previously divided countries, as the representative of the United States had recently acknowledged, undoubtedly as a result of the debates in the Committee. Those debates had also led to the convening of a number of regional conferences in Africa, Asia and Latin America, where States were trying to reach understanding among themselves before trying to reach agreement with the major Powers. The time for a frank dialogue with the maritime Powers was at hand, and the developing countries would have nothing to fear from such a meeting if they went to it sufficiently prepared, united among themselves and determined to win justice. It was in that spirit that 15 Latin American countries had attended the Specialized Conference held in June 1972 at Santo Domingo, and that the African countries had participated in the African States' Regional Seminar on the Law of the Sea referred to by the representative of Kenya (78th meeting). Just as important as the Declaration of Santo Domingo was the resolution unanimously adopted to invite all the countries of Latin America to a conference before the Conference on the law of the sea, with a view to agreeing on a common position. It should not be very difficult to achieve a preliminary Latin American agreement and subsequently one with the African countries, since it would appear from the conclusions of the recent African States' Regional Seminar that there were many similarities between the views of the African countries and those expressed in the Delegation of Santo Domingo, which could be brought into concordance with those of other Latin American countries.

In 1971, the Minister for Foreign Affairs of Colombia had said that the concept of a 200-mile limit was gaining ground. At the recent Specialized Conference at Santo Domingo, he had further stated that recognition of the "patrimonial sea" would constitute a new step taken by the countries represented at the Conference in the

evolution of the law of the sea. Some Latin American countries used different terms - the economic zone, the sea complementing the territorial sea, or the national sea - to describe the same zone and were actively engaged in analysing the resources of that zone with the common purpose of trying to extend their authority to a distance 200 nautical miles from their coastlines. Whatever the name given to the zone within that limit, the important point was to ensure that the 200-mile limit attained the status of a universally accepted principle. Indeed, "200 miles" had already become one of the unifying symbols of Latin American nationalism.

The claims of Latin American countries to the sea adjacent to their coasts had been lodged primarily with a view to the exploitation and conservation of their natural resources, as had been recognized in a study conducted by OAS. Only Brazil, Ecuador and Panama had claimed a territorial sea - in the strict sense of the word - of 200 miles. The other countries which had lodged claims would preserve the freedom of navigation beyond a narrow strip. In the case of the Ecuadorian claim, provision was made for the possibility of determining different areas of the territorial sea which would be subject to the régime of free navigation or innocent passage for foreign vessels. Claims of that sort constituted the source of what was now termed the plurality of régimes within the territorial sea.

The internal legislation of individual countries could not be imposed beyond their frontiers. International law was the fruit of agreements and not always the result of unilateral proclamations. Obviously, the Colombian Government did not wish to encroach upon the right of each State to express and defend its views. His Government would, however, continue to work towards harmony and understanding. Indeed, that was a policy of long standing. On several occasions since 1947, the Governments of various Latin American countries had outlined the reasons for their decision to extend national sovereignty to a point 200 miles from their coasts: to conserve and protect their natural resources, and to regulate the use of such resources, with a view to obtaining the maximum benefit for the countries concerned. In the Declaration of Montevideo on the Law of the Sea promulgated on 8 May 1970, the Latin American Governments had claimed the right to explore, conserve and exploit the natural resources of the sea-bed to the limit of the area over which the coastal States exercised jurisdiction and the right to adopt regulatory measures for those purposes without prejudice to the freedom of navigation and overflight by vessels and aircraft of any flag.

At the Specialized Conference of Caribbean Countries on Problems of the Sea, Latin American countries had defined the patrimonial sea as a zone adjacent to the territorial sea in which they exercised rights of sovereignty over the natural resources, both renewable and non-renewable, situated in the waters, sea-bed or subsoil thereof, in other words, from the 12-mile limit (the extension recommended for the territorial sea) to a point not exceeding 200 miles for the whole of the two zones, subject to an international, and preferably world-wide, agreement.

The signatories of the Declaration of Santo Domingo had also proclaimed the right of the coastal State to regulate scientific research conducted in its patrimonial sea, the obligation to promote such research, and the right to adopt measures to prevent the pollution of the marine environment and to ensure sovereignty over resources. Those provisions were equivalent to an extension of the sovereignty over certain resources of the continental shelf, which States already enjoyed under the 1958 Convention on the Continental Shelf, to all resources - whether renewable or not - of the sea-bed, subsoil and superjacent waters, up to 200 miles.

The Declaration also requested the Latin American members of the Committee to promote a study of the advisability of extending the present limits of the continental shelf to the outer limit of the emergence of the continental land mass. For the high seas, the four traditional freedoms had been recognized at the Conference, but it was stressed that the right of fishing should not be unrestricted or exercised in an indiscriminate manner, and should be the subject of appropriate international regulations, preferably on a world-wide and universally accepted basis. In the opinion of his delegation, the Declaration had consolidated, interpreted and in some cases amplified the policies of Latin American countries, which had been striving to assert their right to develop all the resources of the seas adjacent to their coasts.

Whatever name was given to the new legal formula, it should take full account of the desire of the developing countries for change, so as to achieve justice, protect their rights, strengthen their economies and use the resources adjacent to their coasts as their own. At the same time, freedom of navigation and overflight would have to be preserved, as the Presidents of Colombia, Chile and Argentina had stated on various occasions.

Some Latin American countries did not support the view expressed by the signatories of the Declaration that the territorial sea should extend to a maximum distance of 12 miles from the coast and preferred to speak of full sovereignty over an area adjacent to their territory, without specifying the external limit. Others would prefer to permit only innocent passage up to 200 miles, but would accept the establishment of a régime for the intermediate space between the zone immediately adjacent to the coast and the limit of 200 miles. In the intermediate space, the freedom of navigation and overflight would be respected without discrimination, the only limitations deriving from the exercise by the coastal State of its rights with regard to pollution, scientific research, and the use of natural resources. The term "intermediate space" was another way of denoting the "patrimonial sea", where the freedom of navigation, overflight and laying of submarine pipelines and cables would also be exercised, without other restrictions than those that might result from the exercise by the coastal State of its rights over the resources in that area.

Consequently, it would appear that the only point on which Latin American countries were still divided was the designation and width of the territorial sea. The representative of Chile, however, had proposed the establishment of zones of jurisdiction for the development of resources up to 200 miles from the coast. Such a proposal did not appear to be far removed from the Declaration of Santo Domingo, which referred to rights of sovereignty over resources.

In a joint statement made on 29 June 1972, the Ministers for Foreign Affairs of Chile and Colombia had described the Declaration as an effective contribution to the consolidation of a Latin American position on the law of the sea, particularly in so far as it recognized a zone in which the coastal State exercised sovereignty over resources up to a distance of 200 nautical miles. They supported the convening of a meeting of Ministers for Foreign Affairs of Latin American countries early in 1973, and in any case before the proposed United Nations Conference on the law of the sea, in order to provide a proper forum for the necessary consultations and agreement on a common position with regard to the law of the sea. They had also agreed that it would be appropriate to hold a high-level dialogue between the four Latin American countries

bordering the South Pacific concerning jurisdiction over the sea. The Colombian Government was confident of reaching agreement with the other participants in that dialogue, with the other countries of Latin America and with the developing countries of Africa and Asia. It had not ruled out the possibility of an understanding among all the countries of the American continent, and it still hoped that the world Conference on the law of the sea scheduled for 1973 could be held in that year or in 1974.

The developing countries were working feverishly, but everything would depend on the position adopted by the major maritime Powers. The developing countries would continue their regional negotiation, because their very survival depended on it. But just as they rejected the veto system and sanctions by the major Powers, they would avoid using their force of numbers in an arbitrary manner. Only an open dialogue and a spirit of compromise would permit harmony and a successful outcome. If the major Powers agreed on that point, progress could be made. If they did not, the developing countries would have no choice but to seek refuge in regional agreements which would then cease to constitute steps towards universality and instead acquire a dogmatic character, with consequences that could easily be imagined - one of which would be the fragmentation of international law. It was to be hoped that the experience of 1958 and 1960 would make it possible to avoid a repetition of such errors.

Mr. AGUILAR (Venezuela) said that the General Assembly at its twenty-seventh session would have to make the basic determination whether the Committee's preparatory work was sufficiently advanced to allow the Conference on the law of the sea to be held in 1973. Although that decision clearly fell within the competence of the Assembly, not the Committee, his delegation considered it opportune, in the final stages of the Committee's second 1972 session, to express some general and preliminary views on that subject, for the benefit of members and non-members of the Committee and in order to prepare to some extent for the debate which would take place in the General Assembly.

After citing the provisions of General Assembly resolution 2750 C (XXV) relating to the Committee's tasks in preparing the Conference, he said that, although considerable progress had been made in Sub-Committee I and its Working Group on the task of preparing draft treaty articles on an international *régime*, his delegation considered that that progress could have been even greater if certain delegations in the Working Group had not tended to ignore the fundamental principles of the General Assembly's Declaration in its resolution 2749 (XXV) and especially the principle contained in paragraph 1, which laid down that the sea-bed and its resources beyond the limits of national jurisdiction were the common heritage of mankind, thereby disregarding the specific injunction in paragraph 6 of resolution 2750 C (XXV) that the draft treaty articles must be based on the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof beyond the Limits of National Jurisdiction. Although all delegations naturally had the right to defend their particular interests, they could not go back in time and revise that Declaration adopted by the General Assembly; whatever opinions might be held concerning its legal value, no one could deny that the Declaration was an expression of the political will of a large majority, emanating from the main organ of the United Nations, in which all Member States were represented. Nevertheless, despite the difficulty of translating the principles of the Declaration into treaty articles, his delegation was convinced that acceptance of the

principles would help to speed up the Committee's work in that regard. In any case, the question of the international régime was only one of several closely interrelated problems, and could not finally be solved while such questions as the delimitation of the international area and the régime of other ocean areas remained outstanding.

With regard to a second task, the Committee seemed to be on the point of reaching a consensus on a list of subjects and issues, and there were grounds for hope that that time-consuming work would be completed by the end of the current session. The negotiations had been most valuable for several reasons: in the first place, the Conference would clearly not confine itself to considering the problems which could not be solved at the 1958 and 1960 United Nations Conferences on the Law of the Sea or those which had arisen as the result of new scientific and technological advances, but would be concerned with the progressive development of the law of the sea; secondly, the negotiations had enabled individual States to weigh up various interests and to consider their positions; thirdly, the controversial subjects and issues had been identified; and finally, it had been possible to harmonize and unify criteria in regional groups and between countries with common needs and interests, thus facilitating future negotiations. However, while the negotiations had not hampered a constructive debate on the list of subjects and issues or on individual problems and had not prevented the submission of draft articles, his delegation believed that a decision on the list should not be further delayed.

In his delegation's opinion, the preparation of draft articles should be preceded by an endeavour to reach political agreement on the general outlines of a new, universal law of the sea which could serve as a basis for regional and sub-regional agreements. That did not exclude the concurrent preparation of draft articles on individual proposals, for specific formulations could give a clearer idea of the meaning and scope of various solutions, but at the present stage what was really important was to reach agreement on the fundamental bases of the system; a global solution was needed, not partial agreements which, in any case, would depend on the subsequent solutions of other problems of the law of the sea.

It seemed clear that, for the majority of States, the corner-stone of any agreement was the question of the exclusive economic zone, or patrimonial sea. The proposals made by the countries of various regions in that regard were well known; it would be most interesting to have those proposals examined and discussed in detail, both in order to dispel any doubts that might remain concerning the nature and scope of the rights claimed by the coastal States and to initiate genuine negotiations with regard to the proposals. It would be highly desirable for various members of the Committee clearly to express their views, not only on the expediency of establishing such a zone by international agreement, but also in its maximum extent and on all other aspects of the solutions proposed. An agreement of principle on that zone would contribute to the solution of problems concerning the régime and breadth of the territorial sea, the continental shelf, the high seas and the sea-bed and ocean floor beyond the limits of national jurisdiction.

Turning to the question of whether the Conference could be convened in 1973, he expressed his delegation's view that it would be desirable for the Committee to hold two more sessions during 1973, one in the spring and the other in the summer, for the same periods as those held in 1972, with a view to reaching a basic political

agreement and drafting a set of articles, unified if agreement could be reached and with variants if it could not. Provided that the summer session made sufficient progress, the Conference could meet late in 1973, if only to organize a session in 1974, which could meet for about three months to consider the Committee's drafts, on the understanding that the Conference could be reconvened, if necessary, in 1974 or even in 1975. In any case, his delegation believed that the General Assembly should renew the terms of reference of the Committee for another year and should allow it to hold two sessions in 1973. The Assembly could examine the Committee's report at its twenty-eighth session and could then decide in October, on the basis of that report, to convene the Conference in November or December of that year or early in 1974.

It was vitally important not to lose the momentum engendered by General Assembly resolution 2750 C (XXV), and it would indeed be deplorable if after two years of work and effort the Committee were to disband without achieving any result. The developing and the developed countries had an equal interest in reaching a peaceful and universal solution of the problems which had arisen in the law of the sea as the result of new political and economic realities and of scientific and technological advances. There might be no new opportunity of achieving a regulation of the uses of the sea which would promote international co-operation and would serve the needs and interests of all States, both coastal and land-locked, taking into account the special needs and interests of the developing countries, as laid down in resolution 2750 C (XXV). The task of reconciling the manifold interests involved was of course not easy, but it was both essential and urgent, since the alternative could only be a new and dangerous competition between States for the appropriation of seas and oceans, in which the great maritime Powers were likely to obtain the lion's share, although the growing unity of the developing countries and their determination to ensure the triumph of justice should not be overlooked. In any case, prevention was better than cure and a just and stable legal order was certainly preferable to an anarchical and most probably inequitable partition of the seas and their resources.

In conclusion, he emphasized that those considerations did not constitute formal proposals and did not necessarily reflect his Government's ultimate position in the debates in the General Assembly.

The meeting rose at 1.5 p.m.

SUMMARY RECORD OF THE EIGHTY-THIRD MEETING

held on Thursday, 10 August, at 3.35 p.m.

Chairman: Mr. AMERASINGHE Sri Lanka

GENERAL DEBATE (continued)

Mr. PARDO (Malta) thanked the Governments of Chile and Austria for offering to hold the Conference on the law of the sea in their countries. He would transmit their invitation to his Government.

He hoped that the Chairman would ensure that speakers took the floor in the order in which they had been placed on the list.

The Committee's current session was the last before the twenty-seventh session of the General Assembly, at which, in accordance with the provisions of General Assembly resolution 2750 C (XXV), the date of the forthcoming Conference on the law of the sea was to be decided. It might therefore be useful to review the work of the Committee's session so far and to make suggestions on the measures which the Committee would have to take to achieve its objectives.

He recalled that the 1958 Geneva Conventions had divided ocean space into six major zones, and he cited the definitions of those zones.

Since the entry into force of those Conventions, coastal States had tended in practice to merge the contiguous zone and the territorial sea, and in a number of cases had extended the territorial sea far beyond the 12 miles which had originally marked the limits of the contiguous zone. The fishery conservation zones of the 1958 Convention had in many cases been enlarged, and coastal States had often adopted more exclusive régimes than the ones originally envisaged. Those States had also tended more and more to assert their authority over navigation, scientific research and other activities in some areas of the high seas, particularly for purposes of pollution control, and that could lead to the recognition in practice of a seventh zone of coastal State jurisdiction. Thus, while the freedoms of the high seas, as defined in the 1958 Geneva Convention on the High Seas, remained a basic principle of international law, the area in which those freedoms could be freely exercised had shrunk considerably over the past 15 years. Furthermore, there was increasing dissatisfaction with the law of the sea as it stood, particularly among States which had gained their independence since the signature of the 1958 Conventions. The States signatories to the Conventions had in fact themselves recognized that their revision was necessary, because the confusion and imprecision prevailing in some areas, particularly regarding the limits of territorial waters and other areas where coastal States enjoyed special rights, permitted the virtually unlimited extension of national jurisdiction, and could give rise to serious international complications; moreover, the 1958 Geneva Conventions lacked even the most general international regulation of activities in ocean space beyond territorial waters and the legal continental shelf, and that could hamper the exploitation of the resources of the sea-bed beyond the continental shelf; nor was there any provision for the harmonization of the uses of ocean space in congested areas not totally subject to national jurisdiction, and that led to unilateral decisions or lengthy negotiations; lastly, the provisions of the Geneva Conventions could not provide an adequate framework for the negotiation of useful, effective and internationally viable agreements on fisheries and pollution.

It was to remedy that situation that the General Assembly had adopted resolution 2750 C (XXV), and in particular paragraph 2. Unfortunately, the Committee had not seized the opportunity given to it to bring up to date and radically to revise the law of the sea; in nearly two years, it had only been able to adopt the programme of work of two of the three sub-committees which it had set up and to draw up the text of three articles containing concepts already approved in principle two years earlier in General Assembly resolution 2749 (XXV). It had not yet succeeded in preparing the list of subjects relating to the law of the sea which it had been instructed to draw up, and serious negotiations on important points had not even begun.

That delay in the progress of the Committee's work was rather surprising, since there was no really basic difference between the views of the States represented. However, apart from a few "mavericks", including Malta, delegations had approached the problems facing them with the traditional methods of international negotiations, i.e. from the point of view only of the competing interests of fully sovereign and independent nations. Under those conditions, the aim became exclusively to further national interest, in its most immediate, simple and obvious form, and the Committee's task was liable to become that of partitioning the marine environment in the interests of coastal States.

As far as could be seen, virtually all coastal States were agreed on a number of fundamental points: the zone subject to their national jurisdiction should extend at least 200 miles from the coast, and their territorial waters should extend at least 12 miles. In addition, whatever international machinery was established should be in no position to impede a further partition of the ocean. To that end, some countries wanted to limit the competence of that machinery, while others wished to assign it such detailed and complex powers that it would be practically paralysed and reduced to impotence. In both cases, the aim was to prevent the proposed institution from being able to assume, as IMCO had done, for example, functions which had not been contemplated in its statutes. In order better to achieve that purpose, some States were proposing that responsibility should be divided between the machinery to be established and various agencies such as IMCO and IAEA; the resulting conflicts of competence and problems of co-ordination would guarantee that whatever was done was accomplished with the maximum delay, effort and expenditure. There were, of course, difficulties over fisheries and straits, but a great many coastal States would be prepared to trade their interest in those spheres against other advantages. In short, all the elements existed for the conclusion of deals which were very advantageous to the immediate interests of most coastal States. The delegation of Malta, however, had no intention of assisting in such transactions.

Some countries regarded the advance of technology and the rapid erosion of the law of the sea, as it stood at the present time, as a unique opportunity to gain much more interesting advantages than could be achieved in the near future through negotiations. That was why they had endeavoured, so far successfully and with a tenacity worthy of a better cause, to delay any decisions. Only the future would tell whether the misunderstandings and delays which those countries had successfully fostered in the Committee and the anarchy developing in the oceans would bring the countries concerned all the benefits on which they now counted so confidently.

Again, the reason the Committee was unable to progress in its work was that many participating countries pursued their national interest in its most elementary and obvious interpretation.

In matters relating to the sea-bed, the coalition of a small number of States advocating their national interests by traditional methods of international negotiation was no longer valid, in view of the great diversity of national interests at stake and the shortage of time remaining to solve the problems involved. That did not mean that national interests should be ignored, but that their pursuit should be tempered by the certainty that none of the participants, either singly or in a group, could force the acceptance of points of view that blatantly disregarded the rights, established interests or aspirations of other countries, and that they could disregard the general interest only at their peril.

In those circumstances, the first decision to be made was whether the Committee really wanted a conference on the law of the sea. In making that decision, account should be taken of irreversible developments in which the intensive commercial exploitation of the mineral resources of the sea-bed would be followed by the industrialization of ocean space and its permanent colonization by man, and subsequently, perhaps in the 1990s, access to the seas and oceans and participation in the exploitation of their resources would become an essential element in the survival of all States, large and small.

Furthermore, the marine revolution, which was gathering force, could not be stopped either by General Assembly resolutions or by the action of States or groups of States, however powerful.

Lastly, in the absence of a conference on the law of the sea, the norms to be established would, at best, have regrettable political and ecological consequences. Land-locked and shelf-locked countries would be at an increasing disadvantage unless they achieved, through bilateral agreements, the possibility not only of obtaining access to ocean space but also of carrying on activities there without discrimination. What was more, the uncontrolled application of technology in the exploitation of marine resources would have disastrous ecological effects.

In those circumstances, Malta considered that countries which did not wish a conference on the law of the sea to be convened in the near future should state their point of view frankly or, failing that, provoke a situation which made the further existence of the Committee unnecessary, rather than continue to use tactics which were becoming increasingly difficult to tolerate. The Government of Malta was finding it more and more difficult to justify to public opinion in its own country the expenditure involved in participating in the work of a Committee which seemed to devote most of its time to going round in circles.

If it became apparent that it was impossible to convene a general conference on the law of the sea, each country doubtless had in mind what arrangements it would have to make to alleviate the immediate adverse consequences to its national interest. However, no country could do very much to prevent that failure from causing serious long-term prejudice to the interests of all States.

If, on the other hand, the Committee decided that it was feasible and desirable to hold an early conference on the law of the sea, it would have to determine the purpose of that Conference. If the Conference was really to achieve a positive result, the agenda assigned to it by the General Assembly must not be so detailed that it made any useful negotiations very difficult. In addition, the competence of the commissions of the Conference must not be defined in such a way as to make all constructive discussion impossible.

Some perhaps hoped that the proposed Conference would confine itself to considering the question of the sea-bed beyond national jurisdiction and a few other issues related to the law of the sea. It was, however, unlikely that the General Assembly would adopt that approach.

The primary purpose of the proposed Conference was to create in ocean space a régime or régimes which, while ensuring the preservation of the marine environment from significant impairment, would allow the expansion of the present and future beneficial use of the oceans by all countries, whether land-locked or coastal, rich or poor, large or small. The extension of the zone subject to national jurisdiction, the regulation of the use of living and non-living resources within or beyond the limits of national jurisdiction, and any other problem must be solved in the perspective of those two imperatives.

The two imperatives were paramount, because human survival itself depended on the maintenance of the quality and biological balance of the marine environment, and the future of man's industrial civilization depended on the national development and industrialization of ocean space. Moreover, in the long term, the economic aspirations of poor countries could not be fulfilled without their active and equitable participation in ocean development in all its aspects. Those considerations gave the proposed Conference a new dimension.

Some members of the Committee believed that the forthcoming Conference should reaffirm the basic principle of the freedom of the seas, fill certain glaring gaps in the law of the sea - for example, with respect to artificial islands, international fisheries and pollution - and establish a régime for the sea-bed beyond national jurisdiction and international machinery for that area and/or its resources, the revenue resulting from their exploitation being distributed predominantly to developing countries.

Another and much larger group of countries in the Committee looked to the Conference to endorse the concept of an economic zone extending beyond territorial waters up to 200 miles from the coast, and absorbing the present contiguous zone, fishery zones, most of the legal continental shelf and presumably emerging pollution zones. Freedom of navigation and overflight, and freedom to lay submarine pipelines and cables with no restrictions other than those resulting from the exercise by coastal States of their rights over the resources of the area in question, would be recognized in that economic zone. The Conference would also establish an international régime and international machinery to administer the sea-bed and regulate the exploitation of its resources beyond the economic zone, while the high seas beyond national jurisdiction would remain subject to a somewhat modernized version of the present régime of the high seas.

While the second approach was preferable, both of them were based on outdated concepts, because they stemmed from the triple hypothesis that the present law of the sea was still viable or could be made viable with some changes, that the régime of the freedom of the high seas could coexist harmoniously with a sea-bed régime based on totally different principles, and that the activities of the proposed international machinery must be oriented exclusively or mainly towards the exploitation of resources.

If the Conference was not to fail in the same way as it had done in 1958, it must take account not only of political and legal questions, but also of objective realities, such as the implications inherent in technological progress, and of moral imperatives, such as equity. Technology was changing very rapidly, and the application of new methods by a State in the zone subject to its jurisdiction could irreparably prejudice

the marine environment in a zone dependent on other States. Furthermore, access to the marine environment and its resources would soon become a question of survival for the majority of mankind, and a solution based solely on political considerations would no longer be acceptable.

Technological progress required both general limitations on the sovereignty of States in the zone subject to their national jurisdiction, even in their territorial waters, and general regulation of the freedoms of the high seas beyond national jurisdiction. There were numerous examples of cases where the utilization of the marine environment by one State could be harmful to other States. Limitations on the sovereignty of coastal States did not form part of the traditional law of the sea, but they became essential in the light of advancing technology. In that sphere, the adoption of decisions of principle would not be subordinated to the completion of technical negotiations in IOC or WMO, since the problems involved were not purely technical.

It was now broadly recognized that beyond the limits of national jurisdiction, in increasingly wider areas, the exercise of the freedoms of the high seas must, in the general interest, be subject to general regulations and standards based on the constraints imposed by technological progress and by the nature and intensity of use of particular ocean areas. In that connexion, mention need only be made of the traffic separation corridors to be imposed by IMCO probably in the near future.

The delegation of Malta hoped that the various points of view, and particularly the one which it had expressed, would be constructively considered by the next Conference on the law of the sea. That, however, would only be possible if the Committee did away with the methods of work it had followed so far, which had resulted in three sessions having already been devoted to the preparation of the list referred to in General Assembly resolution 2750 C (XXV). But the purpose of that list had been merely to ensure that the forthcoming Conference would consider all the questions of international concern pertaining to the law of the sea and that those questions would be formulated in such a way as to ensure their useful discussion, in the light of their main interactions. It had now been decided that the forthcoming Conference would consider any question relating to the law of the sea which any delegation wished to raise. Furthermore, it was certain that whatever list might emerge from the present consultations, it would have to be refined before it could serve as a basis for serious negotiations. In those circumstances, the solution might perhaps be for the General Assembly, at its twenty-seventh session, to decide upon the date of the next Conference on the law of the sea and to abolish the Committee, replacing it by an ad hoc committee with the sole task of preparing exclusively for the organizational and procedural aspects of the Conference. That ad hoc committee would be asked to complete its work in six to eight weeks and to report to the Conference. It could be requested, inter alia, to prepare provisional rules of procedure for adoption by the Conference, and to formulate recommendations to the Conference on the number and competence of the main subsidiary commissions, the work accomplished by the present Committee naturally being taken into account. In that connexion, Malta would be in favour of establishing a limited number of commissions - no more than five or six - each competent to consider a set of questions relating to more or less the same sphere of the law of the sea which might eventually be the subject of separate treaties. Among the major spheres to be considered, for example, were the general principles and norms of the law of the sea, whether within or beyond the limits of national jurisdiction; coastal State jurisdiction and the economic zone; the general norms concerning the marine environment

beyond national jurisdiction and the international machinery to be established. The ad hoc committee might further recommend that the subsidiary commissions should also hold inter-sessional meetings.

That suggestion was being made because the Committee constantly encountered procedural problems in trying to implement the mandate given to it by the General Assembly - a mandate that was perhaps already outdated.

He would not insist that the Committee should consider the Maltese proposal it was called upon to discuss in accordance with General Assembly resolution 2846 (XXVI) entitled "Question of the creation of an intergovernmental sea service". However, he hoped that that proposal would be maintained on the agenda for consideration when the Committee had more time.

Mr. CHAO (Singapore) said that a law of the sea was necessary to ensure that the marine environment was used in a reasonable manner and that its resources were shared equitably among States. In that connexion, he recalled that his delegation had suggested at the Committee's first 1971 session (50th meeting) nine categories of interest groups which should be taken into account in any new law of the sea prepared by the Committee and the proposed Conference.

Owing to its geographical situation, Singapore was unable to extend its national jurisdiction for more than four miles at the widest point and was thus practically in the same position as a land-locked country. Moreover, its fishing fleet was compelled mostly to fish outside the territorial waters of neighbouring States.

For those reasons, Singapore thought it important that the international sea-bed area, which was the common heritage of mankind, should be as extensive as possible and that, while some preferential or exclusive rights over a certain zone of the sea might be granted to coastal States, the interests of the land-locked, shelf-locked and nearly land-locked States should be accommodated within the scheme to be established.

It was in the light of those considerations that the Singapore delegation viewed the recommendations of the African States' Regional Seminar on the Law of the Sea, held at Yaoundé (A/AC.138/79) and the Declaration of Santo Domingo (A/AC.138/80), approved by the Specialized Conference of the Caribbean Countries on Problems of the Sea. Those two important documents would help to advance the Committee's work. The Yaoundé Seminar had taken a step in the right direction in recognizing the need to find an accommodation satisfactory to the various interest groups.

The delegation of Singapore also welcomed the fact that the Yaoundé Seminar and the Santo Domingo Specialized Conference had been decisive in declaring that the breadth of the territorial sea should not exceed 12 nautical miles. That pronouncement would go a long way towards facilitating the solution of other problems relating to the marine environment, and Singapore was ready to accept that maximum breadth if the 1973 Conference decided to do so.

The most important recommendation of the Yaoundé Seminar was that which dealt with the exploitation of the living resources within the economic zone (see A/AC.138/79, section I, para. (a), (4)). That question should be settled not by bilateral negotiations or by regional arrangements but by a multilateral treaty recognising the rights of land-locked or nearly land-locked countries, and particularly the right of transit, as stated in the recommendation in question.

Singapore wished, however, to make a major reservation concerning the recommendation of the Yaoundé Seminar relating to the limits of the economic zone (ibid., para. (a) (5)), a recommendation which did not fix any specific limit but which would have the effect of including at least the continental shelf of the coastal State in the economic zone. If that recommendation was universally applied, the national jurisdiction of coastal States would cover the whole of the continental shelf, so that its resources could no longer be exploited as the common heritage of mankind.

The same criticism applied to the 200-mile limit recommended by the Santo Domingo Specialized Conference (see A/AC.138/80, "Patrimonial sea", para. 3).

The Singapore delegation was very surprised at the proposal concerning the continental shelf contained in the Declaration of Santo Domingo (ibid., "Continental shelf", para. 1), which would retain the "exploitability criterion" as defined in article 2, paragraph 1, of the 1958 Convention on the Continental Shelf. Many members of the Committee had said that that would tend to protect the interests of the developed and technologically advanced countries. That was particularly true with respect to the exploitability criterion. It was therefore difficult to understand why developing countries should now be defending it. The Santo Domingo proposal involved the danger that, with the advance of technology, the entire ocean floor would one day come under national jurisdiction - and that would mean the end of the "common heritage" concept.

The Singapore delegation welcomed the fact that the States participating in the Santo Domingo Specialized Conference had considered that the Latin American delegations in the Committee should promote a study of the advisability of establishing the precise outer limits of the continental shelf, taking into account the outer limits of the continental rise (ibid., para. 3). His delegation took that to mean that the question of the precise limits of the continental shelf was not regarded as settled and would be reopened at an appropriate time once the consequences of the choice among different limits had been studied.

Despite those reservations, the recommendations of the Yaoundé Seminar and the Declaration of Santo Domingo constituted significant milestones in the progressive development of a modern law of the sea.

In view of the slow progress made by the Committee, certain delegations had expressed pessimism with regard to the possibility of convening the Conference on the Law of the Sea in 1973. The Singapore delegation had been glad to learn at the 82nd meeting that the negotiations conducted under the Chairman's guidance had achieved some important results and that a consensus was in sight on the list which the Committee had been instructed to draw up. That list could become the agenda of the Conference on the law of the sea.

Very encouraging progress was also being made by Sub-Committees I and III.

In his delegation's view, the Committee should recommend that the Conference on the law of the sea should begin its work in 1973. In the meantime, the Committee could hold one or two sessions to complete work on its mandate. The fixing of a definite date would have the psychological effect of stimulating the Committee to advance more rapidly. Moreover, technology was progressing every day and if the Committee and the proposed Conference did not succeed in solving current problems, States might take unilateral initiatives which would render the situation even more complicated. Lastly, if the Conference was postponed to a later date, there was no guarantee that it would ever meet.

It would be noted that the Singapore delegation had suggested that the work of the Conference should begin in 1973. The Conference might have to hold two sessions to solve all the complex problems it had to deal with.

The Singapore delegation gladly welcomed the invitations extended by Chile and Austria. It hoped that it would be possible to accept both of them.

In conclusion, he introduced the document entitled "Request for a study on the different economic implications of the various proposals on the limits of the international sea-bed area" (A/AC.138/81). The intention of the sponsors was to ensure that the question of limits was examined in a rational manner. The proposed study would not prejudge the recommendations to be made on the question. He hoped that the request submitted by the sponsors would be approved by the Committee.

Mr. BEESLEY (Canada) wondered whether the Committee had succeeded in laying the basis for a settlement of the major outstanding issues of the law of the sea and, if so, whether there was the political will to achieve such a settlement and whether it would be possible for the Conference to be convened in 1973, as scheduled by the General Assembly in its resolution 2750 C (XXV). Obviously, the two questions were closely related.

There was no question that the progress made by the Committee had been slower and less satisfactory than might have been hoped, but the broad outlines of a possible settlement seemed to have emerged. The concept of a new law of the sea, truly international and giving greater attention to harmonizing interests than to defending national sovereignties, was gaining support and he was pleased, in that connexion, to stress the decisive part played by Mr. Pardo and the delegation of Malta.

Since the 1958 and 1960 United Nations Conferences on the Law of the Sea, there had been an overwhelming swing in favour of a 12-mile limit for the territorial sea, and many States were already applying that principle, thereby developing customary law whose importance must not be under-estimated. The claims of some coastal States to extend certain forms of jurisdiction, or even complete jurisdiction, beyond the 12-mile limit as far as 200 miles - Canada itself had done so for certain fishing zones and had extended its anti-pollution jurisdiction to 100 miles from its Arctic shores - had been opposed by some maritime Powers which, while relatively few in number, had a great influence on the development of the law of the sea. It had for some years been the Canadian view that an accommodation could be reached, based on the two-fold principle of complete sovereignty over a relatively narrow area and various forms of limited and specialized jurisdiction beyond it, and that now seemed to be within the bounds of possibility.

With regard to mineral resources, existing international law already provided a firm basis for the exercise by coastal States of exclusive rights over the exploration, exploitation and management of such resources, but did not as yet define the limits of their jurisdiction. It should be possible to do so on the basis of a combination of criteria such as distance and geomorphological factors, with due regard for the rights of coastal States acquired by virtue of the principle of exploitation laid down by the 1958 Conference on the Law of the Sea.

As to living resources, there seemed to be general recognition of the right of coastal States to exploit, conserve and manage such resources in the area adjacent to their respective territorial seas. Some of them believed that their jurisdiction should be exclusive and others that it should be preferential. Canada upheld the latter

opinion, provided that the coastal State's jurisdiction was in either case exclusive. The two points of view were not incompatible, any more than the species and zonal approaches were, and a compromise did not seem impossible, since the objective in both cases was the same.

The protection of the marine environment was increasingly regarded as being related to the management of resources, and the principle of interrelationships had been explicitly affirmed by the recent United Nations Conference on the Human Environment at Stockholm. There appeared to be general agreement on the need to set up a working group to study the question of jurisdiction in that respect. While convinced that such jurisdiction should be exercised in areas adjacent to the territorial sea, the Canadian delegation also believed that the rights of flag States should be protected, and that that might be done by some form of shared jurisdiction. The draft convention on ocean dumping considered at Stockholm provided a possible precedent.

There seemed to be a growing recognition of the coastal State's need to have a voice in the matter of scientific research in areas adjacent to its shores. In his delegation's opinion, coastal States should have the right of prior consent, of participation and of access to the results in respect of such research. The question might well settle itself once the problem of the jurisdiction of coastal States over marine resources had been resolved, for that would calm the legitimate apprehensions of some of those States and would undoubtedly promote the cause of scientific research.

Those various elements - jurisdiction over mineral and living resources, over marine management and over scientific research - underlay the relatively new concepts of the economic zone or "patrimonial sea". While terminology was not of great importance, what was important was to recognize that the only possible basis for an accommodation was recognition of the right of every coastal State to exercise its jurisdiction, in one form or another, over a large area adjacent to its territorial waters. The present session of the Committee had witnessed some historic developments on that issue.

For instance, the Committee had considered the text of the Declaration of Santo Domingo, the conclusions of the Regional Seminar at Yaoundé and the proposal made by the Kenyan delegation in Sub-Committee II on 7 August 1972 concerning draft articles on the concept of an exclusive economic zone (A/AC.138/SC.II/L.10). All those texts showed a functional approach - which was what Canada had advocated for years - asserting only that national jurisdiction which was essential for the resolution of a specific problem. Some countries, of course, would find it difficult to accept that approach, but it nevertheless appeared to be the only one on which a new law of the sea could be founded and was, in the view of his delegation, not incompatible with some of the ideas put forward by such States as Australia, China, India, Malta, the Soviet Union and the United States of America. It was to be hoped that countries that still held back would make the necessary effort of political will and help to ensure that the Conference on the law of the sea did not end in failure.

Although the resolution of the issue of coastal jurisdiction beyond 12 miles was the key to a successful over-all accommodation, there remained the thorny question of innocent passage through the territorial sea. He was afraid that it was still far from being settled, because those who wished to maintain the traditional principle continued to oppose those who supported the concept of free transit. In view of the fact that the General Assembly had endeavoured in resolution 2750 C (XXV) to formulate the principal items to be considered at the Conference in as neutral a fashion as possible, his delegation felt that every delegation should be entitled to propose whatever wording it

preferred for an item it wished to be included, provided that it also used neutral language, especially as the list of issues and subjects adopted by the Committee was purely provisional. The problem of straits also seemed to be no nearer a solution, although it was to be hoped that positions adopted on other questions would facilitate an accommodation. In any case, a consensus seemed to be emerging on the need to modernize the traditional doctrine of innocent passage, both to protect the interests of the coastal States and to safeguard the right of access from one area of the high seas to another without which peaceful commerce and communications between nations might be jeopardized. Perhaps the following form of words might be used in the list: "The progressive development of the concept of innocent passage". It was regrettable that negotiations on that point had not yet been undertaken, and his delegation urged that that should be done as soon as possible.

The question of the international régime and machinery was perhaps the most complex of the issues under consideration by the Committee. It had already been the subject of innumerable discussions, from which it appeared that the exploration and exploitation of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction should be governed by an international régime and regulated by international machinery with comprehensive powers, possibly including the power to engage in exploitation activities jointly with member States. The Working Group of Sub-Committee I had succeeded in defining the areas of agreement and disagreement and had begun the process of reconciling divergent views. However, serious difficulties still remained with respect to the scope of the machinery's functions and powers, in particular the activities which it was to regulate. In point of fact, however, those difficulties should all but fall into place once the essential issues of jurisdiction had been resolved.

In the circumstances, his delegation felt that it was not easy to prognosticate with confidence about the prospects of the success of a third conference on the law of the sea, and even less to express definitive views as to its timing. Obviously, the Committee should first hold one or two more sessions of four or five weeks each, although they could not be held either in 1972 or in early 1973. Perhaps a first organizational session of the Conference might then be held for two or three weeks in New York at the same time as the General Assembly, following a precedent established during the twenty-third session of the Assembly. Some experts would be in New York at the time and that would mean a considerable financial saving for the United Nations. His delegation therefore suggested the following tentative time-table:

March-April 1973:	a session of the Committee (4-5 weeks)
July-August 1973:	the final session of the Committee (4-5 weeks)
November-December 1973:	an organizational session of the Conference, confined to the election of officers and procedural questions, including, if possible, consideration of the agenda and allocation of work
February-March 1974:	the first substantive session of the Conference (8 weeks)
Summer of 1974 or preferably spring of 1975:	the final session of the Conference (9 weeks)

New York or Geneva might be chosen as the venue for the Conference, although the offer of the Chilean Government to act as host to the first substantive session and that of the Austrian Government to act as host to the final session deserved consideration.

Mr. STEVENSON (United States of America) said that, if the success of the Committee's negotiations was to be ensured and an international solution reached to the problems of the law of the sea, it was first of all necessary for States to be prepared to accommodate each other's interests and needs. The treaty being prepared, which would govern not only the conduct of States and private persons with respect to the oceans but also the exploitation of the resources of an area covering two thirds of the earth's surface, would be effective only to the extent to which it represented a consensus of all States. It was also important not to be overtaken by events and to reach agreement rapidly, so that technology could be used for the benefit of all mankind. Many people in the United States and in other countries were anxiously or, in some cases, sceptically, waiting to see the results of the present negotiations, and it was the Committee's responsibility not to disappoint them.

The uses which could be made of the ocean could be divided into two broad categories: resource uses and non-resource uses. His country's views on the non-resource uses, which included navigation and overflight, scientific research and the preservation of the ocean environment, had been clearly defined on a number of occasions; his delegation was convinced that the only limit which could be set for the breadth of the territorial sea was 12 nautical miles, and that, at the same time, agreement must be reached on free transit through straits used for international navigation. Those objectives remained basic elements of United States maritime policy and could not be sacrificed. In that connexion, he reminded the Committee that his delegation was prepared to accommodate the concerns of coastal States with regard to navigation safety and pollution, as shown by the proposals it had submitted to that effect in Sub-Committee II.

With regard to the ocean's resource uses, his delegation had also stated its views on a number of occasions, but it wished to make it clear that, contrary to what certain delegations seemed to believe, the United States had no intention whatever of sacrificing its basic interests or abandoning its national policy on resources or navigation, and that, in particular, it would not agree to a monopoly by an international operating agency over deep sea-bed exploitation or to any type of economic zone that did not accommodate its basic interests.

In order to promote agreement, the United States was prepared to accept the principle that coastal States should have broad jurisdiction over adjacent waters and sea-bed areas beyond the territorial sea as part of an over-all law of the sea settlement, but it considered that such jurisdiction should be limited by international standards offering protection of the interests of other States and of the international community, and by a compulsory system for settling disputes.

Such international standards would be laid down in treaty form and would have a number of specific objectives. In particular, they would be designed to prevent resource exploitation by coastal States from interfering unreasonably with other ocean uses, such as navigation, overflight, etc., to protect the ocean from pollution, even in areas in which the coastal State had resource management jurisdiction, and to protect investments by providing guarantees and creating a climate of stability likely to attract investments in areas managed by developing coastal States. Standards should also be laid down to ensure an equitable sharing of revenues from the exploitation of the mineral resources of continental margin areas, particularly for the benefit of developing countries. The coastal States of a particular region could not be required to bear the entire burden of ensuring equitable treatment for land-locked and shelf-locked States and for States with narrow shelves. That was an international problem and its solution should be

international. His delegation repeated its proposal along those lines, although it was aware that, in the early years, a significant portion of the total international revenues would come from the continental shelf of the United States, and it was concerned that certain countries were opposed to that idea and were proposing the establishment of an exclusive economic zone.

Lastly, there would have to be assurances that those international standards would be observed and, for that purpose, an impartial procedure for the settlement of disputes was necessary. His delegation was of the opinion that such disputes must be settled by the decision of a third party and that, consequently, it was essential to adopt the principle of the compulsory settlement of disputes.

Turning to the question of the resources of the deep sea-bed, he said that, although his delegation did not agree that international law prohibited the exploitation of deep sea-bed resources in accordance with high-seas principles, it fully shared the desire to establish an equitable, internationally agreed régime for the area and its resources, which were the common heritage of mankind. The desire to find a rapid and effective solution in that connexion had been expressed both by President Nixon and in the draft convention on the international sea-bed area, submitted to the Committee by the United States in 1970.[28/] Such an international régime should protect not only the interests of the developing countries but also those of the developed countries by establishing secure conditions for investments of capital and technology. It would also be necessary to establish a decision-making system providing for the compulsory settlement of disputes. In his delegation's opinion, those objectives were not inconsistent with the desire of other countries for equitable participation in deep sea-bed exploitation and its benefits.

Again, his delegation was of the opinion that only the countries which were prepared to ratify or accede to that new treaty should benefit from the advantages which were to be derived from its implementation and which would continue to increase as new technology for the exploration and exploitation of the mineral resources of the ocean was developed.

With regard to fisheries, his country's basic interest was to ensure the rational use and conservation of all fish stocks. It believed that coastal States should have substantial jurisdiction over all fish stocks, including anadromous species, except for highly migratory species such as tuna, where it would be necessary to make multilateral arrangements. Moreover, the jurisdiction of the coastal State over coastal waters should be limited by such international standards as would ensure the sound conservation and full utilization of the sea's living resources.

His delegation thought that it was possible to reconcile the interests of both coastal and distant-water fishing States - 80 per cent of the fisheries of the United States were situated near its coasts - and to ensure special co-operation at the regional level. It was necessary also to take into account the migratory habits of fish and the manner in which they were fished. His delegation was prepared to

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28/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 21 (A/8021), annex V, p.130.

support the principle of a broad jurisdiction of the coastal State over fisheries, including coastal and anadromous species, beyond the territorial sea, subject to the application of international standards to ensure the conservation, the maximum utilization and the equitable allocation of resources, with a compulsory procedure for the settlement of disputes and the international regulation of highly migratory species such as tuna.

The proposals his delegation had made in that connexion in the document entitled "Revised draft article on fisheries" (A/AC.138/SC.II/L.9, which it had submitted to Sub-Committee II were more than a reflection of its firm belief that the conservation and utilization of the sea's living resources must take into account the biology and distribution of those resources. They also responded to the desire expressed by coastal States for direct regulatory authority and preferential rights over coastal and anadromous fisheries. However, account should be taken of the traditional fishing activities of other countries, and also of the desire of some States to enter into special arrangements with their neighbours.

His delegation hoped that those new proposals would make it possible for the Committee to move towards the solution of the complex problem of fisheries. It noted with satisfaction that considerable progress had been made on certain points, such as the breadth of the territorial sea and the jurisdiction of the coastal State over resources beyond the territorial sea, and it welcomed the reports submitted by the representatives of Venezuela and Kenya on the results of the Specialized Conference of the Caribbean Countries on Problems of the Sea, held at Santo Domingo, and the African States' Regional Seminar on the Law of the Sea, held at Yaoundé. Although he regretted that those reports made no reference to a number of the points he had just mentioned, he considered that they could provide a starting-point for serious discussions and make it possible to outline a programme for the 1973 Conference on the law of the sea.

His delegation also considered that the work of Sub-Committee I was very encouraging, and that concrete results were beginning to appear. The political will which had emerged during those meetings must infuse the further work of the Committee, so that remaining problems could be settled and the drafting of articles for the future Conference could begin without further delay.

Mr. BALLAH (Trinidad and Tobago) spoke on the progress of the Committee's work, which was to be reviewed by the General Assembly at its twenty-seventh session. If no decision or agreement of substance could be reported, the General Assembly might have the impression that the Committee had done nothing tangible. In reality, however, as the delegations of Canada and Venezuela had pointed out (82nd meeting), progress had been made, in that tendencies towards agreement were emerging and the law to be elaborated seemed to be taking shape. Although the Committee had as yet not reached agreement on a list of subjects and issues, the final list was not so important as the discussion which had taken place on what to include and which had made it possible to identify and clarify the positions of delegations on certain controversial issues, such as that of straits. It might be said that once the Committee agreed on what items should be included in the list, it would have practically agreed on the items themselves.

It would be for the General Assembly to decide whether or not the Conference on the law of the sea should take place in 1973. However, the perspectives opened by the work of the Yaoundé Seminar and the Declaration of Santo Domingo augured well for the work of the future Conference and, in that connexion, his delegation shared the cautious optimism expressed by the delegations of the United States and Venezuela.

Referring to the statement made by the representative of Singapore, he said that he did not agree with him on the question of the text, or criterion, of exploitability. If the criterion was objectively applied, i.e. only in order to determine whether exploitation was possible or not, it should not favour technologically advanced coastal States over less advanced coastal States. Under the criterion of exploitability, as soon as an enterprise exploited an area situated 300 miles from the coast of a State, the jurisdiction of that State extended to that area. What was more, States parties to the Convention would not be the only ones subject to that criterion, because a number of States had introduced a similar criterion into their legislation. The sponsors of Senate bill S 2801, which was before the United States 92nd Congress, should carefully weigh the consequences of the objective criterion of exploitability in the light of article 1 of the 1958 Convention on the Continental Shelf.

In general, it was certain that, if agreement was to be reached, States would have to take each other's interests into account. Thus, it was no longer possible to speak of the freedom of the high seas as an element of international law which could be interpreted by analogy to mean freedom to exploit the sea-bed and the ocean floor beyond the limits of national jurisdiction. Otherwise, it would be useless to continue working for an agreement.

In conclusion, his delegation stated that the schedule of conferences proposed by the delegations of Canada and Venezuela deserved careful consideration.

The PRESIDENT said that some delegations on the list of speakers of the meeting of Sub-Committee II, which was to have taken place after the present plenary meeting, had asked to speak at the present meeting of the plenary Committee because there would not be a meeting of Sub-Committee II. The delegations of Iceland and the USSR would therefore make their statements at the present meeting, on the understanding that those statements would be covered in the report of Sub-Committee II, since they had been intended for that Sub-Committee.

Mr. ANDERSEN (Iceland) recalled that his delegation had emphasized on previous occasions the need to distinguish, in dealing with fisheries, between the conservation of resources on the one hand and their exploitation or utilization on the other. It was clear that every nation in the world was interested in conserving the fish stocks in the oceans and therefore in adopting the proper conservation measures to ensure the optimum yield. But this would still leave the problem of utilization and exploitation unsolved. Overfishing had reached such dimensions that stocks of certain species of fish were no longer sufficient to satisfy the demands of various fishing nations, so that conflict was becoming inevitable between the coastal States wishing to use their coastal fisheries resources for their own economy and the distant-water fishing nations which sent their fleets for great distances to exploit the resources of the coastal States for themselves. The time had certainly come to face that issue and to establish proper criteria for priorities. Iceland had long claimed that coastal fishery resources formed part of the natural resources of the coastal State and, when there was a conflict of the kind he had described, the distant-water fishing nations should respect the claim of the coastal State to utilize the natural resources which belonged to them by the same token as the resources of their continental shelf. The coastal area formed one ecological whole, and it was utterly unrealistic that foreigners could be prevented from extracting oil from the continental shelf while being allowed to destroy other resources based on the same sea-bed. Consequently, his delegation would like to say a few words on the problem of overfishing, on the system hitherto applied to deal with the disputes and on the new proposals put forward by various countries represented on the Committee, and to present a few relevant conclusions for consideration by the members of the Committee.

According to the most recent data, it appeared that stocks of the most important of the commercial species of fish in the North Atlantic in particular were by now fully utilized, and that current fishing mortality had reached a level above which any additional fishing effort would produce only a very small increase in yield and, in the case of some stocks, even a decrease. Those facts were amply demonstrated in a report of the ICES/ICNAF Working Group on cod stocks in the North Atlantic, which especially stressed that the most important spawning stocks had been reduced to such a low level that the result might be a very big drop in the total catch; even if the catch was limited to approximately half the present figure, the average long-term yield would only just be maintained. At the beginning of the 1960s, the overfishing in the north-east Atlantic had already led a number of fishing nations to concentrate their efforts on the north-west part of the Atlantic, but a decade later all the stocks were being fully utilized. The modernization of the fishing fleets in the North Atlantic - improved gear, faster ships, more operational mobility tailored to the abundance of stocks - had served to increase fishing efficiency by 30 per cent over 10 years, quite apart from the increased efficiency resulting from the concentration of fleets in areas where the availability of fish was high, which tended to offset the higher operating costs of the bigger vessels and the decrease in stocks. By way of illustration, he referred to the statement of a well-known biologist, for whom the worst thing that could happen to a particular species of fish was the occurrence of a very big year-class, since it at once attracted the mobile international fleets of big freezers, which would sweep the grounds with their highly effective gear and finally reduce the stocks to an even lower level than before that favourable occurrence. Some important stocks of cod in the North Atlantic were showing typical signs of overfishing, for fish mortality had risen drastically in 10 years and the average age of the fish in the various stocks had declined. As a result, the volume of the catch had become much more dependent on short-term fluctuations in the strength of the various year-classes. Particularly striking examples could be given for the Icelandic stock of cod, whose state was fast approaching that of the salmon, most of which died after the first spawning.

The existing system of fisheries control was old and out of date. Under that system, the coastal State had exclusive control or jurisdiction within a narrow belt of 12 miles - previously 3 miles - beyond which regional organizations were supposed to deal with the conservation and the exploitation or utilization of the fish stocks on a non-discriminatory basis. His Government had on many occasions emphasized the fact that the system was, in reality, heavily weighted in favour of the distant-water fishing nations and operated to the direct detriment of the coastal States. A scrutiny of the two basic elements of the system made that quite clear. To begin with, the 12-mile limit - whether called a territorial sea or a fishery limit - was in no way determined by local considerations but only by strategic considerations and for the purpose of securing the interests of the distant-water fishing nations, regardless of the requirements of the coastal population. What was needed was a limit based on due consideration for the size and actual range of the local stocks and not on something that was alien to the problem, in other words, the desire to secure for distant-water fishing nations the right to exploit the resources of the coastal States. As far as the regional organizations were concerned, it was quite clear that they had been unable to ensure the necessary protection of the fish stocks. It had been said that it would be enough to strengthen those organizations. His delegation fully supported a considerable increase in their powers once their proper role had been determined. Their proper role was to deal with the conservation and utilization of fish stocks beyond the limits of national jurisdiction, in particular the highly migratory species which traversed the oceans from country to country. As far as local stocks were concerned, however, it was not the proper role of the regional organizations to deal with any kind of allocation in respect of their utilization or exploitation. It should be emphasized that in the international

agreements providing for regional commissions, such as the Commissions for the North-east and North-west Atlantic, it was specifically provided that nothing in those agreements should affect the rights and claims of the coastal States with regard to the extent of their jurisdiction over fisheries. In other words, as far as exploitation was concerned, the functions of the Commissions were limited to the area outside the fishery limits themselves. It was true that the distant-water fishing nations had recently shown a willingness to insist less on the application of a non-discriminatory rule by the regional commissions, and had begun to talk about giving coastal States a certain preference in the matter of allocation. It must be emphasized, however, that the change in policy had been brought about by the insistence of the coastal States and had been only reluctantly accepted by the distant-water fishing nations. Moreover, within some of those regional commissions, it could be seen that the share attributed to a coastal State was determined in the final analysis by the other members of the commission, all of whom had fishing interests in the same area - the coastal State, of course, having one vote to put against those of all the other States. As his delegation had already stated in the Committee, a system of that kind was completely unrealistic in the case of coastal fish stocks.

In view of the ever increasing dissatisfaction with such an obsolete system, some countries were beginning to submit proposals for the establishment of a new system. In the draft article on fishing submitted by the Soviet Union (A/AC.138/SC.II/L.6), it was proposed, for instance, that the developing coastal States could reserve for themselves that portion of the coastal fish stocks that could be harvested by them. While that proposal showed considerable progress from earlier ideas, it was not enough to concede that right to developing coastal States; the special requirements of countries, or even of specific areas, that were overwhelmingly dependent on coastal fisheries for their livelihood had to be considered as well. Apart from that, the whole system proposed by the Soviet Union was to be subject to determination by a third party - and his delegation had already stated what it thought about the 12-mile limit. The proposal of Canada in the working paper entitled "Management of the living resources of the sea" (A/AC.138/SC.II/L.8) and that of the United States (A/AC.138/SC.II/L.9) went further, since their basic premise was that coastal States could regulate, and have preferential and potentially exclusive rights to, all coastal living resources to the extent required by them. That "species approach" presumably implied the establishment of a fishery zone on the basis of local conditions. As Canada had mentioned, the species approach and the exclusive zone approach had some elements in common. Both were basically concerned with safeguarding the rightful claims of the coastal States to exercise jurisdiction over their coastal fishery resources, and in both cases it was recognized that some limits would have to be defined, although they would vary according to circumstances. Nevertheless, some basic elements of the proposals of Canada and the United States were subject to an eventual decision by a third party. Under the United States proposal, for instance, that might include decisions concerning the assessment of the total allowable catch, the capability of the coastal State to harvest the stock or stocks under consideration, the operation of mixed fisheries, and so on. Under the Canadian proposal, fewer questions were left for possible decision by a third party, but some of them were important. For those reasons, the Canadian and United States proposals in their present form did not go far enough to be acceptable to his delegation. Although agreeing with them that coastal fish stocks should be regarded as part of the natural resources of the coastal State, his Government thought that the establishment of an exclusive fisheries zone was a much more realistic and practical way of dealing with the matter. The exclusive fisheries zone was based on the principle that coastal fishery resources were an integral part of the natural resources of the coastal State as were the resources of the sea-bed within a reasonable distance from the coast determined by geographical and economic considerations. For the

species approach must be further developed to give full weight to that principle. As the United States and Canadian delegations had recognized, resources of anadromous species represented a special component of the resources of the coastal State in whose rivers they spawned, since the fact of their spawning imposed on the coastal State responsibility for, and expenditure on, the special measures of conservation required, and his delegation therefore considered that the coastal State should have the exclusive right to harvest those species. That view had already been widely accepted in international agreements prohibiting the fishing of such species in vast areas beyond the limits of national jurisdiction.

In conclusion, it seemed crystal clear that, for the great majority of countries, the basic premise of a reasonable system was that coastal fisheries formed an integral part of the natural resources of the coastal State in the light of the relevant local geographical, geological, biological, economic and other considerations, and that the coastal State should have the right to determine its fishery zone on that basis. In the case of Iceland, for instance, the limits should clearly embrace the continental shelf area, which was in keeping with the proposals of the Latin American countries as shown in the Declarations of Montevideo, Lima and Santo Domingo, in the work of the Afro-Asian Legal Consultative Committee, and in the conclusions of the general report of the Yaoundé Seminar. Many nations were preparing to follow Iceland, Nigeria, Oman and Senegal in the adoption of legislation to extend their fishery limits, and it could readily be seen that an overwhelming number of countries would support the concept of an exclusive zone at the future Conference on the law of the sea.

It followed from what he had said that his delegation welcomed the draft articles on the concept of an exclusive economic zone (A/AC.138/SC.II/L.10), submitted by Kenya; those draft articles accorded with the principles enunciated in Iceland's Continental Shelf Law of 1948. It was sometimes said that that approach was unreasonable, because it might lead to the reservation by the coastal State of large areas of the sea in cases where its nationals might not be able or willing to utilize fishery resources to the extent allowable. The obvious answer to that argument was that, even if the coastal State might be unwilling or unable to utilize those resources, they would still form part of its national resources, and it would then be in the interest of the coastal State to negotiate bilateral agreements with other countries interested in exploiting those living resources rather than to allow them to perish without benefit to anyone. It had also been said that if coastal States were allowed to establish such a fisheries zone - or "economic zone" or "patrimonial sea" - that might lead to "creeping jurisdiction", i.e. the gradual extension of other forms of jurisdiction in order to protect other interests, so that in the long run the result might be an extension of the territorial sea itself. The answer to that criticism was that if the right of the coastal State to establish a zone in terms of the natural resources concept was defined in a general convention at the Conference on the law of the sea, that right would necessarily be limited to the definition agreed upon at that Conference.

In conclusion, he said that, as the Committee had already been informed, his Government had issued new regulations on 14 July 1972 establishing a 50-mile fishery limit around Iceland, to become effective on 1 September 1972. That limit had been chosen in terms of local considerations relating to fish stocks. His Government had also informed the Secretary-General of the United Nations of the new regulations and had requested that they be circulated to all Member States. The text of the new regulations would supersede and replace Iceland's regulations of 11 March 1961 as they

appeared in the document[29] recently submitted to the Committee by the Legal Counsel of the United Nations (80th meeting), and would be issued as an addendum to that document. In the meantime, his delegation was prepared to make the text available to any delegation that might wish to see it.

Mr. KHLESTOV (Union of Soviet Socialist Republics) said he wished to give a few explanations concerning the draft article on straits used for international navigation, submitted by the Soviet Union (A/AC.138/SC.II/L.7). After pointing out that the régime for straits used for international navigation and overflight must last for at least a decade and that, consequently, account must be taken of all aspects of the present situation and their future development, he observed that not all straits had the same importance for international navigation. In fact, most of them lay off the major international shipping routes and, for geographical or historical reasons, were used by a few countries only. That was true, for instance, of the straits through rocky Scandinavian waters, archipelagoes, and the territorial waters of coastal countries, such as the Pemba Channel off the coast of the United Republic of Tanzania.

Other straits, far less numerous - a few dozen - connected parts of the high seas and constituted the only means of direct access between them; they were generally situated on important sea-routes and were of immense importance for international navigation. Hundreds and sometimes thousands of ships passed through them daily. For example, nearly 400,000 ships a year passed through the Straits of Dover, or more than 1,000 ships a day; and over 150,000 ships a year passed through the Straits of Gibraltar; the Straits of Malacca, Bab-el-Mandeb and the Aegean Sea were scarcely less important. As for the number of States whose ships used those Straits, the figure was about 100 for the Straits of Dover and practically the same for Gibraltar, in addition to the 22 Mediterranean and Black Sea States which had to use those straits.

The ships in question carried cargoes of nearly every country in the world, a considerable proportion being bound for, or coming from, developing countries. Thus those straits might be said to serve not only countries which had a merchant marine, but all the countries of the world. The question of freedom of transit through straits was therefore of concern to all countries, and more especially developing countries which did not have a merchant marine. Any limitation of access to a strait might lead to higher freight rates, with adverse effects on the economy, not only of countries having sea-going vessels, but also of those which had to use foreign ships to carry their cargoes.

In view of those considerations, it was important to distinguish between two categories of straits, each of which should be subject to a different legal régime: (a) straits lying off the major international routes and used by coastal States only, and (b) straits used by international shipping and of interest to all countries. While the former group could scarcely affect international navigation, the case of the second group was quite different. He quoted a few figures to demonstrate the rapid increase in tonnage shipped, which had more than tripled between 1950 and 1967, and the considerable expansion of the total tonnage of the world's merchant shipping, which would be still more marked in the coming years as a result of the development of the merchant marine of such countries as the People's Republic of China, India, Indonesia, Thailand, Algeria, Sri Lanka, Mexico, Venezuela, Chile and Peru; and he expressed the view that the main international straits were bound to play an even greater role in international navigation in the coming decade. It would therefore become all the more important to guarantee the free passage of ships of all countries. By their geographical situation, the straits used for international navigation lay off the coasts of a small number of States, such

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29/ See ST/LEG/SER.3/16 (vol.II), p.234.

as the United Kingdom, France, Spain, Morocco, Italy, Greece, Malaysia, Indonesia, Singapore, Ethiopia, Yemen, Japan, Australia and a few others. The problem was therefore to elaborate a régime which would cater for the interests of all countries, as well as for those of the coastal States involved. Examining the legal régime to be applied to the first category of straits, he said that, under existing international law, the status of those straits was governed by the legislation relating to territorial waters, which provided for the right of innocent passage for all ships, and there was no need for a change.

In connexion with the statement made at the 40th meeting of Sub-Committee II by the representative of the United Republic of Tanzania, he wished to make it clear that he had never thought that such straits as the Pemba Channel should be opened to international navigation. It would not be very logical for ships to take a route which would lengthen their itinerary and it was unlikely that any delegation was proposing the application to such straits of any legal régime other than that of innocent passage.

The same applied to straits which connected a part of the high seas to the territorial waters of one or more States, of which, moreover, there were very few. For that reason, the first category of straits was not mentioned in paragraph 1 of the USSR draft articles.

In the case of the second group of straits, the interests of the international community called for the application of a régime of free passage for the ships of all countries, which at the same time took into account the interests of States bordering on those straits. In such straits, moreover, freedom of navigation had always been assured in conditions of equality for all flags, and the coastal States did not normally impose any condition or limitation on the right of passage of ships, whatever the breadth of their territorial waters. Singapore, for example, had never imposed any limitation on the passage of ships through the Straits of Singapore, which was less than six nautical miles wide. The question of the régime of transit through straits used for international navigation had really only arisen in the last two or three years, when coastal States had begun to extend their territorial waters. At the time of the 1958 United Nations Conference on the Law of the Sea, the limit of the territorial waters of most States had been only three to six nautical miles and the problem of straits lying wholly within territorial waters had not been raised. Today, when there was a question of increasing that limit to twelve nautical miles, some countries were raising objections to a free-transit régime on grounds of national security, and were arguing that the only régime applicable to such straits was that of "innocent passage". That view did not seem justified, since the passage of ships through international straits had so far not been a threat to the security of the coastal States, and one failed to see why the situation should be any different when those States extended the limits of their territorial waters.

What was more, the shortness of most straits and the difficulty of engaging in strategic manoeuvres therein owing to their narrowness made such an eventuality improbable. On the other hand, it was hardly possible to claim that a régime of innocent passage would suffice for international straits. Experience in recent years had shown that that régime was sometimes interpreted in different ways; it might result in attempts by States to regulate the passage of ships unilaterally and to obstruct freedom of navigation. In practice, control of those important straits would be in the hands of a small group of States, which would be prejudicial not only to international navigation but also to the entire international community. In certain cases, it might create difficulties for the coastal States.

Above all, it should not be forgotten that the legal régime of straits must be established for the next decade at least and that it would really apply only to the extent that it corresponded to the interests of the international community as a whole and of the expansion of international trade and other exchanges between States. For that reason, it was necessary to consider all aspects of the question in the light of the inevitable development of a number of factors.

Referring to the arguments put forward at the 36th meeting of Sub-Committee II by the representative of China, who had criticized the position of the USSR on the question of territorial waters and straits, he said that care should be taken not to confuse two entirely different notions, namely, the existing régime of territorial waters and, in particular, that of the USSR, and the régime to be introduced for straits used by international navigation. It was not the first time, incidentally, that the representative of China had distorted facts when referring to the Soviet Union and had endeavoured to involve the Committee in political discussions, when its task was to elaborate proposals with a view to submitting, at the forthcoming Conference on the law of the sea, a draft agreement and draft articles on the law of the sea. His country's policy was well known: it was to maintain peace, develop friendly relations among all States and peoples, and support peoples who were fighting for freedom. There might be some different conceptions in the Committee, depending on economic interests, but the Committee's task was to look for concerted solutions, having regard to the interests of all States, and that was what his delegation was trying to achieve. He hoped that the Chinese delegation, instead of indulging in political criticism, would join the Committee in its efforts to submit constructive proposals.

The draft article submitted by the Soviet Union aimed at ensuring freedom of transit through straits for all ships, while respecting the interests of the coastal States. Paragraph 1 of that draft granted freedom of navigation only for one quite specific purpose - to pass through the straits - and for no other activities. The draft did not deal with straits connecting the high seas and the territorial waters of coastal States. Under the Soviet proposal, the régime applicable to those straits was that of innocent passage.

Paragraph 2 provided for specific guarantees to safeguard the interests of the coastal States and their security. To that end, it stressed that ships in transit through the straits, and in particular warships, should take all necessary steps to avoid causing any threat to the security of the coastal States. The same paragraph contained provisions designed to prevent collisions between ships and to prohibit any dangerous manoeuvres in the straits. Indeed, it was in the interests of all countries, and not only of the coastal States, that the passage of ships should comply with the rules of navigation. In that connexion, he supported the recommendations of IMCO, which had wide experience in elaborating rules for the passage of ships in each direction. In the same paragraph, the provision creating an obligation, for ships in transit through the straits, to take precautionary measures to avoid causing pollution, was particularly important. The same applied to the provision concerning compensation for any damage which might be caused to the coastal States as a result of the transit of ships.

Also, deserving of the Committee's attention was paragraph 3 (b), which recognized the sovereign rights of the coastal States with respect to the surface, the sea-bed and the living and mineral resources of the straits. Lastly, the article did not apply to the case of straits to which access was governed by special international agreements.

In connexion with the second part of the draft, it was worth noting that it did not concern all straits, but only those over which the air space was used for flights by foreign aircraft between one part of the high seas and another part of the high seas.

Thus, while seeking the maximum protection for the rights and interests of the coastal States, the draft article aimed at ensuring, for ships and aircraft, that freedom of passage which was indispensable for the development of inter-State economic, commercial, scientific and technical relations, in the interests of all countries, developed or developing, coastal or land-locked. He hoped that it would receive wide support in the Committee.

Mr. Zegers (Chile), Vice-Chairman, took the Chair.

Mr. TUNCEL (Turkey) said he wished to make some comments on the progress of the Committee's work. At its twenty-seventh session, the General Assembly would have to take a decision on the date of the future Conference on the law of the sea. It would fix that date in the light of the progress achieved by the Committee, which was entrusted with the preparatory work for that Conference. The Committee's mandate included in particular, the preparation of draft articles for a convention - a task it had so far failed to carry out. It would accordingly be difficult for the Conference to work on a simple list of subjects and issues without having before it draft articles and their variants. In that respect, the progress made by the Committee was not very encouraging.

On the other hand, the Committee and its Sub-Committees had set up working groups, the first of which had really got down to business. Working Group I of Sub-Committee I had considered 11 of the 24 articles which had been submitted by the Chairman of that Sub-Committee, without, however, arriving at concrete conclusions on any of them. It would obviously have to meet again to complete the consideration of the remaining 13 articles. The Sub-Committee's Working Group II had not begun its work and would therefore be unable to submit any draft articles, and the same applied to the Working Group of Sub-Committee III. As for Sub-Committee II, it had not yet set up a Working Group, although it had before it a United States proposal to that effect.

In those circumstances, he wondered whether the Committee could recommend the General Assembly to convene the Conference on the law of the sea in 1973. It had to be recognized that, although it had not made tangible progress, the Committee had evolved a method of work which consisted in negotiating in working groups. It was now necessary to expedite the work of those groups, and the only way of doing so was to arrange for them to meet between sessions, so that they could report to the Committee when the latter was in session. The Secretariat of the United Nations should therefore be requested to take steps to enable the working groups to function between sessions.

All things considered, his delegation thought that the Committee might be able to recommend the General Assembly to convene the Conference on the law of the sea for the end of 1973 or the beginning of 1974, the Conference continuing the work begun by the Committee, and completing it itself. That would also avoid duplication of work, because the 140 delegations or so participating in the Conference would be taking a direct part in that work. In his delegation's view, it was pointless to continue to work within the framework of the present Committee, for, even judging by the statements just made that very day, the mood prevailing in the Committee would exclude agreement being reached on important points.

Mr. SHEN Wei-liang (China), referred to the statement made by the USSR delegation, which had accused the Chinese delegation of giving a polemical turn to the Committee's deliberations and seeking to divert attention. He said that his delegation did not accept such allegations and reserved the right to reply in an appropriate manner to the delegation of the USSR.

Mr. HYERA (United Republic of Tanzania) said he wished to reply to the USSR delegation's observations concerning the Tanzanian statement at the 40th meeting of Sub-Committee II. According to the USSR delegation, straits were divided into two categories, those without any real importance for international traffic, and those used for international navigation. The Straits of Pemba, to which his delegation had referred, would at present be in the first category, according to the USSR representative, who had gone on to say that freedom of passage would be authorized in that strait, subject to what was known as innocent passage. But what, in fact, had been implicit in the USSR statement was that, since the United Republic of Tanzania did not have any straits for which freedom of transit was required, there was no need for it to speak on the concept of freedom of transit. That view was not shared by his country, which, as a member of the Committee, had the same right as other States to consider the questions before the Committee; what was more, the reasons advanced by delegations in defence of the concept of freedom of transit justified its speaking up, to combat the gross unfairness of that concept.

The meeting rose at 7.55 p.m.

SUMMARY RECORD OF THE EIGHTY-FOURTH MEETING

held on Monday, 14 August 1972, at 11.20 a.m.

Chairman: Mr. AMERASINGHE Sri Lanka

GENERAL DEBATE (continued)

Mr. BANERJEE (India) noted that according to General Assembly resolution 2750 C (XXV) the crucial decision concerning the possibility of holding the third Conference on the law of the sea in 1973 would be taken by the Assembly at its twenty-seventh session. If the Committee was to make positive recommendations to the Assembly, therefore, it would have to act promptly. His delegation welcomed the Venezuelan representative's suggestion at the 82nd meeting that there should be two sessions of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1973, followed by an organizational meeting of the Conference itself late that year, to lay the groundwork for substantive negotiating and law-making sessions in 1974. His delegation also supported the series of measures to attain those ends, as outlined by the Canadian representative at the 83rd meeting. Its position on the exact schedule of the sessions of the Conference was flexible.

Few would deny that the existing law of the sea was inadequate to meet the requirements of modern technology and the needs of the international community. The future law must be based on the principle of national sovereignty, the requirements of economic progress and the need for international co-operation in the application of technology for the maximum benefit of all mankind. The Indian delegation welcomed the Kenyan working paper entitled "Draft articles on the concept of the exclusive economic zone" (A/AC.138/SC.II/L.10) and was glad that a number of delegations regarded it as a starting point for serious negotiations. It indeed provided for a realistic revision of international law on the utilization of marine resources which could guarantee a fair share for the developing countries without interfering with the legitimate interests of other States. The proposal was mainly concerned with the resources of the sea adjacent to the coastal State and placed no restriction on other uses of the sea, such as navigation, overflight, the laying of submarine cables and internationally agreed measures for the preservation of the marine environment. The precise extent to which a coastal State should be competent with regard to the exploitation of the resources of the zone could be worked out in the Committee. Moreover, the use of the word "exclusive" would not prevent agreement on various possible ways of exploiting the ocean's potential, such as preferential arrangements, licensing systems and co-operation with existing and future international organizations. In particular, bilateral, multilateral or regional arrangements could be entered into with land-locked States and other countries with geographical disadvantages. Those and other important subjects must naturally be discussed further in the Committee, but a framework had now been provided for substantive negotiations on the balance that should be struck between the interests of coastal States and those of the rest of the international community.

The exclusive economic zone obviously included an exclusive fisheries zone. It was widely accepted that the question of the fishing rights of the coastal State was a separate matter from that of the outer limits of its territorial waters. His delegation was also prepared to consider a formula under which the outer limit of the exclusive fishery zone was not necessarily the same as the outer limit of the exclusive economic zone, provided there was recognition of the special interests of the coastal State in the living resources of the area adjoining the exclusive fishery zone.

In his delegation's opinion, the Committee's task was to agree not so much on the exact mileage at which limits should be set as on the nature of the competence to be exercised within those limits. Much had been said about the sacrifices that were allegedly demanded of the more developed and advanced maritime countries; he would suggest that what was required of such countries was understanding and co-operation in order to advance the interests of the international community. A territorial sea of 12 miles and the acceptance of a straight distance criterion of 200 miles for the exclusive economic zone would provide a realistic solution to the problem of the competence of coastal States and would also help to dispel the vagueness now surrounding the exploitability criterion.

Serious consideration would have to be given to ways of reconciling various conflicts of interest arising out of the acceptance of an exclusive economic zone. With regard to fisheries, for example, it was of no benefit to coastal States for available fish stocks to be wasted, but it was also desirable to ensure that optimum levels of stock and catch were maintained. Transitional arrangements should be studied to reconcile the interests of countries with distant-water fishing fleets and those of developing coastal States.

A major task of the Conference would be to draft laws meeting the complex requirements of modern navigation, since the introduction of giant tankers and bulk carriers had radically changed the entire pattern of shipping and greater responsibilities with regard to the safety of navigation would be imposed on coastal States. The concept of innocent passage would therefore have to be progressively developed, with due regard for the security of coastal States.

Turning to the question of the list of topics, he said that his delegation was glad that the areas of difference had been narrowed down. It hoped that the hard core of outstanding matters would not hamper substantive discussion on questions already agreed upon. Such a list would provide a necessary framework for substantive decisions, ensuring that the widest possible range of views would be considered at the Conference. India was committed to the idea of a comprehensive régime based on 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), and international machinery with wide-ranging powers. It believed in equitable sharing of benefits, with special attention to developing countries, and in the need for the rational management of the mineral resources of the international area, so as to avoid unfavourable effects on national economies. Mutual accommodation would be the best way of solving problems of the codification of the new law of the sea, and a realistic basis for such an accommodation was the recognition of a new kind of jurisdiction for coastal States.

Mr. CASTANEDA (Mexico) said that his delegation, which had originally approached the question of the future law of the sea with an open mind, had gradually come to the conclusion that the only more or less universal solution would be that of a territorial sea, or area of full sovereignty, of 12 miles, together with an economic zone beyond the territorial sea which could vary in size according to local conditions up to a maximum breadth of 200 miles. In the past 18 months, since the first session of the enlarged Committee, the statements of many delegations had helped to define and strengthen that basic concept. The debates had shown that the legislation of many

States had established special zones beyond the 12-mile limit, in which they exercised some degree of sovereignty, especially where fishing was concerned. It was probable that most coastal States accepted the principle that there was a zone beyond the territorial sea in which States were not all in a position of equality, in which the coastal State enjoyed more extensive fishing rights than other States, or in which certain forms of jurisdiction and control were exercised unilaterally to prevent the pollution of the marine environment. Differences with regard to the breadth of the zone and the ways in which rights were exercised were less important than the actual principle of the existence of a zone of special jurisdiction. Recognition of that fact had certainly become more general and the nucleus of a legal principle had thus emerged, which might subsequently be translated into a compromise formula acceptable to the majority, if not all, of the States participating in the Conference on the law of the sea.

A group of Caribbean States, including Mexico, had held a meeting in July 1972 at Santo Domingo to formulate their version of the basic idea of a patrimonial sea in the zone beyond the territorial sea. The countries concerned did not claim that their proposal was applicable to all Latin American countries, but regarded it as a possible contribution to a future Latin American formula. His delegation believed that what separated the signatories of the Declaration of Santo Domingo (A/AC.138/80) from other Latin American States was less important than what united them. They all pursued the same objective, namely, that natural resources within an area of 200 miles should be exploited for the benefit of the peoples of the coastal States, but that those States should do nothing to hamper navigation or overflight by the craft of other countries. What divided the Latin American States was the legal classification of the various areas of jurisdiction and the terms by which they were to be designated; he was sure that agreement on the specific competence of States in those areas could be reached by negotiation.

Commenting on the origins of the Declaration of Santo Domingo, on its scope and on its place within the law of the sea as a whole, he pointed out that one of the basic themes during the 1958 United Nations Conference on the Law of the Sea had been the conservation of the living resources of the sea by the coastal State, without discrimination against foreign fishermen. That idea had now been replaced by another, that of the appropriation by the coastal State of the resources adjacent to its shores and the corresponding exclusion of foreigners. That change of attitude was largely due to the greater recognition by the international community of the interests and needs of the developing countries. Those countries, however, should not try to draw up a law of the sea for the benefit of the third world alone, since that would be counter-productive; they should try instead to evolve a body of rules covering the interests and needs of the various groups of States. In his opinion, the concept of the patrimonial sea met that requirement. The special situation of coastal States was justified by the natural, physical, biological and economic inter-relationship between earth, sea and man. The presence or absence of living resources depended closely on the coastal environment, and would do so still more in the future, owing to the protective measures that the coastal State would have to take to prevent marine pollution. Accordingly, coastal States could not allow fishermen from distant lands, who had no link with their territory, to exploit their resources under the same conditions as nationals in areas at a short distance from their coasts. Mexico knew from bitter experience that a territorial sea of 12 miles not accompanied by a patrimonial zone resulted in a situation in which the bulk of the living resources were caught by a few fishing Powers, for their sole benefit and to the detriment of the coastal State.

It should be borne in mind, however, that the economic zone was not intended to be a zone of sovereignty of the same kind as the territorial sea. The reason for differentiating between the two zones was the need to reconcile various uses of the sea; it was in the interest of the international community and of individual States not to restrict navigation and overflight unduly but, on the contrary, to facilitate them as far as possible. Accordingly, the coastal State could not have the power to close the area of the patrimonial sea to navigation and overflight. The concept of the patrimonial sea thus permitted a twofold utilization of the sea, guaranteeing the coastal State full and exclusive enjoyment of the resources adjacent to its coasts and guaranteeing other States facilities of communication and transit, without ascribing any territorial character to the economic zone.

Confusion had arisen at times during debates on the concept of the patrimonial sea. Some representatives of European States had rightly pointed out that an economic zone of 200 miles was not applicable to their part of the world; that doubtless applied to other regions as well. But the advocates of the patrimonial sea concept had no intention of imposing an economic zone where that did not meet the interests of coastal States; they did not claim that the maximum breadth they suggested should be uniformly applied throughout the world. The future law of the sea must combine regional and universal aspects. The wide variety of geological, oceanographic, biological and other conditions in different parts of the world made it extremely difficult to apply legal rules governing fisheries in a uniform way, whereas the rules facilitating communications between nations, including navigation and overflight, by their very nature had to be applied universally and uniformly. The law of the sea as a whole should integrate and reconcile those two aspects; thus, the universal element would be the area over which the coastal State exercised full sovereignty, and would extend to 12 miles throughout the world, whereas the regional element would be represented by areas of special jurisdiction, varying in breadth according to regional or local needs. There was no reason to suppose that all States would adopt the maximum authorized economic zone of 200 miles. Thus, at the Committee's session in March 1972, Iceland had claimed a zone of 50 miles, because that distance corresponded to its needs; the members of the European Economic Community not only renounced the right to any exclusive fishery zone beyond the territorial sea, but granted each other reciprocal fishing rights within their respective territorial waters; and the countries parties to the North-west Atlantic Agreement had recently agreed to share fishery resources from the high seas by establishing quotas for each member country. A number of regional agreements and agreements by species existed in the world which might or might not be compatible with the existence of a patrimonial sea.

The advocates of the patrimonial sea did not want that system to be established where the States concerned had found more satisfactory solutions and did not seek to upset any international arrangements which existed or which might be set up. Accordingly nothing could be further from reality than maps of the world on which bands of 200 miles were traced along all the coasts of the world and round the thousands of islands, some of them uninhabitable, in all the oceans. That gave the completely misleading impression that States had taken over the ocean and that the high seas had practically disappeared. There was no reason to expect that to happen. The fact was that exclusive fishery zones and zones of special jurisdiction to prevent pollution, varying in breadth and content according to the special needs of each country, had only been established in certain regions by certain countries.

In the light of those explanations, some might conclude that the advocates of the Declaration of Santo Domingo had in mind a regional problem calling for a regional solution and that the concept of the patrimonial sea did not represent any universal principle. Yet such a conclusion would be erroneous, since the concept of the patrimonial sea combined regional and universal aspects and in fact constituted a universal rule from a twofold point of view. In the first place, there would be a uniform maximum of rights for all coastal States, both for the width of the patrimonial zone and for the extent of States' rights in that zone. Secondly, all States would have an obligation to respect regional agreements or provisions taken by individual States within the limits authorized by the proposed general rules. Furthermore, the rules of the Declaration of Santo Domingo were not mandatory but permissive, in the sense that they authorized all States to exercise certain kinds of jurisdiction which were international in their effect. The establishment of such zones of jurisdiction, provided the limits fixed by the universal rule were observed, would have to be recognized and respected by all.

That conception of the Declaration of Santo Domingo as a legal framework was an expression of the relationship established between each State and the international community in the process of the creation of international law; that relationship had been referred to by the International Court of Justice in its opinion in the Anglo-Norwegian fisheries case; 30/ the Court had recognized that the coastal State could delimit maritime areas by unilateral action, but that the validity of that delimitation in respect of third States depended on international law.

Mr. AL-SABAH (Kuwait) reminded the Committee that at its first 1972 session (76th meeting) his delegation had submitted for its consideration a draft resolution (A/AC.138/L.11) calling on all States to cease and desist from all commercial activities in the area beyond the limits of national jurisdiction pending the establishment of an international régime. The Committee had decided that the consideration of that draft resolution should be deferred until the present session. In the meantime, his delegation had consulted with a number of other delegations, with a view to ensuring that the views of the majority of States represented in the Committee were reflected. A revised text of the draft resolution (A/AC.138/L.11/Rev.1) was now before the Committee.

In submitting the revised text, his delegation and the other sponsors had been motivated by the evidence that certain States were engaged in operational activities in the sea-bed area beyond the limits of national jurisdiction, despite the provisions of General Assembly resolution 2574 D (XXIV) on the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind, of the Declaration contained in General Assembly resolution 2749 (XXV) and of resolution 52 (III) on the exploitation, for commercial purposes, of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, adopted by the United Nations Conference on Trade and Development at its third session. Those operational activities were being carried out by a few industrial States contrary to the principle that the area was the common heritage of mankind.

30/ I.C.J. Reports 1949, order of November 9th, 1949, p.233.

His delegation believed that any exploitation prior to the establishment of the international régime and machinery would make it more difficult for the Committee to achieve a common ground for agreement and an atmosphere of confidence and co-operation.

He therefore requested that the draft resolution should be included in the Committee's report to the General Assembly.

Mr. de la GUARDIA (Argentina) said that, although the current session of the Committee had proved more fruitful than some previous ones, the Working Group had not succeeded in producing a document outlining areas of agreement and disagreement concerning the basic principles underlying the international régime for the sea-bed. An effort had in fact been made in the Working Group to reopen the debate on the Declaration of Principles, some delegations persistently refusing to agree that the draft articles should include principles which were fundamental to the establishment of the régime. Consequently, no progress could be made on the international machinery until the situationwith regard to the basic principles had been clarified.

His delegation supported draft resolution A/AC.138/L.11/Rev.1 concerning the moratorium established by General Assembly resolution 2574D(XXIV). It opposed the request contained in the document entitled "Request for a study on the different economic implications of the various proposals on the limits of the international sea-bed area" (A/AC.138/81) for a number of reasons. Firstly, reference was made in the request to five suggested limits for national jurisdiction. In the opinion of his delegation, that prejudged a very delicate subject which was of fundamental importance to all countries, particularly during the current negotiations, and was therefore totally unacceptable. Furthermore, the list of suggested limits was not complete. It would be incorrect to exclude the possibility of conducting a study on the basis of other limits. Combinations of criteria and alternative criteria had been proposed by a considerable number of delegations, including his own. Consequently, there could well be a much greater number of limits than the five referred to in the request.

Secondly, the study would be completely impossible to carry out. In order to be able to determine the economic implications of the various limits referred to, it would be essential to have highly accurate technical and scientific information on the bed of all the seas and oceans in the world, in particular in those areas nearest the coasts, in order to be able to determine the types and quantities of natural resources present and their value. Obviously, that would be an enormous task.

Thirdly, although the request referred to the economic implications of the various proposals regarding the limits of the international sea-bed area, it said nothing about the implications which the adoption of a given limit would have for coastal States.

Lastly, a study of the kind requested would entail considerable expenditure. His delegation had consistently advocated the need to keep increases in United Nations expenditure to a minimum.

Substantial progress has been made on the question of the list of subjects and issues, which had been entrusted to Sub-Committee II. It was to be hoped that similar progress would soon be made on the few outstanding issues, so that the Sub-Committee would be able to proceed with its substantive work. The lengthy informal discussions concerning the list had not been wasted effort, since they had permitted an exchange of views which had clarified the main areas of agreement and disagreement.

Two important documents had been brought to the attention of the Committee at the current session: the Declaration of Santo Domingo and the draft articles on the concept of an exclusive economic zone (A/AC.138/SC.II/L.10) submitted by the Kenyan delegation. Both documents represented a very useful contribution to the work of the Committee and pointed the way to possible agreement. The draft articles constituted a commendable proposal for the establishment of common positions which would permit a general political agreement on the basic framework of the future law of the sea. Obviously, the two documents were not identical and some of the problems considered in one of them were not referred to in the other. The Declaration of Santo Domingo, for example, made no mention of special provisions for the land-locked countries. The Kenyan draft articles, for their part, did not deal with the question of the continental shelf, which had been considered by all the regional groups, and in particular detail by the Latin American countries. But those omissions were not to be regarded as shortcomings. The countries responsible for producing the two documents had first had to establish common positions reflecting the situation of developing countries in a particular area. Once that had been done, the task of accommodating the interests of other countries could be undertaken. In the important task of defining the major areas of agreement, his delegation was always prepared to collaborate with the developing countries, and, in particular, with those which had prepared the documents to which it had just referred.

He was somewhat surprised by the statement recently made by the representative of Singapore (83rd meeting), whose views on the continental shelf seemed to be a retreat from the existing law rather than an advance on it. Yet that representative had himself expressed regret that the Declaration of Santo Domingo based the limit of the shelf on the same exploitability criterion as had been adopted in the 1958 Convention on the Continental Shelf. If that limit was no longer applicable, because of the substantial progress made in exploitation techniques, it would be necessary to find more reliable criteria. In that connexion, his delegation had already stated its conviction that a single limit valid for all cases was not the solution. A suitable combination of the geomorphological limit now recognized, i.e. the outer limit of the continental shelf, and a maximum distance of 200 miles would be the best means of accommodating the various interests involved. On that point, he agreed with the Canadian representative (83rd meeting).

His delegation had been pleased to note that the great majority of fishing Powers were coming to recognize the right of coastal States to develop the living resources of the sea in the area adjacent to the territorial sea for their own use. That right was not a privilege of the developing countries but should be granted to every coastal State. Although the draft articles that had been submitted by Kenya recognized such a right in principle, in many respects, they sought to restrict it, particularly with regard to the enactment of regulations for the conservation of resources and the imposition of penalties. In the opinion of his delegation, all coastal resources should be administered by the coastal State, which would have exclusive responsibility for granting permits for foreign vessels to fish for some of the species which were not caught by national vessels or whose maximum annual catch was not exceeded. It would also be logical to agree that it was the coastal State which should establish - on the basis of all available scientific and technical information, both national and international - the level of the maximum annual catch. Such information would enable the coastal State to take reasonable measures to maintain the production of protein from its waters at the highest level.

Basic penalties, such as fines and confiscations, should be within the exclusive competence of the coastal State which granted the fishing licence and established the relevant regulations. Other types of penalties might be within the competence of the State whose flag was flown by a vessel infringing the regulations.

His delegation was pleased to note that Sub-Committee III had completed its debate on pollution and scientific research and that it had established (23rd meeting) a working group on pollution. It was to be hoped that new proposals and working documents on pollution would be submitted, in order to provide additional subject matter for discussion in future negotiations.

It had been suggested that the working groups established by the Sub-Committees should continue their work between the sessions of the plenary Committee. In the opinion of his delegation, that would result in unnecessary duplication of the Committee's work, since many of the delegations of developing countries would be unable to participate fully in the inter-sessional meetings, with the result that debates would have to be held again on the same questions at the following sessions of the plenary Committee.

On the question of the future work of the Committee, his delegation was not in principle in favour of postponing the Conference on the law of the sea, but it did believe that the Conference should not be convened until all the legal and political requirements for its success had been met. It doubted whether that was yet the case. From the legal point of view, the work entrusted to the Committee by the General Assembly had undoubtedly not been completed, since the draft treaty on the régime for the sea-bed had not been prepared and there were not enough draft articles on the other subjects and issues relating to the law of the sea. From the political point of view, the necessary general agreement had not been reached, although some delegations had begun to state their positions and to make suggestions on the subject. The Committee should therefore continue its work during 1973 and should not be dissolved before it had fulfilled its mandate. The General Assembly should review the situation at its twenty-seventh session, and, after due consideration, decide on the final date of the Conference.

Sir Roger JACKLING (United Kingdom) said that the question of a moratorium had been before the Committee for several years. The terms of the debate had not changed and the conflicting points of view remained as they had been when the General Assembly had considered its resolution 2574 D (XXIV). When his delegation had explained its vote against the resolution, it had made it clear that it did not believe that the General Assembly could modify existing international law by resolutions of that kind. Quite apart from that, it did not understand how a moratorium on the exploration and exploitation of a part of the sea-bed could be meaningful if it was not known where that part of the sea-bed was. His delegation's vote against resolution 52 (III) of the United Nations Conference on Trade and Development had been based on the same considerations.

Some of the delegations which had laid the proposal before the Committee again in its present form rested their case on the Declaration of Principles contained in General Assembly resolution 2749 (XXV), which had had the positive support of virtually all delegations represented in the Committee, rather than on General Assembly resolution 2574 D (XXIV), which 28 delegations had voted against and 28 had abstained on.

His delegation saw nothing in the Declaration of Principles inconsistent with its view of the law, but even if there were, it did not believe that the Declaration of Principles could have changed the law. That followed from the status and force of resolutions of the General Assembly as such. However, his delegation had stated, in supporting the Declaration of Principles, that it agreed with the view expressed by other delegations that the Declaration was not intended to establish an interim régime for the sea-bed. General Assembly resolution 2749 (XXV) must be regarded and interpreted as a whole, and as a whole it had no dispositive effect until agreement had been reached on an international régime, including a definition of the area to which the régime was to apply.

In earlier statements at the present session, his delegation had made it plain that the United Kingdom was not an interested party in the controversy. So far as he knew, no United Kingdom companies were at present actively interested in the exploration of the deepest and furthest parts of the sea-bed. However, his delegation's view of the law remained as it had been stated during the discussion of General Assembly resolution 2574 D (XXIV). Specifically, it did not share the view of the law that was implicit in draft resolution A/AC.138/L.11/Rev.1. For that reason, as well as for the other reasons which he had explained, his delegation could not support it.

The only way to resolve the controversy was to make it out of date by expediting the work on which the Committee was engaged. If possible, the Working Group on the international régime should meet in the course of the next few months, so that it could prepare the way for the Conference on the law of the sea to reach an early and successful conclusion.

Mr. VALDIVIESO (Peru) said that the function of the next Conference on the law of the sea would be different from that of the two previous Conferences, at which delegations had been seeking to codify international law. At the next Conference, participants would have the more radical task of establishing new law. In choosing the Committee as the body to prepare the ground for the third Conference, the General Assembly had rightly taken account of the fact that many of the present States Members of the United Nations had not taken part in the previous Conferences and that a new Conference would have to be carefully prepared to ensure its success. The General Assembly had wisely refrained from binding itself to a particular date and had taken steps to avoid the fragmentation of the general Conference into individual conferences on different aspects of the law of the sea.

His delegation continued to believe in the need for a single conference but proper preparations would have to be made for it. The main framework of agreement should be established before the Conference was actually covened; the purpose of the Conference would be to finalize the text of the convention on that basis. When a conference could be convened must be determined by the extent to which a consensus emerged from the debates of the Committee. In view of the slow progress made thus far, the time was not yet ripe. After ten sessions, four of which had been devoted to work of a preparatory nature, the following situation existed. In Sub-Committee I, efforts were being made to revise the Declaration of Principles, a situation which was totally unacceptable to the developing countries. Sub-Committee II had not only failed to produce draft articles but had also made no progress in drafting a list of subjects and issues. Sub-Committee III had before it the material which it had received from the United Nations Conference on the Human Environment, but it was still at the preliminary stage of determining how the matters that came within its purview were to be dealt with.

On the other hand, he had been happy to note that a number of countries both in the Americas and elsewhere had recently come out in favour of the extension of maritime sovereignty to a limit of 200 miles, which Chile, Ecuador and Peru had supported for the past 20 years. He referred in that connexion to the Declaration of Santo Domingo and the recommendations of the Yaoundé Regional Seminar (A/AC.138/79).

In the circumstances, he did not believe that it was possible at the present juncture to pass any judgement on the possibility of the preparatory work being completed in time to hold the Conference in 1973. Perhaps the General Assembly might decide at its twenty-seventh session to renew the Committee's mandate and reconsider the position at its twenty-eighth session.

Turning to draft resolution A/AC.138/L.11/Rev.1, he said that in view of the legal void concerning the exploitation of the sea-bed beyond the limits of national jurisdiction and in view of the impossibility of saying that the freedom of the high seas, under the terms of the 1958 Convention on the High Seas, could be applied to such activities by extension, the only possibility was to refer to the Declaration of Principles. The Declaration represented the freely expressed will of States; there had been no opposition to it whatever and only a very small number of abstentions. He wished to point out, however, that the Declaration contained not only the principles specifically referred to in the second preambular paragraph of the draft resolution but also principles 4 and 14, the texts of which he quoted. It was thus clear that the Declaration did not constitute an intermediate régime for the exploitation of the sea-bed beyond the limits of national jurisdiction. What it did was to make such activities subject to the future establishment of an international régime. Thus, States were bound by the terms of principle 14 in respect of the activities of their nationals.

Referring to the request for a study on the different economic implications of the various proposals on the limits of the international sea-bed area, he said that he found it perplexing. Although, under paragraph 11 of General Assembly resolution 2750 C (XXV), the Committee could request the Secretary-General to render the Committee all the assistance it might require in legal, economic, technical and scientific matters, it was obvious that the Secretary-General did not have the resources to carry out the study. In any case, it was not clear for whom the economic implications were to be studied. If the answer was the international community, it should be remembered that those countries which were in favour of the 200-mile limit were also members of the international community. It did not seem right, moreover, to speak of limits without reference to the international régime and machinery for the sea-bed; obviously, the economic consequences of the various limits would depend less on the limits chosen than on the nature of the régime which would be adopted. Nothing was said in the explanatory statement about the implementation of the principle of the common heritage of mankind through an authority which genuinely represented the interests of the countries making up the international community. The study was really intended to provide arguments against the broad jurisdiction of the coastal State which had been advocated repeatedly by States in all continents. He did not consider that the Secretariat should be used for such purposes. It could only carry out studies requested by the Committee unanimously and his delegation would oppose the request in question. States could work out the implications of the various limits for themselves.

The meeting rose at 1.10 p.m.

SUMMARY RECORD OF THE EIGHTY-FIFTH MEETING

held on Monday, 14 August 1972 at 3.25 p.m.

Chairman: Mr. AMERASINGHE Sri Lanka

In the absence of the Chairman, Mr. Venchard (Mauritius), Vice-Chairman, took the Chair.

GENERAL DEBATE (continued)

Mr. ARYUBI (Afghanistan) said he wished to explain his delegation's views on the question of the rights and interests of land-locked countries, within the future juridical framework to be established by the Conference on the law of the sea. Those rights and interests had not been adequately protected by the numerous international instruments on the subject. Despite all the efforts made by the land-locked countries, the international community had failed to apply in their regard the fundamental principle of the equality of nations. Their continued dependence on transit States for access to the sea was not only contrary to the very concept of the freedom of the high seas, which was universally recognized in international law, but was also in practice a negation of that fundamental principle. Obviously, the freedom of the high seas had absolutely no meaning whatsoever for land-locked States unless they were guaranteed access to and from the sea and freedom of transit. Unfortunately, in the absence of a universally recognized principle to the effect that land-locked countries should have access to the sea and freedom of transit, those countries were placed in a very difficult position. The insurmountable problems confronting them were having particularly adverse effects on their development efforts. His delegation firmly believed that the perpetuation of the status quo in that regard was contrary to the interests of the international community. It was high time that the rights and interests of the land-locked countries were fully guaranteed and universally recognized in a treaty on the law of the sea. Care should be taken to ensure that the relevant provisions contained no gaps or ambiguity, so that the fundamental rights of the land-locked countries could not be violated on any pretext.

With regard to the other aspects of the Committee's work, his delegation noted certain signs of progress which indicated that the present session of the Committee would achieve positive results and thus pave the way for the success of the future Conference. It seemed that an agreement on the list of subjects and issues relating to the law of the sea, to be submitted to the Conference on the law of the sea (A/AC.138/66 and Corr.2) was in sight (despite reservations on certain items), as a result of the tireless efforts of the Chairman, which had led to a compromise agreement on the nine-Power amendments (A/AC.138/72 and Corr.1) to items 8 and 9, in particular. It was regrettable that the group of 56 Powers had found it impossible to accept the amendments proposed to item 6, with the result that the sponsors had been obliged to place their reservations on record. While the developing land-locked countries were committed to maintaining their solidarity with the other developing countries in their common endeavour to bring about an international order based on justice, freedom and progress, they naturally expected the developing coastal States to apply the principle of the equality of nations; solidarity and unity could not be sustained on a basis of different treatment. The Afghan Government, while reaffirming its solidarity with all those who desired to attain the common objective, therefore hoped that the developing coastal States would appreciate its concern to obtain complete equality of treatment.

On the question of the international régime and international machinery referred to in the Declaration of Principles contained in General Assembly resolution 2749 (XXV), his delegation wished merely to reaffirm the views it had already expressed on previous occasions.

In conclusion, he wished to comment on the proposal entitled "Request for a study on the different economic implications of the various proposals on the limits of the international sea-bed area" (A/AC.138/81), submitted by the representative of Singapore (83rd meeting) and co-sponsored by the Afghan delegation. His delegation firmly believed that, as had been ably explained by the representative of Singapore, a study on the different economic implications of the various proposals for the limits of the international sea-bed area would make a particularly useful contribution to the work of the Committee. It considered that the objections that had been raised by certain delegations were completely unjustified. It also believed that the outright negative reaction of certain countries clearly revealed the subjective motives of those who, for obvious reasons, wished to deprive members of the Committee of the valuable information that would undoubtedly be contained in the report requested of the Secretary-General. His delegation therefore hoped that the majority of delegations would support the proposal.

Mr. UPADHYAY (Nepal) said he hoped the Committee would be able to complete its work successfully and that the Conference on the law of the sea could be held as scheduled, since any postponement would make the issues even more complicated. The new law of the sea should consolidate past results and introduce new concepts, taking due account of the interests of all countries or groups of countries. His delegation considered that a régime should be established for the areas and resources constituting the common heritage of mankind, and it therefore attached prime importance to the delimitation of territorial seas, the seas corresponding to the economic zone and the seas constituting the common heritage of mankind. There seemed to be a general feeling that no State could exercise jurisdiction over part of the seas and oceans and over their resources except in accordance with international agreements, and in that respect his delegation fully shared the view expressed by the United States delegation (83rd meeting), namely, that rules concerning the exploitation of the sea-bed and ocean floor should be established as soon as possible, and that the "common heritage" meant the "common property" of mankind. Accordingly, to ensure that a State did not unilaterally exercise jurisdiction over a part of the seas and the oceans, it was essential, first of all and as a matter of great urgency, to settle the question of the delimitation of the international area constituting the common heritage of mankind, with primary emphasis on the economic implications. That was why his delegation, together with 10 other delegations, had submitted a request for a study on the different economic implications of the various proposals on the limits of the international sea-bed area, in which the Secretary-General was requested to prepare "a study on the economic implications for the area under the authority of the international machinery" (see A/AC.138/81). He hoped that that request would be given general support.

His delegation had already explained on other occasions that the nature and scope of the machinery would directly depend on the area to be placed under the régime. While there appeared to be general agreement that the international régime should be applied only to the resources of the sea-bed and ocean floor, his delegation believed that living resources also should be included. Whatever its scope, the proposed international machinery could not achieve its objective - which was to ensure the rational

exploitation of the international sea-bed area - unless it was given very extensive and clearly defined powers. It should also be in a position to ensure the equitable sharing of benefits among all countries, taking particular account of the needs and interests of the developing countries, and especially the least developed among them, i.e. the developing land-locked countries.

The land-locked countries deserved particular consideration; that was not a new idea and all that was needed was that international bodies should give special attention to the land-locked developing countries as compared with the other developing countries, just as the developing countries were given special treatment as compared with the developed countries. They must, in particular, be given adequate representative in the different organs of the international machinery, taking into consideration their particular needs and interests, as well as their numerical strength.

In that connexion, his delegation welcomed the text of the Declaration of Santa Domingo approved by the meeting of Ministers of the Specialized Conference of the Caribbean Countries on Problems of the Sea, held on 7 June 1972 (A/AC.138/80), and the conclusions in the general report of the African States' Regional Seminar on the Law of the Sea, held at Yaoundé from 20 to 30 June 1972 (A/AC.138/79). Those documents would have to be studied in greater detail, but would undoubtedly be extremely valuable in achieving an international solution of the problems of the Law of the sea. He welcomed with particular satisfaction the recommendation in section I (a) (4) of the conclusions in the general report of the Yaoundé Seminar, which dealt with the problem of the land-locked countries and their legitimate interests in the economic zone. The elaboration of a new law of the sea - which should take the form of rules of world-wide application - was progressing in a spirit of fraternity and equality among nations, and the interest in the sea shown by the land-locked countries was in keeping with their natural desire to put an end to the difficult situation in which they found themselves, and in particular to solve the problems of malnutrition of their populations. The chief element in the problem of malnutrition was the shortage of animal protein. The living resources of the sea were very rich in protein and also provided important ingredients for the development of agro-industries, poultry and dairy farming, and the production of fertilizers for agriculture and horticulture. It was therefore not only legitimate but also essential that the developing land-locked countries should have access to the sea beyond the territorial waters but still within the limits of the exclusive economic zone. The new law of the sea should therefore reconcile the needs and interests of each State with those of the international community at large, and should take into consideration the interest of the land-locked countries in the living resources of the sea, which was in fact a right rather than an interest. In that connexion, he recalled that the Yaoundé Seminar specified in the recommendation he had already referred to that, to be effective, the rights of land-locked States over the living resources within the economic zone should be complemented by the right of transit. He wished to make it clear, however, that those rights should be accorded to them by international agreement. Such agreements could be concluded at different levels, depending on the various aspects of the freedom of transit; but freedom of transit should be established by the international law of the sea and not defined by the transit countries.

All countries wanted to develop in peace and harmony, in accordance with the objectives of the Charter of the United Nations, but co-operation and understanding between States could be further strengthened. That could be done by establishing a clear code of conduct among nations, and the power to interpret the legitimate rights of each nation must rest with a competent international authority accepted by all and established under international law.

Mr. Evensen (Norway), Vice-Chairman, took the Chair.

Mr. KALOMJI-TSHIKALA (Zaire) said that his delegation was among those which believed that a conference on the law of the sea should be held in 1973, in accordance with the decision by the General Assembly in paragraph 2 of its resolution 2750C (XXV). With the passage of time, positions became more complicated and the chances of agreement diminished. From the standpoint of the future Conference, the proposal contained in document A/AC.138/81 and introduced so eloquently by the representative of Singapore - a proposal of which the Zairian delegation was one of the sponsors - appeared particularly important. It should obtain the Committee's general endorsement, because it was not only reasonable but also logical. Many criteria had been suggested for solving the problem of limits - distance, or depth, or even the edge of the continental shelf - and it had even been proposed that the limit of national jurisdiction should be the limit of exploitability, a solution which would deprive the international régime and its machinery of their raison d'être. The situation was particularly confused, if only from a purely quantitative point of view, and required clarification. While it was true that the various arguments were based on specific realities (particularly economic realities), those realities were not the same for everyone. But, as stated in document A/AC.138/81, the question of the limits of national jurisdiction was important not only for the coastal States, but also for the international régime, whose extent would have to depend on the limits established.

The delegation of Zaire had repeatedly emphasized the close relationship between the question of limits and the question of the international régime to be established. In its view, the viability of the international régime and its machinery would depend on an equitable solution to the equation "area subject to national jurisdiction/area subject to international jurisdiction". As the delegation of Zaire had stated at the Committee's first 1972 session (45th meeting of Sub-Committee I), it considered that the régime, to be truly realistic, must extend over a considerable area and must cover resources whose exploitation was economically profitable, in order to produce an income that could be shared. The adoption of clear and firm limits for national jurisdiction was therefore also a sine qua non for the success of the Conference on the law of the sea. Evasion of the question, through the invoking of budgetary and other considerations for postponing a decision, served only to increase the confusion. A formula must be found to achieve a balance between the legitimate rights of coastal States and the interests of land-locked, near-land-locked and shelf-locked countries.

The basic principles contained in paragraph 7 of the Declaration of Principles recognized that all States, large and small, rich and poor, coastal and land-locked, had equal rights in the exploration and exploitation of sea-bed resources. If the idea of an area subject to international jurisdiction was deprived of its substance by limitations excluding all economically exploitable resources, the interests of the international community as a whole would be seriously damaged, because many countries, and particularly developing countries, would be excluded from the scope of the new law

of the sea. It was therefore essential to understand clearly the significance and possible economic effects of the various proposals made concerning limits. The developing countries, which did not possess the technology or the financial and human resources needed to carry out a study of the kind requested, would derive great benefit from such a document, because the question of the viability of the area subject to international jurisdiction was an issue of the highest importance. Among the conclusions of the Yaoundé Seminar, which the delegation of Zaire unreservedly endorsed, mention should be made of the conclusion in which the economic zone was defined as a zone in which the coastal State would have "exclusive jurisdiction for the purpose of control regulation and national exploitation of the living resources of the sea and their reservation for the primary benefit of their peoples and their respective economies and for the purpose of the prevention and control of pollution". The economic zone was also described as being open, for the exploitation of resources, to all African States, whether coastal, land-locked or near-land-locked.

It should also be emphasized that the study requested was not the first of its kind, and that it was a logical follow-up to all those which the Secretary-General had prepared in accordance with General Assembly resolution 2750C (XXV). In paragraph 2 of that resolution, the General Assembly had stated that the future Conference would, inter alia, deal with a precise definition of the area; an objective and impartial study was therefore certainly needed. It would also make it possible to assess the appropriateness of the criteria proposed for the establishment of the various areas subject to national jurisdiction and, in particular, the special and intermediate areas. The delegation of Zaire had always advocated narrow and specific limits of national jurisdiction; in that connexion, it could not accept the criterion of exploitability for the limit of the continental shelf, since, if the common sea-bed was limited to the unexploitable sea-bed, that meant that the common heritage of mankind existed only where it was of no interest or value - not to mention the fact that such a criterion was, from the legal standpoint, too vague. The Committee's task was precisely to attempt to establish, finally and formally, the legal status of ocean space; that status must be based not on might but on right, not on the de facto situation but on principle. The request which the delegation of Zaire had supported therefore deserved the Committee's full attention.

Mr. PINTO (Sri Lanka) said that it would be wrong, despite appearances, to conclude that the Committee had accomplished little in its preparations for the third Conference on the law of the sea, to be held in 1973; such a view might even obstruct the progress of the Committee's work. Since its expansion in 1970, the Committee had embarked on a delicate exercise, of which the outward and visible manifestation was the preparation of a list of subjects and issues for the Conference. The Committee's discussions had given many developing countries the opportunity to benefit from the experience and knowledge of other countries with regard to the various aspects of the law of the sea, and to express their own opinions in a preliminary way. The discussions on the composition of the list, even if they had sometimes been frustrating, had enabled individual countries to express their apprehensions or describe their needs, and had contributed to the emergence of an over-all compromise which could be regarded as a necessary prerequisite for the holding of a successful conference on the law of the sea.

Of course, the mere listing of issues was not enough to solve them. On the contrary, it was only the beginning of arduous discussions and negotiations. Once the list was completed - as it soon would be, through the efforts of all delegations - its major political function would already have been largely accomplished, and it could then serve as a basis for the preparation of a draft agenda for the Conference on the law of the sea.

His delegation considered that the two corner-stones of an over-all compromise would be agreement on the exclusive economic zone and passage through straits used for international navigation.

With regard to the exclusive economic zone, the delegation of Sri Lanka had noted with satisfaction the draft articles on the concept of an exclusive economic zone (A/AC.138/SC.II/L.10), submitted by Kenya. That draft took into account many viewpoints expressed in the Asian-African Legal Consultative Committee, which had met at Geneva immediately before the Committee's present session. The exclusive economic zone concept had developed over the years, and the central feature of the draft submitted by Kenya was the provision to the effect that the coastal State's exercise of jurisdiction, for the purpose of exploitation, should encompass all the economic resources, either on the water surface or in the water, or on the soil or subsoil of the sea-bed, to a distance of 200 nautical miles from the coastal State's base-line. Those resources would therefore be the property of the coastal State, and it was on that point that the concept of the exclusive economic zone concept differed fundamentally from what had been called the traditional concept of the law of the sea, which held that the resources beyond the territorial sea did not belong to any State. Most of the drafts submitted to the Committee were based, in one form or another, on that traditional concept, but, though the developed countries had made far-reaching modifications in favour of the developing countries in acknowledgement of the latter's need for new resources to stimulate their economic growth, and had offered them preferential rights, that system could not succeed. It was true that compromise was needed, but it should be based on the exclusive economic zone concept and the principle of the sovereignty of the coastal State over the resources of the sea and sea-bed to a distance of 200 nautical miles from its coastline, and not on the idea that the resources beyond the territorial sea belonged to no one - which meant in effect that they were the preserve of a few technologically advanced countries. The acceptance of the exclusive economic zone concept could be a turning point in the negotiations and facilitate the solution of a great many problems.

With respect to straits used for international navigation, the interpretation given by many countries to the present law - namely, that it permitted no more than innocent passage through straits within the territorial waters of one or more coastal States - was being challenged by the new concept of "free transit". His delegation entirely agreed with the statement made by the representative of China in Sub-Committee II (36th meeting) that, even if straits within territorial seas were often used for international navigation, they did not have the status of the high seas, that permitting innocent passage was not the same as closing the straits, and that that merely meant that foreign ships, while passing through the straits, should not impair the peace, good order and security of the coastal States, and should observe their laws and regulations. In his delegation's view, a compromise was possible on that point also, but the right of coastal States to regulate and perhaps to restrict passage through straits within their territorial seas must first be acknowledged. It would then be easier to define their duties and obligations, and to speak of applicable international standards or other objective criteria.

The question of passage through straits used for international navigation had been debated at length by the Committee, and it was now time for delegations which, like his own, supported the innocent passage concept to prepare a specific text on the basis of which the Committee could continue its work and reach a compromise. Such a text should clearly set forth the legal content of the concept of innocent passage and might, for

example, cover the question of discriminatory treatment or the measures to be taken in case of disputes between the coastal States of a single strait as to the innocence of passage.

Since its inception, the Committee had had frank and detailed discussions on a variety of topics, and a framework for a settlement of the issues of the law of the sea was beginning to emerge. His delegation hoped that the Committee would from now on have more and more texts before it, and that States members would submit their views increasingly in the form of specific draft articles. Of course, that was not always easy to do, but the textual approach would help to clarify positions and highlight points of agreement and disagreement. If the Committee continued its work intensively, it should be possible to convene at least an organizational session of the Conference on the law of the sea late in 1973. From the political standpoint, his delegation considered that it would be better to hold the Conference earlier rather than later; from the point of view of the developing countries, particularly the less advanced among them, it would be preferable to tackle the problems immediately without further delay. His delegation thought, therefore, that the substantive sessions of the Conference should begin early in 1974, and it warmly thanked the Government of Chile for its invitation to hold the first session of the Conference at Santiago.

Much naturally remained to be done in clarifying positions, settling remaining points of disagreement, reaching agreement on working methods and obtaining the staff needed for a conference of unprecedented scope and complexity, bearing in mind that more than one session might be needed to complete the work and that final solutions must fit into the over-all scheme worked out in advance. However, none of those difficulties seemed to his delegation to be insuperable.

Mr. MHLANGA (Zambia) said that his delegation had already pointed out, at the first 1972 session of the Committee in New York (73rd meeting), that the purpose of the Committee's work and of the work of the future Conference should be to find lasting solutions to the most serious problems, in order to eliminate the causes of international conflicts. In that connexion, it was important to note the geographical location of the land-locked countries. 14 out of the 29 land-locked countries were in Africa. The problems of those countries were aggravated by the fact that a large part of southern Africa was still under foreign domination. The Zambian delegation wished to do everything in its power to ensure the success of the future Conference. It had been particularly gratified by the invitations extended by the representatives of Austria and Chile (82nd meeting), and regarded those invitations as an indication that it might be possible to hold the Conference, as scheduled, in 1973. It would transmit the invitations to its Government with favourable comments.

As a sponsor of the request contained in document A/AC.138/81, which had been introduced by the delegation of Singapore, his delegation wished to say a few words on the question of limits. It felt that the question of limits was often described as controversial merely because of ignorance of the economic implications of the various limits proposed. It therefore considered that the objective study which the Secretary-General had been requested to prepare would greatly facilitate the Committee's task and help it in reaching a decision on that vital question. It therefore hoped that the request would be endorsed without delay. Such a study would obviously be of value to all the developing countries, whether coastal or land-locked, which did not themselves have the necessary means to obtain such information, though it was so essential to them.

Mr. STEVENSON (United States of America) said that he wished to refer to the revised draft resolution introduced at the 84th meeting by the representative of Kuwait (A/AC.138/L.11/Rev.1). His delegation regretted that the draft resolution, which was similar to a draft submitted at the Committee's first 1972 session, revived the divisive issues inherent in attempts to establish a moratorium on deep sea-bed exploitation. The commitment of the United States Government at the highest levels to the timely establishment of an equitable internationally agreed régime was a matter of public record. At the present session for the first time, in the work of Sub-Committee I and its Working Group, a real possibility of achieving that goal was clearly visible. Now, however, he feared that certain delegations were contemplating a step backward. The United States delegation considered that there was no possibility of agreement on a moratorium. Neither General Assembly resolution 2749 (XXV) nor any new resolution on a moratorium, nor any unilateral claims or interpretations by coastal States could deprive other States of their rights under international law. The United States Government was willing to sign a treaty which would ensure that the exploitation of deep sea-bed resources would be for the benefit of all mankind, and it was willing to ensure that activities in the interim would be subject to the international régime to be established. Any attempt, either in the Committee or in the General Assembly, to establish a moratorium would only inject a new element of divisiveness into the negotiations, and would not be conducive to the mutual accommodation necessary to establish an agreed régime. By undermining the confidence of those whose interests were directly involved, the sponsors of the draft resolution might well achieve, in many countries, exactly the opposite of what they intended. That would be particularly tragic, in view of the fact that, if the Committee refused to allow itself to be diverted by extraneous issues, there was still time to establish an international régime before technology overtook the law, and before the commercial recovery of sea-bed minerals actually began. The United States delegation therefore believed that the time and energy which would be wasted on discussion of a new draft resolution on the question of a moratorium should be spent on more constructive work - including intensive inter-sessional substantive negotiations - which would lead to the convening of a successful conference on the law of the sea as soon as possible.

Mr. Perisić (Yugoslavia), Vice-Chairman, took the Chair.

Mr. SULIMAN (Sudan) said that his country, which had been a member of the Committee since its establishment, had - like many other developing countries - been particularly disheartened and disillusioned by the Committee's inability to reach agreement on transforming the Declaration of Principles into treaty articles. However, it was gratifying to note the progress which had been made at the present session as a result of the spirit of conciliation which had prevailed during the meetings of the working groups and contact groups.

As the question of the delimitation of the area of the sea-bed beyond national jurisdiction was of paramount importance, his delegation believed that the Declaration of Santo Domingo and the conclusions of the Yaoundé Seminar, which codified the views of a considerable number of States on the future law of the sea, would contribute greatly to such progress. In addition, the draft articles on the concept of the exclusive economic zone, which had been introduced with such lucidity by the representative of Kenya (42nd meeting of Sub-Committee II), were also a highly constructive contribution which took particular account of the needs and interests of the land-locked or near land-locked countries. His delegation agreed that the needs of those countries could be the subject of regional agreements, whether bilateral or multilateral.

Although the basic principles underlying the Declaration of Santo Domingo and the conclusions of the Yaoundé Seminar were the same, there were, nevertheless, some differences with regard to the concept of sovereignty over the zone and the question of the continental shelf. It might be premature to say whether the concept of the economic zone would replace that of the continental shelf, as defined in the 1958 Convention on the Continental Shelf. That definition had been described as vague and inadequate, since the exploitability criterion for the outer limit of the continental shelf was controversial. Thus, the draft articles submitted by Kenya had the merit of making no reference to the continental shelf.

With regard to the draft resolution originally submitted by the representative of Kuwait, of which a revised version had been submitted at the present session by 13 countries, he could understand that some delegations found it difficult to support the proposal, which was tantamount to the establishment of an interim régime. However, his delegation wished to point out that, since the proposal was confined to the area beyond national jurisdiction, in accordance with the Declaration of Principles, the argument against it was not valid. Nevertheless, his delegation's support for the proposal should in no way be understood as inconsistent with the activities - mentioned by the Secretary-General in his "Additional notes on the possible economic implications of mineral production from the international sea-bed area" (see A/AC.138/73, para.7) - which the Democratic Republic of the Sudan was carrying out in the Red Sea, and which were related to the exploitation of its natural resources in the area adjacent to its coasts.

In conclusion, his delegation would take pleasure in transmitting to the Sudanese Government the offers by Chile and Austria to act as hosts for the Conference on the law of the sea in 1973.

Mr. YASSEEN (Iraq) said that he considered it an honour to be one of the sponsors of draft resolution A/AC.138/L.11/Rev.1, which the representative of Kuwait had introduced so eloquently at the 84th meeting. That draft merely reflected existing positive law. Since the adoption of the Declaration of Principles by the General Assembly at its twenty-fifth session, the sea-bed must be considered as the common heritage of mankind, and it was no longer possible for a single State or private enterprise to explore or exploit it. It was true that, de jure, General Assembly resolutions had only recommendatory force, but, in the case in question, they had, de facto, clearly superseded the rule of customary law invoked by the champions of the freedom of the high seas. The principle laid down in paragraph 1 of General Assembly resolution 2749 (XXV) stated that "the sea-bed and ocean floor ... as well as the resources of the area, are the common heritage of mankind", and paragraph 3 stated that "no State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international régime to be established and the principles of this Declaration".

Earlier on the same day, the representatives of the United Kingdom (84th meeting) and the United States had once again upheld the principle of the freedom of the high seas. However, that principle was not a rule of natural law. It was merely a rule of customary law, and its force had never been more than permissive. The declaration of Principles which the General Assembly, representing the international community, had adopted without opposition had in fact annulled that rule of customary law by eliminating one of its constituent elements - namely, the opinio necessitatis, which was a psychological element. It was therefore perfectly justifiable torreaffirm the moratorium decreed in General Assembly resolution 2574 D (XXIV).

Mr. ZEGERS (Chile), said that the draft resolution introduced by the representative of Kuwait - and of which the Chilean delegation was one of the sponsors - was merely a political reaffirmation of the Declaration of Principles adopted by the General Assembly at its twenty-fifth session in resolution 2749 (XXV) and of the moratorium declared at the twenty-fourth session in resolution 2574 D (XXIV). He read out paragraphs 1, 2, 3, 4, 7 and 14 of the Declaration, which seemed to provide an unequivocal basis for the future law of the sea and which must obviously be complied with by all members of the international community. The political value of resolution 2574 D (XXIV), announcing the moratorium could not be questioned, particularly at a time when the very existence of the international machinery might be jeopardized and another régime, separate from that envisaged by the United Nations, might be established. Some delegations regarded the reaffirmation as premature, since the limits of national jurisdiction had not yet been defined, but the Committee had been requested by the General Assembly to prepare for a conference which would inter alia determine those limits on the basis of the preparatory work undertaken by the Committee. He regretted, in that connexion, that some delegations had been less than eager to participate in the drafting of articles for submission to the Conference.

With regard to the proposal to request the Secretary-General to prepare a study on the economic implications for the international régime of the limits established for national jurisdiction, the Chilean delegation noted, first, that the implications would depend on the powers given to the machinery; secondly, that the volume of sea-bed resources varied widely, which meant that it would be impossible to carry out a uniform study, and thirdly, that the Secretary-General would have to take into account all the views held on the width of the territorial waters and the continental shelf. In the circumstances, he regretted that his delegation could not support the proposal, which it regarded as utopian.

Mr. Kalonji-Tshikala (Zaire), Vice-Chairman, took the Chair.

Mr. KHLESTOV (Union of Soviet Socialist Republics) thanked the delegations of Chile and Austria, whose Governments had offered to act as hosts for the Conference on the law of the sea. He hoped that their proposals would be given due consideration.

His delegation took a realistic approach to the preparatory work for the Conference, and did not share the cautious optimism or tempered pessimism displayed by other delegations. There was no doubt that, at the Committee's fourth session, progress had been made in preparing for the Conference. However, in paragraph 6 of General Assembly resolution 2750 C (XXV), the Committee had been instructed not only to prepare a list of issues but also to prepare draft treaty articles and reports. It had to be admitted, however, that the proposals submitted so far were few in number and dealt only with some isolated issues. In order to speed up the Committee's work, a working group should be set up to consider the draft articles and working papers on fishing submitted by the Soviet Union (A/AC.138/SC.II/L.6), the United States of America (A/AC.138/SC.II/L.9), Kenya (A/AC.138/SC.II/L.10), Japan (A/AC.138/SC.II/L.12) and Australia and New Zealand (A/AC.138/SC.II/L.11).

However, the preparations for the Conference did not depend only on studies by a working group. Its success would be determined largely by the extent of agreement reached on basic issues concerning the law of the sea, and in the search for joint solutions. The list of subjects and issues included problems, such as the extent of the territorial sea, on which it was particularly important that delegations should reach

agreement. In that connexion, it was evident that the principle of the 12-mile limit was gaining ground, and he hoped that the opponents of that principle, who advocated a wider area, would in the end decide to support it, in view of the needs of navigation, overflight and other allied problems.

The question of the rights of coastal States beyond the limits of their territorial waters was still more difficult. It should be given careful study, since several States wanted to modify the principle of the freedom of the high seas and establish the right of coastal States to extend the limit of their jurisdiction, in respect of fishing rights and other economic activities, to a distance of 200 miles from their coasts. He wished to state in that connexion that the principle of the freedom of the high seas was founded on a centuries-old tradition. It had even been referred to in papers exchanged between Ivan the Terrible and Queen Elizabeth I of England. History afforded a number of examples of States which had sought to assert their hegemony over the high seas, even in recent times. Similar attempts were being made now, but States were invoking considerations of progress and equity to support their claims to exclusive fishing and economic exploitation rights in areas of up to 200 miles from their territory. But it was impossible to speak of progress, when the States which would benefit from such a provision amounted to no more than a third of the membership of the United Nations; equity consisted above all in making rational use of the resources of the sea, and in endeavouring not to harm fish stocks. Furthermore, the developing countries, which had not hitherto had adequate exploitation possibilities, should be given the right to reserve to themselves as much fish as they were able to catch. That was the essence of the question whether or not it was equitable for coastal States to arrogate to themselves exclusive fishing rights, and to impose a tax on other fishermen operating in their areas, on the grounds that the resources of the sea belonged to them. The situation was quite clear: while the resources existing in the territory of a State belonged to the people which had traditionally inhabited that territory, the resources of the high seas could be used by all countries. Consequently, delegations which were thinking of creating a new law of the sea should reflect carefully before submitting proposals on the issue of the establishment of fishing zones.

The only way of accelerating the work of the Committee was to find agreed solutions for the main problems, such as straits, the régime for the sea-bed, etc. It was equally important to submit draft articles or instruments. The main objective of the Conference on the law of the sea, as of all the other legal or political conferences which had preceded it, was to prepare a specific instrument and to formulate rules of international law acceptable to all States. In so doing, it was essential to bear in mind the interests of the 200 million inhabitants of the African continent and of the 250 million inhabitants of the Soviet Union.

With regard to the draft resolution submitted by the Kuwait delegation calling upon States to refrain from exploiting the resources of the sea-bed before the establishment of an international régime - a decision which would be tantamount to imposing a moratorium on the exploitation of the resources of the sea - he pointed out that it was a well-known principle of international law that, during treaty negotiations, States should abstain from any action contrary to the purposes of the treaty. That principle had been applied, for example, by the United Nations Conference on the Law of Treaties in 1969. However, the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor was concerned not only with the elaboration of a treaty on the exploitation of the resources of the sea, but with many other questions, such as the extension of

the territorial sea, or the extension of the fishing rights of coastal States beyond the limits of their territorial sea. On those matters, some States were attempting to change the present situation, mainly by extending their territorial waters and fishing zones beyond 12 miles. In the circumstances, the moratorium should apply to those claims as well. From the standpoint of international law, it was impossible to argue - as did the supporters of the draft resolution introduced by the representative of Kuwait - that the legal basis for a moratorium of that kind was to be found in General Assembly resolution 2749 (XXV) or in resolutions adopted by the United Nations Conference on Trade and Development at its third session, since those resolutions did not legally oblige States to establish or modify rules of international law.

In the absence of a moratorium on the extension of the territorial sea, it would be possible for certain States, by extending their rights, to benefit from the resources of the high seas hitherto used by all States, and that would obviously be contrary to the purpose of the moratorium on the exploitation of sea-bed resources. Logically, such exploitation should not be permitted in any form whatsoever. The Soviet delegation hoped that the sponsors of the draft resolution would take those points into account and would, by analogy with the provisions of the existing draft, call for a moratorium also on the extension of the territorial sea and fishing zones beyond 12 miles. On that condition, his delegation would be prepared to take a positive view of the draft resolution.

Mr. JEANNEL (France) said that his delegation was anxious for the work of the Committee to progress, so that the Conference on the law of the sea could be held as soon as possible. Various suggestions had been made with regard to the time-table for the preparatory work for the Conference, but the plain fact was, that the Committee had not yet completed its task. It was true that the lengthy discussions had made many delegations aware of the magnitude of the problems referred to the Committee, but the Committee itself had not really done what it was supposed to do. Sub-Committee II, in particular, had not yet established the list of subjects and issues. In the circumstances, therefore, it seemed strange to prolong the disucssion on the date of the Conference. It was for the General Assembly to assess the work of the Committee, and to fix the date of the Conference in the light of its findings.

It had been proposed that a preliminary meeting should in any case be held at the end of 1973 to elect the officers and adopt the rules of procedure for the Conference; but the French delegation was opposed a priori to that suggestion. A preliminary meeting might delay the preparatory work entrusted to the Committee, which might well be paralysed by the prospect of the Conference being held so soon, and might allow positions to crystallize, leaving it to the Conference to settle any disputes - in short, it might to some degree abandon the task which had been entrusted to it. The Conference would not then be a genuine conference at all, but merely a prolongation of the preparatory Committee. A conference should have a specific text to work on, like the 1958 United Nations Conference on the Law of the Sea, which had been planned with care and remarkable skill for 10 years. Hence, it seemed unlikely that the Committee could in one year provide the Conference with an adequate working basis to ensure its success.

Lastly, he said that the draft resolution introduced by Kuwait at the 84th meeting raised some legal points on which his delegation would comment in detail after it had studied the text. It felt compelled to point out immediately, however, that the Committee should concentrate on the tasks specified in its terms of reference - in other words, it should prepare texts for the Conference and not adopt resolutions or recommend resolutions for adoption by the General Assembly.

Mr. VALDIVIESO (Peru) said he wished to express his delegation's views concerning the request for a study on the different economic implications on the various proposals on the limits of the international sea-bed area. He had been pleased to hear the Chilean representative's observations on the subject. The request was, in fact, directed against the interests of those countries which were demanding an extension of national jurisdiction, both over the sea-bed and the superjacent waters. His delegation was suprised to note that a large number of developing countries had allowed themselves to be deceived by an initiative which was obviously designed to divide them. He repeated what he had said at the 84th meeting, namely, that if the sponsors of the request maintained it, his delegation would request the Secretary-General to prepare a report on the consequences - for coastal States - of the setting of narrow limits on national jurisdiction, whether over the surface of the sea or the sea-bed. The 11-Power request for the study was in fact a delaying tactic designed to hold up the work of the Committee and, consequently, the convening of the Conference on the law of the sea.

His delegation wished that all delegations could participate in the deliberations of Sub-Committee I and its Working Group, so that they could gain a clear idea of the true objectives pursued by certain Powers. It could only predict that, under the terms on which the establishment of the international authority was at present proposed, the countries sponsoring document A/AC.138/81 would pick up the crumbs of what, in the future, might be a real source of income for the developing countries. Some delegations considered it utopian to believe that the international sea-bed authority could function and produce results. But recent technological progress gave grounds for believing that, in the relatively near future, the sea-bed could be exploited for the benefit of all mankind, and the developing countries must ensure that their interests and those of the international community were not relegated to the background.

In any case, an economic study of the type called for would undoubtedly be useless, because its conclusions were bound to be inaccurate. It would, in fact, have to deal with the economic implications of technical progress which, by definition, was dynamic and not static. The Peruvian delegation believed that the Committee should adhere strictly to its terms of reference, namely, to establish an international régime as soon as possible.

His delegation wished to ask the USSR delegation whether it considered it fair that the fishing fleets of four Powers which came all the way to the coast of Peru should be the only fleets to benefit from the expolitation of the resources of the sea in that area. Peru would have liked to develop its fish canning industry, but certain of the Powers in question were denying it access to their markets by imposing prohibitive tariffs. Did the use of such a "deterrent" seem fair to the USSR delegation, when it was well known, for example, that during the past 15 years 75 fish-canning factories in Peru had been obliged to close down? The great Powers' idea of the freedom of the seas enabled them to exploit the resources of the seas of the developing countries, thereby creating serious social and economic problems in those countries.

His delegation fully shared the opinion expressed by the French delegation concerning the date for the Conference on the law of the sea, and endorsed its observations on the Committee's terms of reference.

Mr. OGISO (Japan) expressed regret that the possibilities afforded by the exploitation of the resources of the sea-bed for the betterment of living conditions throughout the world were not viewed with more optimism. It was true that the economic implications of sea-bed mineral production had to be carefully assessed, but the prime objective of that exercise was, as stated in the report of the Secretary-General entitled "Additional notes on the possible economic implications of mineral production from the international sea-bed area" (see A/AC.138/73, para. 51), to generate the maximum revenue for the international machinery and actively promote the expansion of the world resource base.

When the General Assembly had adopted resolution 2574 D (XXIV) in 1969, it might have been expected that the international régime and machinery relating to the sea-bed beyond the limits of national jurisdiction would be established within five years. That expectation could still be fulfilled if the Conference on the law of the sea began its work in 1973. In the opinion of his delegation, it should be possible immediately to apply the proposed régime and machinery to the resources of the sea-bed and ocean floor, in order that the concept of the common heritage of mankind might become a reality at the earliest possible date. That would mean that the benefits to be reaped from the exploitation of sea-bed minerals could be put at the disposal of the international community, and the developing countries in particular, shortly after the international machinery had begun functioning.

In that connexion, experimental activities connected with the eventual exploitation of sea-bed mineral resources should be continued and even encouraged, as his delegation had already stated in Sub-Committee I. Unencumbered exploratory activities were required for the development of an adequate technology in time for the establishment of the international machinery. It was, indeed, difficult to make a clear distinction between experiment and exploration, for experimental activities at an advanced stage inevitably involved exploration. Enterprises must have their own detailed survey of the ocean floor, and the assay of its mineral contents, before making the necessary investments.

Resolution 2574 D (XXIV), in which the General Assembly declared that States and persons were bound to refrain from all activities of exploitation, had been adopted in spite of strong opposition by a large number of States, including Japan. Draft resolution A/AC.138/L.11/Rev.1, now before the Committee, went much further, since it called upon all States "to refrain from engaging directly or through their nationals in any operations aimed at the exploitation of the area before the establishment of the international régime". His delegation was seriously concerned at the tendency on the part of some delegations to impose further restrictions on activities in the sea-bed area - activities which, in its opinion, were essential to enable the international machinery to start operating efficiently.

The draft resolution before the Committee was in that respect too sweeping, and might discourage private enterprises from investing in sea-bed exploration activities and the development of new technology. It might, therefore, harm the interests of the international community, and his delegation would be obliged to oppose it.

Mr. MESLOUB (Algeria), speaking as a sponsor of the draft resolution introduced by the delegation of Kuwait at the 84th meeting, said that it was based on the Declaration of Principles which the General Assembly had adopted by a large majority. The adoption of the Declaration carried with it the obligation for States to suspend any activity beyond the area of their national jurisdiction. His delegation supported the arguments advanced by the delegations of Iraq, Chile and Peru, in particular, in favour of the adoption of the draft resolution. In adopting it, the Committee would not be departing from its terms of reference but would, in fact, be performing a duty which followed naturally from them.

The meeting rose at 6.10 p.m.

SUMMARY RECORD OF THE EIGHTY-SIXTH MEETING

held on Thursday, 17 August 1972, at 10.55 a.m.

Chairman: Mr. AMERASINGHE Sri Lanka

GENERAL DEBATE (concluded)

Mr. NATORF (Poland) said that a Conference of Ministers of Fisheries of the socialist countries, convened in Moscow on 6 and 7 July 1972, had adopted a Declaration on Principles of Rational Exploitation of the Living Resources of the Seas and Oceans in the Common Interests of All Peoples of the World. He read out a summary of the Declaration, which had been signed by the Ministers of Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, the Union of Soviet Socialist Republics and his own country, and said that, since its content presented considerable interest as the formulation of the position of those countries on questions studied by the Committee, the Declaration had been submitted to the Secretariat for circulation as a Committee document.31/

Mr. MENDOZA (Philippines) said that, in his delegation's opinion, although the Committee had far from completed the preparatory work for the forthcoming Conference, it had made substantial progress. Indeed, there were grounds for hope that, with two more sessions in 1973, an adequate working basis could be provided for the Conference. Great efforts had been made to overcome the formidable difficulty of reconciling the various national interests that had to be protected in the context of a world community striving not only for order in the oceans but for the survival and betterment of mankind. Members of the Committee had shown a willingness to accommodate and reconcile each other's views and, although the enthusiasm with which certain opinions were pressed might suggest insurmountable obstinacy, by and large there was an indication of understanding for the particular concerns of others. The Philippine delegation therefore urged the Committee to continue its endeavours to provide a workable foundation for the Conference.

Whatever the ultimate result of the Committee's work might be, it could already be said that significant and valuable contributions had been made to international understanding, the progressive development of international law and world peace. The illuminating statements that had been made, not only on the existing and future law of the sea, but on the economic, political, geographical and other considerations to be taken into account, the draft articles and working papers before the Committee, the negotiations entered into and the declarations by groups of States all constituted factors liable to promote the orderly and beneficial use of the oceans and their resources. Irrespective of whether or not a formal convention ultimately emerged, the future conduct of nations with regard to the oceans and their resources would be largely governed by the results of the Committee's deliberations. The law of the sea of the nineteenth century was now inadequate and had only historical value for many; the law of the sea of the 1950s no longer met the needs of the 1970s; and before the present decade was over, further changes would probably be necessary.

New rules were bound to emerge from the Committee's work, if not in the form of a treaty or convention, then by an upheaval resulting from such factors as technological advances, pollution, the imbalance in the economic wealth and needs of nations and the

31/ The text of the Declaration was subsequently circulated under the symbol A/AC.138/85.

general trend of events, hastened by the many considerations expressed in the Committee. It was currently believed that clarity and precision in the rules governing nations were as vital as the need for those rules to be widely recognized as genuinely meeting the needs of States. Nevertheless, an even more beneficial result of the Committee's work might be the very process that had set in motion the re-examination of traditional rules and the formulation of new concepts within the context of the existing and anticipated needs of States and the living resources of the seas and the wealth of the ocean floor.

Mr. CHAO (Singapore) said that his delegation, as one of the sponsors of the request for a study on the different economic implications of the various proposals on the limits of the international sea-bed area (A/AC.138/81), was surprised that there had been opposition to that proposal, when its sole purpose was to obtain objective facts. The grounds on which it had been opposed were, first, that the study was impossible to undertake, secondly, that it would be prejudicial, thirdly, that it would delay the Committee's work, fourthly, that it would impose a heavy burden on the United Nations budget and lastly, that such a request fell outside the Committee's terms of reference.

With regard to the first objection, it should be borne in mind that in 1966, the Economic and Social Council, in its resolution 1112 (XL) entitled "Non-agricultural resources", had asked the Secretary-General to prepare a study on the resources of the sea beyond the continental shelf; and the Secretary-General had submitted a report on on that subject to the Council.32/ In 1968, the Council, in its resolution 1380 (XLV) entitled "Resources of the sea", had requested the Secretary-General to submit regular reports to the Council on further developments and information available on the resources of the sea. Moreover, the Secretary-General was currently preparing a report for the next Council session on the possible resources available on the sea-bed and the subsoil thereof, with indications of their depths and distances from the coast. In view of those developments, the proposal in document A/AC.138/81 could be regarded merely as a request that existing studies should be related to the various limits suggested for national jurisdiction; if such studies had been possible in 1966 and 1968, there was no reason why they should no longer be possible in 1972. Furthermore, the Secretariat was already conducting a study on the impact of mineral production, on which it had already produced two reports, one entitled "Possible impact of sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment"33/ and the other entitled "Additional notes on the possible economic implications of mineral production from the international sea-bed area" (A/AC.138/73); the latter study was certainly much more difficult than the one the sponsors of document A/AC.138/81 proposed, which was really concerned with a particular aspect of the study on the implications of mineral production.

As far as the second objection was concerned, his delegation failed to see how a study of objective facts could be prejudicial. All limits of jurisdiction were obviously interrelated and the sponsors of the request for the study considered that, unless all the known information was made available to the Committee and the Conference, the various limits could not be seen in their true perspective. In referring to the concept of the common heritage of mankind, members of the Committee were not using academic terms, but were speaking of hard economics and of the benefits which would

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32/ E/4449 and Add.1 and 2.

33/ A/AC.138/36.

accrue to the peoples of the world. The sponsors considered that the Committee needed the assistance of the Secretariat and had accordingly requested that assistance; they wanted to decide on the vitally important question of limits on the basis of objectives facts and information. Moreover, the delegations of developing countries would be most handicapped by the absence of such a study.

There seemed to be no reason to dwell on the third objection, since a study carried out by the Secretary-General concurrently with the Committee's sessions could hardly hinder its work.

The fourth objection was also groundless, since the Secretariat was already conducting a study for the Economic and Social Council. Even if the proposed study did involve significant expenditure, its importance more than justified it. In any case, budgetary considerations should not be used as an excuse; the fact that the Committee's March session had been held in New York, thanks to the fforts of his own delegation, had saved the United Nations something like $200,000; those who were concerned about the United Nations budget should urge at the twenty-seventh session of the General Assembly that all the Committee's sessions in 1973 should be held at United Nations Headquarters.

Lastly, the objection that the request fell outside the terms of reference of the Committee was extremely tenuous in view of paragraph 11 of General Assembly resolution 2750 C (XXV), whereby the Secretary General was requested to render the Committee all the assistance it might require in legal, economic, technical and scientific matters.

One delegation had pointed out that there might be other criteria for limits than those listed in the request for the study. Those criteria were the ones proposed orally or in written form during the Committee's deliberations; it was, however, stated in the penultimate paragraph of the explanatory statement that the list was not necessarily exhaustive and that the sponsors would be prepared to accept any suggested additions.

Finally, it had been suggested that the study should extend to the economic implications of the area under national jurisdiction, based on each criterion listed in the document. Although his delegation agreed with that suggestion, the sponsors had omitted reference to that aspect in order to meet the views expressed by certain delegations.

Mr. CHEN (China), commenting on the time and venue of the forthcoming Conference, said that, although a certain amount of progress had been made, thanks to the positive proposals and reasonable recommendations made by developing and small and medium-sized countries, further progress had been held up by the attitude of the super-Powers, which had clung to their position of maritime hegemony. Preparations for the Conference were far from being complete, and it would be essential to hold two more sessions of the Committee for that purpose. His delegation agreed with those who recommended that the exact dates of the Conference should be fixed in the light of progress made with the preparatory work in 1973. China appreciated the offers by Austria and Chile to act as hosts of the Conference; his delegation agreed with those who considered that the Conference should be held in a developing country. It had been suggested that it might be held in stages in different countries and a decision on that suggestion could be taken in due course by the General Assembly.

Turning to the 13-Power draft resolution (A/AC.138/L.11/Rev.1), of which China was a sponsor, he expressed his delegation's opinion that, pending the establishment of an international régime for the sea-bed and the ocean floor beyond national jurisdiction, activities designed for the commercial exploitation of the resources of the area should be discontinued. It was well known that, while the Committee was trying to formulate draft articles on the international régime, a number of States had already begun to exploit the resources of the area, in an attempt to create a fait accomplie and thus to nullify the Committee's efforts. China believed that General Assembly resolution 2574 D (XXIV) on that subject should be respected by all States. The assertion that any resolution providing for a moratorium would be inconsistent with "existing international law" was merely an attempt to continue to misuse the idea of the freedom of the high seas with a view to maintaining maritime hegemony. The argument that the area in which activities should be stopped was yet to be delimited could not justify countries in conducting exploitation activities at will in the area beyond their national jurisdiction. Moreover, those who alleged that, if exploitation activities were to be stopped, the same should apply to expansion of territorial seas and limits of national jurisdiction were confusing two issues of different kinds; the delimitation by a State of its territorial seas or of the scope of its national jurisdiction fell within the sovereign rights of that State, whereas conducting exploitation activities on the sea-bed and the ocean floor beyond national jurisdiction before the establishment of the international régime ran counter to the concept of the common heritage of mankind.

Finally, he observed that the USSR representative in his statement at the 83rd meeting, had alleged, without any foundation whatsoever, that the Chinese delegation was distorting the facts concerning the Soviet Union, drawing the Committee into political problems and trying to make the Committee choose a course which was contributing little to the success of its work. The USSR representative had been unable to substantiate the points with regard to which the Chinese delegation was said to have distorted the fact concerning the Soviet Union; indeed, the Chinese delegation had been obliged to express its views because of unwarranted assertions by the USSR delegation. Moreover, the records of the session clearly showed who was trying to make the Committee choose a course which was contributing little to the success of its work; it was well known who had tried to deny that the resources of the sea-bed and ocean floor beyond national jurisdiction were the common heritage of mankind and even to oppose the use of such terms as "the limits of national jurisdiction" and "the international sea-bed area"; it was also well known who had stubbornly demanded the right of "free transit" through straits within the territorial sea of coastal States and had even gone so far as to assert that "free transit" through straits by warships helped to promote international trade and did not threaten the security of coastal States. Those statements spoke for themselves.

Mr. KHLESTOV (Union of Soviet Socialist Republics), speaking in exercise of his right of reply, pointed out that his delegation had already stated at a previous meeting that if the Chinese delegation, as a result of its statements, persisted in trying to divert the work of the Committee towards a discussion of the policies of individual States, it would not be difficult to imagine the results. His delegation could, if it so decided, comment on and criticize the policies pursued by the Chinese Government. The task of the Committee, however, was to find solutions which took account of the various interests of States, and it was to be hoped that the Chinese delegation would direct its efforts to that end, which was the only means of ensuring the success of the Committee's work.

His delegation had already stated that the Chinese delegation had distorted the facts in its comments on the policies of the Government of the Soviet Union. The statement just made by the Chinese delegation was another case in point. His delegation would not, however, refute the Chinese delegation's accusations, since his Government's policy, as was well known, was one of peace. Any attempt to denigrate that policy was thus doomed to failure. His delegation appealed to the Chinese delegation to make a constructive contribution to the work of the Committee.

REPORT OF SUB-COMMITTEE I (A/AC.138/82)

Mr. MOTT (Australia), Rapporteur of Sub-Committee I, introduced the report of Sub-Committee I (A/AC.138/82). It would be apparent from the report that the Sub-Committee had made considerable progress during 1972. It had concluded the preliminary consideration of the item assigned to it - the question of the international sea-bed régime and machinery - and on the question of the régime, it had considered specific texts. At its first 1972 session, the Sub-Committee had established a Working Group on the international régime. During the current session the Group had worked hard and well, and the section of the report relating to its activities (ibid., section B) reflected heartening progress.

It should be noted that, after the Sub-Committee's debate on item 2 of the programme of work (Status, scope, functions and powers of the international machinery), it had been decided to entrust responsibility for consideration of that item to the Working Group established to consider item 1 (Status, scope and basic provisions of the régime based on the Declaration of Principles). That decision was explained in paragraphs 93-96 of the report. He drew attention to paragraph 70, which contained a recommendation that the main Committee should annex to its report the report of the Secretary-General entitled "Additional notes on the possible economic implications of mineral production from the international sea-bed area" (A/AC.138/73).

During the consideration of the report, many delegations had raised points relating to the translation of the text into languages other than English. He regretted that it had not yet been possible to act on their observations because of lack of time, but assured interested delegations that appropriate action would be taken before the publication of the report of Sub-Committee I, together with the report of the main Committee. In paragraph 2, the figure "15" should be inserted before the words "August 1972", and the figure "14" before the word "meetings" at the end of the second sentence; in paragraph 3, "61st" should be inserted before the word "meeting".

During the latter part of the current session, the Sub-Committee had been handicapped by the absence of its Chairman, Mr. Engo, because of ill-health. On behalf of the Sub-Committee, he wished Mr. Engo a speedy recovery.

Mr. de SOTO (Peru), referring to paragraph 39 in the Spanish text of the report, drew attention to the omission of the word "las" before the word "características" in the third sentence of the second sub-paragraph.

The CHAIRMAN said that the text would be amended accordingly.

The report of Sub-Committee I (A/AC.138/82) was adopted as part of the report of the Committee.

ADOPTION OF THE REPORT OF THE COMMITTEE (A/AC.138/L.12 and Add.1)

Introduction (A/AC.138/L.12)

Mr. VELLA (Malta), Rapporteur, drew attention to the introduction (A/AC.138/L.12) to the draft report of the Committee. The draft report covered the proceedings of the main Committee during its two sessions in 1972. Although the work of the main Committee and that of the Sub-Committees were interrelated, the report of the main Committee as such would not cover the work done by its subsidiary bodies. The reports of the three Sub-Committees would, however, form an integral part of the report of the main Committee.

Apart from the introduction, which was factual, the draft report would consist of sections relating to the 13-Power draft resolution (A/AC.138/L.11/Rev.1), the Committee's discussion concerning the Declaration of Santo Domingo (A/AC.138/80) and the draft articles submitted by the Kenyan delegation (A/AC.138/SC.II/L.10), the request for a study by the Secretary-General (A/AC.138/81), the observations concerning preparations for a Conference on the law of the sea and the timing of such a Conference, and the offers to organize the Conference.

Mr. CHEN (China), noting that the name "Khmer Republic" was used in paragraph 9 of the introduction to the draft report, said his Government maintained that the National Union Government of Cambodia was the only legal government of that country. The so-called Khmer Republic and its representatives had no right to participate in meetings of the Committee. He requested that a foot-note stating his delegation's position should be included under paragraph 9.

The CHAIRMAN pointed out that membership of the United Nations did not imply the mutual recognition of Members. The General Assembly, in paragraph 10 of its resolution 2750 C (XXV), had decided to invite other Member States which were not appointed to the Committee to participate as observers and to be heard on specific points, and the Khmer Republic had responded to that invitation. The Committee had never had any arrangement for the presentation of credentials, and the question of the representation of the Khmer Republic was outside its competence. Its report should contain only matters of substance, and he could not agree to the inclusion of a foot-note stating the Chinese delegation's position. That position would, however, be duly reflected in the summary record of the meeting.

Mr. PERIŠIĆ (Yugoslavia) supported the observations made by the Chinese representative. The position of the Yugoslav Government on the question of the legal representation of Cambodia was well known. His delegation would, however, accept the Chairman's ruling on the point.

Mr. MIRCEA TUDOR (Romania) said that the representatives of the régime in Phnom Penh had no right to participate in the proceedings of the Committee. The only true representative of Cambodia was the Royal Government of Cambodia. Those observations also related to the reports of the Sub-Committees.

The introduction to the draft report of the Committee (A/AC.138/L.12) was adopted.

The meeting rose at 12.10 p.m.

SUMMARY RECORD OF THE EIGHTY-SEVENTH MEETING

held on Friday, 18 August 1972, at 10.50 a.m.

Chairman: Mr. AMERASINGHE Sri Lanka

STATEMENT BY THE CHAIRMAN OF SUB-COMMITTEE I

The CHAIRMAN said that he was happy to inform the Committee that Mr. Engo, the Chairman of Sub-Committee I, had been able to leave hospital and to attend the meeting. He welcomed him back to the Committee.

Mr. ENGO (Cameroon) expressed gratitude to his colleagues on the Committee and the secretariat for all the sympathy and kindness they had shown him, and said that while in hospital he had given a great deal of thought to the work of the Committee and its Sub-Committees. At its present session, the Committee had made real progress towards international agreement on the future law of the sea, but the period which would elapse before the Conference on the law of the sea met should be used to reappraise the situation. What was essential for the future was an orderly international community, since that alone would provide a reliable basis for the survival of man. He felt that the time had come to cease talking in general terms of the concept of the common heritage of mankind, since with over-use that expression would lose its significance. He appealed to all delegations to continue to make every effort to codify the law of the sea and thus prevent the division of the international community into blocs holding opposing views and acting individually to advance their interests.

He had noted a new spirit in the Committee at its present session and welcomed the devotion and zeal with which all delegations had worked. That work would, however, be more productive if delegations closed their ranks and dedicated themselves to the common cause of peace. It was essential to develop a common resolve, otherwise the international community might conclude that the Committee's aim was to create new problems, for it was difficult for those outside the Committee to appreciate the magnitude of the problems involved in creating a new law of the sea.

He paid a warm tribute to the Chairman of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and thanked the Bureau of Sub-Committee I and the Chairman of its Working Group for their excellent co-operation.

Mr. IMRU (Ethiopia), speaking on behalf of the African Group, Mr. FONSECA TRUQUE (Colombia), speaking on behalf of the Latin American Group, Mr. YANGO (Philippines), speaking on behalf of the Asian Group, Miss MARTINE SANE (France), speaking on behalf of the Western Group, Mr. ROMANOV (Union of Soviet Socialist Republics), speaking on behalf of the socialist countries of Eastern Europe, Mr. STEVENSON (United States of America) and the CHAIRMAN expressed their gratification at seeing Mr. Engo among them once again, wished him a speedy and complete recovery and thanked him for his devotion to the work of the Committee.

REPORT OF SUB-COMMITTEE III (A/AC.138/84)

Mr. IGUCHI (Japan), Rapporteur of Sub-Committee III, introducing the Sub-Committee's report (A/AC.138/84), said that it made no attempt to quantify the views expressed, because he had felt that it would be misleading to do so, since many of the statements made were of a preliminary nature, while others were rather detailed in their approach. He indicated that the Canadian working paper on the preservation of the marine environment (A/AC.138/SC.III/L.26), which had just been circulated and to which reference would be made in a foot-note to paragraph 7, would be annexed to the report.

The CHAIRMAN said that, if he heard no objections, he would take it that the Committee agreed to the inclusion of a foot-note referring to the Canadian working paper.

It was so agreed.

Mr. KATEKA (United Republic of Tanzania) noted that the word "compromise" was used twice in paragraph 77. If it referred to the merger of the Canadian and Norwegian draft resolution submitted in 1971 34/ with the USSR draft resolution (A/AC.138/SC.III/L.19), he had no objection to its use, but he was afraid that it might suggest that a compromise was reached by the Sub-Committee, and in that case he would like the word "compromise" to be deleted.

Mr. IGUCHI (Japan), Rapporteur of Sub-Committee III, said he saw no objection to the deletion of the word "compromise", since the text contained in document A/AC.138/SC.III/L.25 could be considered as a draft resolution in its own right.

Mr. BEESLEY (Canada) said that he had consulted the representative of Norway, but had not had time to consult the representative of the Soviet Union. He and the representative of Norway could agree to the deletion of the word "compromise". He would like it to be replaced by a word such as "single" to indicate that two texts had been merged, but would not insist on it.

Sir Roger JACKLING (United Kingdom) suggested the word "amalgamated".

Mr. ROMANOV (Union of Soviet Socialist Republics) said that, in his view, the word which most appropriately reflected what had occurred was "compromise", but he was quite prepared to take into account the views of the Rapporteur and the other delegations concerned.

Mr. IGUCHI (Japan), Rapporteur of Sub-Committee III, suggested that the word "amalgamated" should be used in the second sentence; however, he did not think it necessary to insert any adjective before the word "text" in the third sentence.

34/ A/AC.138/SC.III/L.5 and Add.1.

The CHAIRMAN said that, if he heard no objections, he would take it that the Committee agreed to the amendment proposed by the Rapporteur of Sub-Committee III.

It was so decided.

Miss MARTIN SANE (France) said that the last sentence of paragraph 77 reflected a view expressed by her delegation and she would like the words "on marine pollution" to be deleted.

The French amendment was adopted.

The report of Sub-Committee III (A/AC.138/34), as amended, was adopted as part of the Commitee's report.

The CHAIRMAN said that that report would become part IV of the Committee's report.

ADOPTION OF THE REPORT OF THE COMMITTEE (continued) (A/AC.138/L.12 and Add.1)

Part I (A/AC.138/L.12/Add.1)

Mr. VELLA (Malta), Rapporteur, said that his appeal for further consultations concerning the Committee's draft report had met with a satisfactory response. In submitting part I (A/AC.138/L.12/Add.1), he expressed the hope that the text would now be widely acceptable to the Committee.

Paragraphs 19-23

The CHAIRMAN suggested that paragraphs 19 to 23 should be dealt with together.

It was so agreed.

Paragraphs 19 to 23 were adopted.

Paragraph 24

The CHAIRMAN said that it had been suggested that the following sentence be added at the end of the paragraph: "The Committee decided to inform the Economic and Social Council that time did not permit of the question being considered during its second session in July/August 1972, but that it would be taken up for consideration by the Committee at the first available opportunity".

That proposal was adopted.

Paragraph 24, as amended, was adopted.

Paragraph 25

Paragraph 25 was adopted.

Paragraph 26

Mr. YANKOV (Bulgaria) said that, although he would make no formal objection at that stage, an eight-week session in the summer of 1973 seemed to his delegation to be too long, in view of the financial implications and the delegation manpower that would be required.

Mr. ROMANOV (Union of Soviet Socialist Republics) supported that view and said he hoped that at future Committee sessions less time would be wasted; there should be four meetings a day and an effort should be made to begin proceedings at the appointed time.

Paragraph 26 was adopted.

Paragraph 27

Paragraph 27 was adopted.

Paragraph 28

Mr. SHEN Wei-liang (China) suggested that in the third sentence of the paragraph, from the word "aggression", the text should read as follows: "aggression and anti-aggression, between plunder and anti-plunder, and between hegemony and anti-hegemony; and that the equality of States, regardless of their size, should be a basic principle in settling questions concerning rights over the seas and oceans. Certain ...".

The Chinese amendment was adopted.

Mr. GAUCI (Malta) suggested that the words "It may be noted that" at the beginning of the third sentence should be deleted.

The Maltese amendment was adopted.

Paragraph 28, as amended, was adopted.

Mr. NANDAN (Fiji) proposed the insertion after paragraph 28 of a new paragraph, which would read:

"Another new member drew attention to the special needs and interests of archipelagic States and outlined the principles which should govern the régime within the archipelagic waters, including the provision of innocent passage through designated sea lanes for international navigation through these waters".

The amendment of Fiji was adopted.

Paragraph 29 and 30

Mr. GAUCI (Malta) suggested that the two paragraphs should be merged.

The proposal was adopted.

Mr. AL-SABAH (Kuwait) proposed that the text of the draft resolution referred to in paragraph 29 (the new paragraph 30) (A/AC.138/L.11/Rev.1) should be annexed to the report.

That proposal was adopted.

Paragraphs 29 and 30 (the new paragraph 30) were adopted.

Paragraph 31

Mr. ZEGERS (Chile) suggested that a new sentence should be inserted after the first sentence, to read: "Various facts regarding economic activities in the extra-jurisdictional area were cited, activities which violated the principle of the 'common heritage'".

Mr. GAUCI (Malta) suggested that the last phrase of the new sentence should read: "activities which were considered to be in violation of the principle of the 'common heritage'".

Mr. ZEGERS (Chile) accepted that sub-amendment.

The revised Chilean amendment was adopted.

Mr. CASTAÑEDA (Mexico) suggested that the words "or, in general, rules on the exploitation of the area and its resources" should be inserted after the words "activities in the area" in the second sentence (which had now become the third sentence) of paragraph 31.

The Mexican amendment was adopted.

Mr. CASTAÑEDA (Mexico) suggested that the words "and reiterated in the Declaration of Principles" should be inserted after the words "resolution 2574 (XXIV)" in the fourth (now the fifth) sentence.

Sir Roger JACKLING (United Kingdom) suggested that the Mexican amendment should be altered to read "and considered to have been reiterated by the Declaration of Principles".

Mr. CASTAÑEDA (Mexico) accepted that suggestion.

The revised Mexican amendment was adopted.

Mr. STEVENSON (United States of America) suggested that the phrase "which no one disputed" in the same sentence should be changed to "principles which no one disputed".

The United States amendment was adopted.

Mr. GAUCI (Malta) suggested that the words "and the ocean floor" should be added after "area of the sea-bed" at the end of the same sentence.

The Maltese amendment was adopted.

Mr. ZEGERS (Chile) suggested that a new sentence should be added at the end of the paragraph, reading: "Similarly, the view was expressed that there had never existed international custom with regard to the exploitation of the area and its resources".

The Chilean amendment was adopted.

Paragraph 31, as amended, was adopted.

Paragraph 32

Miss MARTIN SANE (France) proposed that the following sentence should be added after the first sentence: "It was pointed out that no commercial exploitation was at present being undertaken".

The French amendment was adopted.

Mr. FAYACHE (Tunisia) drew attention to an error: the last sentence, as it appeared in the English text, had been omitted from the French text.

The CHAIRMAN said that the omission would be rectified.

Paragraph 32, as amended, was adopted.

Paragraph 33

Paragraph 33 was adopted.

Paragraph 34

Mr. VELLA (Malta), Rapporteur, announced that, as a result of consultations among a number of delegations, the words in the fifth sentence of the paragraph (see A/AC.138/L.2/Add.1, p.6, line 12) "at the Santo Domingo Conference a call had been made for more time to study the concept" should be replaced by the words "in the view of one delegation, more time was needed to reflect on the implications".

It was so decided.

Mr. ROMANOV (Union of Soviet Socialist Republics) drew attention to an apparent error in the fifth sentence (ibid., p.6, line 20); he assumed that the word "fishing" should be inserted between the words "distant" and "States".

The CHAIRMAN said that the USSR representative was right in his assumption.

Mr. AGUILAR (Venezuela) said that, in the opinion of his delegation, the paragraph was too long and should be divided into separate paragraphs. The present text was confusing because opposing views were expressed on different subjects without any apparent division between them. He proposed that in the fourth sentence (ibid., p.5, line 29) the words "it was considered" should be inserted before the words "that the basic elements" and that that amendment should constitute the start of a new paragraph

relating to the Kenyan draft articles. He proposed that at the beginning of the fifth sentence the words "On the other hand" should be inserted before the words "other points were" and that that amendment, too, should form the start of a new paragraph. In the same sentence, the word "criteria" in the last line of page 6, should be in the singular and the words "in regard to the delimitation of" in the first line of page 7 should be replaced by the word "on". There had been no question of delimiting the continental shelf in the 1958 Convention on the Continental Shelf.

Mr. NJENGA (Kenya) proposed that the part of the fourth sentence relating to the Declaration of Santo Domingo should constitute a separate paragraph.

Mr. PARDO (Malta) supported the proposals made by the Venezuelan and Kenyan representatives. The punctuation of the fourth sentence was extraordinary and should be improved; he proposed in particular that the reference to the Yaoundé Seminar (ibid., p.5, line 16) should mark the start of a new paragraph and that an appropriate introductory phrase should be inserted.

Mr. NJENGA (Kenya) supported the observations made by the Maltese representative. He proposed that in the second sentence of paragraph 34 the document symbol "A/AC.138/SC.II/L.10" should be inserted in parentheses after the word "Kenya". He also proposed that in the last line on page 5 and the first on page 6 the words "with regard to the resources of the economic zone" should be replaced by the words "referred to jurisdiction and sovereignty over the resources of the zone and".

The Kenyan amendments were adopted.

Mr. de la GUARDIA (Argentina) supported the observations made by the Venezuelan representative. In particular, he proposed that the last sentence of paragraph 34 should constitute a separate paragraph.

Mr. BRAZIL (Australia) supported the Argentine representative's proposal.

The CHAIRMAN suggested that interested delegations should hold consultations with the Rapporteur concerning the division of paragraph 34 into separate paragraphs and the incorporation of the various amendments which had been proposed.

It was so agreed.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE EIGHTY-EIGHTH MEETING

held on Friday, 18 August 1972, at 4.45 p.m.

Chairman: Mr. AMERASINGHE Sri Lanka

REPORT OF SUB-COMMITTEE II (A/AC.138/83)

Mr. ABDEL-HAMID (Egypt), Rapporteur of Sub-Committee II, said that, as the Chairman of the Sub-Committee had already left Geneva, he would himself introduce the Sub-Committee's report (A/AC.138/83). He was glad to say that the list of subjects and issues had been prepared in a manner which established an equitable balance between the views of the different delegations, and had been unanimously adopted. The agreement reached on the list was due to the goodwill displayed by all groups and delegations. He thanked the members of the Sub-Committee for their co-operation, and the members of the secretariat for the assistance they had provided.

In paragraph 37 of the report, the word "general" should be inserted before the words "international agreements" and the word "thereby" in the second sentence of paragraph 48 should be replaced by the word "hereby".

It was so agreed.

The report of Sub-Committee II (A/AC.138/83), as amended, was adopted as part of the report of the Committee.

ADOPTION OF THE REPORT OF THE COMMITTEE (continued) (A/AC.138/L.12 and Add.1)

Part I (continued) (A/AC.138/L.12/Add.1)

Paragraph 34

Following an exchange of views between a number of delegations, the CHAIRMAN suggested that the consideration of paragraph 34 and the new arrangement of its contents be deferred until the Rapporteur had circulated a new text.

It was so decided.

Paragraph 35

Mr. BOS (Netherlands) said that he would like to be sure that the procedure adopted in the case of paragraph 29 (87th meeting) - namely, that the text of the proposals mentioned would be annexed to the report - would also be followed in the case of paragraph 35.

The CHAIRMAN confirmed that that would be so.

Paragraph 35 was adopted.

Paragraph 36

Paragraph 36 was adopted.

Mr. NJENGA (Kenya) thought that paragraphs 37 and 38 should be considered together.

It was so decided.

Paragraphs 37 and 38

Mr. NJENGA (Kenya) said that the important Declaration of Moscow (A/AC.138/85), the English text of which had just been circulated, had unfortunately not been placed before the Committee until the 86th meeting, when the Committee was on the point of finishing its work. Consequently, delegations had not had time to study the Declaration properly and still less to express their views on it. His delegation therefore felt that paragraph 38 of the report, in its present form, did not give a fair and balanced picture of the discussion, during which no comments of any kind, either favourable or unfavourable, had been made on the Moscow Declaration, which had simply been placed before the Committee. In his delegation's opinion therefore, paragraph 38 should be deleted altogether, and a sentence added to paragraph 37 stating that the text of the Declaration was annexed to the report; that would be the best way of reflecting the actual situation. If, however, the Committee wished to retain paragraph 38, it should be explained that the document had been introduced at the last minute and that delegations had not had time to express their views on it.

The CHAIRMAN thought that, in view of the importance of the Declaration of Moscow, it should be referred to in the main body of the report and not merely annexed to it. However, the Committee might well adopt the second suggestion made by the delegation of Kenya, and add a sentence on the following lines at the end of paragraph 37: "The Committee did not have an opportunity of discussing the Declaration for lack of time".

Mr. OLSZOWKA (Poland) said that, under the Committee's rules of procedure, the Polish delegation had been fully entitled to submit the Declaration in question at the time it had done so. In order to avoid giving a contrary impression, he would prefer the following wording: "Some delegations had no opportunity to discuss this Declaration and may do so later".

Mr. NJENGA (Kenya) said he was prepared to support the text suggested by the Chairman, but he felt that the wording of paragraph 38 did not show clearly whether the paragraph referred to discussions held in Moscow, to discussions which might have taken place in the Committee or to the substance of the Declaration itself.

The CHAIRMAN said that the paragraph referred exclusively to the substance of the Declaration.

Mr. de SOTO (Peru) thought that it should, in that case, be clearly stated at the beginning of paragraph 38 that the paragraph was a summary made by the delegation which had introduced the document.

The CHAIRMAN thought that a mere glance at the summary record of the 86th meeting would be sufficient to show that the wording of paragraph 38 was the same as that used by the Polish representative in introducing the Declaration.

Mr. de SOTO (Peru) observed that the paragraphs of the report referring to the Declaration of Santo Domingo and the conclusions of the Yaoundé Seminar reflected the views of delegations which had taken part in the discussion. The same practice should logically be followed for that part of the report which referred to the Declaration of Moscow. He was sure that the Rapporteur could find some means of indicating that the observations contained in paragraph 38 were exclusively those of the delegation which had introduced the Declaration.

Mr. ROMANOV (Union of Soviet Socialist Republics) thought that the statement in the main body of the report to the effect that the Declaration of Moscow had been introduced only on 17 August 1972 was sufficient to show that delegations had not had time to discuss it. It seemed, therefore, that the various amendments that were being proposed related to something more than the question of timing. No considerations of that kind had been advanced, for instance, when the question of the deadline for submitting the report itself had been discussed. In that case, delegations had unhesitatingly said that the matter should be left to the Rapporteur. Why was it not possible to adopt the same approach with a document which had been introduced in the clearest possible terms so as to make sure that it was correctly understood? His delegation had made no objection to the references in the report to the Declaration of Santo Domingo or the conclusions of the Yaoundé Seminar, although it knew nothing about the organization and proceedings of those meetings, apart from the final documents which they had adopted and which had been introduced in the Committee. It had adopted that attitude in the interests of objectivity, since the documents in question represented the views of the Latin American and African countries concerned. It would therefore like to know why certain delegations were now trying to minimize the importance of the Moscow Declaration on Principles of Rational Exploitation of the Living Resources of the Seas and Oceans, which merely incorporated ideas that had been expressed on numerous occasions during the Committee's first 1972 session and during the current session.

Mr. de SOTO (Peru) asked whether it would not be possible merely to say at the beginning of paragraph 38: "It was stated that it was stressed in the Moscow Declaration that the régime of fisheries on the high seas ...".

Mr. OLSZOWKA (Poland) said that he could not accept that suggestion. The Moscow Declaration had been introduced in the Committee in accordance with the rules of procedure and circulated as an official document of the Committee; the question whether the documents submitted to the Committee were studied or not depended on the willingness of each individual delegation to do so.

Mr. SANTA CRUZ (Chile) said that the report should reflect the course of the discussions as faithfully as possible, and should at the same time give an account of events which had occurred. Hence, in the case of the Moscow Declaration, as in that of the Declaration of Santo Domingo and the conclusions of the Yaoundé Seminar, it was quite natural that the report should give a detailed description of the content of the documents, in view of their importance. Consequently, the Chilean delegation had no objection to the wording of paragraphs 37 and 38.

On the other hand, it had been rather surprised by the meagreness of the references in the report to the decisions on the law of the sea adopted at the third session of the United Nations Conference on Trade and Development at Santiago, Chile. Those decisions were briefly mentioned in paragraph 34, but in terms that bore no relationship to those used in the case of the other documents. His delegation therefore suggested the insertion, after paragraph 38, of a new paragraph, for which his delegation would submit an exact text to the Secretariat, but which might read somewhat as follows:

> "The documents on questions connected with the law of the sea which had been approved by the United Nations Conference on Trade and Development at its third session were introduced in the Committee, which decided to circulate them to delegations. At the third session of the Conference, three important decisions were taken on subjects of concern to the Committee: the inclusion in Conference resolution 46 (III) of principle XI concerning the right of coastal States to dispose of the resources of the adjacent seas for the benefit of their peoples; the inclusion on the permanent agenda of the United Nations Conference on Trade and Development of an item concerning the economic implications for the developing countries of the exploitation of the mineral resources of the sea-bed beyond the limits of national jurisdiction; and, lastly, the reaffirmation of a moratorium in Conference resolution 52 (III)."

The documents of the third session of the Conference had indeed been circulated 35/ as official documents of the Committee, and the Chilean delegation had had occasion to comment on them in its official statements. Those were actual facts which had occurred in the course of the Committee's work and should therefore be mentioned in its report.

The CHAIRMAN asked the Peruvian representative whether he would agree to the retention of the existing text of paragraph 38 if the Chilean amendment was incorporated in the report.

Mr. de SOTO (Peru) said he thought that the term "it was stressed" was not objective. However, for the sake of compromise, he would agree to the solution suggested by the Chairman.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that he would not oppose the insertion of the text proposed by the Chilean representative, provided that it constituted a separate paragraph, and that an indication was given of the symbols under which the documents of the Conference had been circulated to the Committee. It should be added that the head of the USSR delegation had already spoken on Conference resolution 52 (III), known as the "moratorium resolution", and he recalled that a number of delegations, including his delegation, had not participated in the adoption of that resolution, on which a roll-call vote had been taken. That Conference resolution should not be regarded as binding, and the following text should

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35/ See the list of documents of the third session of the United Nations Conference on Trade and Development related to the exploitation of sea-bed mineral resources (A/AC.138/SC.I/L.14).

therefore be added at the end of the Chilean amendment: "One delegation observed that a number of countries did not participate in the vote on Conference resolution 52 (III), and that this resolution could not be considered as having any legal force as regards the establishment of a moratorium for the exploitation of the resources of the sea-bed".

Mr. SANTA CRUZ (Chile) said that, in his opinion, the positions of different delegations with regard to the "moratorium resolution" were clearly indicated in paragraphs 31 and 32 of the report. The Chilean amendment was designed solely to bring out a fact - that the documents of the third session of the United Nations Conference on Trade and Development had been submitted to, and considered by, the Committee - and it refrained from making any value judgement on those documents. The reservations expressed by the USSR delegation were therefore quite unnecessary.

Mr. ROMANOV (Union of Soviet Socialist Republics) pointed out that, although paragraph 32 referred to General Assembly resolution 2574 D (XXIV), it did not mention resolution 52 (III) of the United Nations Conference on Trade and Development. That resolution existed, and the Chilean delegation was entitled to refer to it in its amendment, but, if it were referred to, it would be necessary to reproduce the comments made by the various delegations in the Committee with regard to the legal force of that resolution.

The CHAIRMAN said that the Conference documents submitted to the Committee were mentioned in paragraph 6 of the report of Sub-Committee I (A/AC.138/82). He suggested that the second part of the USSR amendment should be re-drafted to read as follows: "... and that it cannot consider the resolution as having any legal force ...".

Mr. YANKOV (Bulgaria), supported by Mr. KATEKA (United Republic of Tanzania), said he could not accept the wording suggested by the Chairman, which he regarded as too restrictive. The USSR amendment reflected the views not of one delegation but of many. Moreover, General Assembly resolutions were not binding; under the terms of the United Nations Charter itself, they were merely recommendatory.

Mr. SANTA CRUZ (Chile) said that, if the USSR delegation pressed its amendment, it would be necessary to add to the text proposed by the Chilean delegation a sentence which might read as follows: "The importance of that resolution and the fact that it was given overwhelming support by developing countries were stressed".

Mr. McKERNAN (United States of America) proposed that, in the Soviet amendment, the words "the exploration and" should be inserted before the word "exploitation".

Mr. ROMANOV (Union of Soviet Socialist Republics) said that he would prefer his amendment to be incorporated in the report in the form in which he had originally proposed it, but he accepted the sub-amendment proposed by the representative of the United States.

After a further exchange of views, the CHAIRMAN suggested that the Committee should retain paragraph 38 as it stood, and should agree to the insertion of a new paragraph containing the text of the Chilean amendment, followed by the Soviet amendment, as amended by the United States representative, would then follow.

That proposal was adopted.

Paragraphs 37 and 38 and the new paragraph 39 proposed were adopted.

Paragraph 39 (new paragraph 40)

Mr. McKERNAN (United States of America) proposed that, after the words "of other problems of the law of the sea" in lines 19 and 20 of paragraph 39, the following text should be inserted: "that the effectiveness of a comprehensive law-making treaty for the oceans would depend in large measure on the extent to which it represented a consensus rather than the view of a group of States and accommodates fundamental national interests".

Mr. PARDO (Malta) proposed that, in the United States amendment, the words "and international" should be inserted, after the word "national", and that, at the end of that sentence, the words "and the constraints imposed by technological advance" should be added.

Mr. YANGO (Philippines) proposed that the United States amendment should end with the following words: "... fundamental national and international interests, as well as the interests of the developing countries".

Mr. McKERNAN (United States of America) agreed to the first amendment by Malta, and to the Philippine amendment, but considered that the second amendment by Malta should be the subject of a separate sentence.

The CHAIRMAN pointed out that the idea referred to by the representative of Malta in his second amendment had already been expressed in line 22 of paragraph 39.

Mr. PARDO (Malta) withdrew his second amendment.

The United States amendment, with the sub-amendments proposed by the representatives of Malta and the Philippines, was adopted.

Mr. YANGO (Philippines) proposed that the following sentence should be inserted at the end of paragraph 39:

> "that with the amplification of various interests, the efforts at compromise and conciliation, the submission of draft articles and working papers on different aspects of the law of the sea and the over-all discussion had set in motion a process of change in the law of the sea by formal conventions or by effective evolution".

The Philippine amendment was adopted.

Mr. VELLA (Malta), Rapporteur, said that a number of delegations had asked him to introduce the following amendments. The part of the paragraph starting with the words "and that the broad outlines" and ending with the words "particularly in recent years, in State practice;" (lines 5 to 8) should be deleted, and the following text should be added after paragraph 39 (the new paragraph 40):

> "It was suggested by some delegations that the broad guidelines had now emerged from State practice and from the deliberations of the Committee for an over-all accommodation on the law of the sea, the key to which would be agreement on a relatively narrow territorial sea and an economic zone - patrimonial sea -

extending beyond the territorial sea, and that such guidelines were emerging also on the limits of the continental shelf and other coastal State jurisdictions and on the proposed international sea-bed régime and machinery. Another view expressed was that only the very beginnings of an outline of a final accommodation were emerging. Some of the elements of such an accommodation were more widely accepted than others and it would be necessary for coastal States to accommodate, in these negotiations, the interests of the maritime States, as well as those of the international community, to an extent not at present reflected in current proposals by coastal States. It was further suggested that, in the light of the emerging framework for the possible outcome of the Conference on the Law of the Sea, it was possible to plan for two further meetings of the Committee in 1973, followed by a brief organizational meeting of the Conference during the General Assembly's twenty-eighth session, followed by substantive sessions in 1974".

Mr. de SOTO (Peru) said that the inclusion of that paragraph would destroy the existing balance of the text of paragraphs 39 and 40 (the new paragraphs 40 and 41), and the delegations proposing it should be named. In any case, the proposed paragraph should be divided into two parts. The first part relating to the assessment of results, should be incorporated in the new paragraph 40 and the second part, relating to the calendar of meetings, in the new paragraph 41.

Miss MARTIN SANE (France) said that she shared the misgivings of the representative of Peru.

Mr. BEESLEY (Canada) said that the paragraph had been proposed by Argentina, Canada, India, Mexico, Sri Lanka and the United States of America.

Mr. ROMANOV (Union of Soviet Socialist Republics) asked the sponsors not to press their amendment, in view of the complex nature of the question. If the proposed paragraph was adopted, he would be obliged to submit another amendment which would reflect his own position.

Mr. McKERNAN (United States of America) thought that the paragraph, which was well-balanced and accurately reflected the opinion of various Governments, should be incorporated in the text.

The CHAIRMAN suggested that, in order to facilitate a solution, the part of the paragraph beginning with the words "and it would be necessary for coastal States to accommodate" should be deleted.

Mr. THOMPSON-FLORES (Brazil) supported that suggestion, but wished to request that the new text should be incorporated in paragraph 39 (the new paragraph 40).

Mr. BEESLEY (Canada) said that he was prepared to accept that solution.

After an exchange of views in which Mr. PARDO (Malta), Mr. McKERNAN (United States of America), Mr. ROMANOV (Union of Soviet Socialist Republics), Mr. SANTA CRUZ (Chile), Mr. AGUILAR (Venezuela), Mr. DJALAL (Indonesia), Mr. FRANCIS (Jamaica) and Mr. de la GUARDIA (Argentina) took part, the CHAIRMAN suggested that the meeting should be adjourned and that the discussion should be continued at the night meeting.

It was so decided.

The meeting rose at 7.30 p.m.

SUMMARY RECORD OF THE EIGHTY-NINTH (CLOSING) MEETING

held on Friday, 18 August 1972, at 9.30 p.m.

Chairman: Mr. AMERASINGHE Sri Lanka

ADOPTION OF THE REPORT OF THE COMMITTEE (concluded) (A/AC.138/L.12 and Add.1)

Part I (concluded) (A/AC.138/L.12/Add.1)

Paragraph 34 (concluded)

Mr. VELLA (Malta), Rapporteur, said that in keeping with the suggestions made at the 88th meeting, he had redrafted paragraph 34 of part I of the draft report (A/AC.138/L.12/Add.1), dividing it into seven new paragraphs, the text of which was contained in an informal working paper before the Committee.

Mr. DOKUCHAEV (Union of Soviet Socialist Republics) said that the major emphasis in the proposed new paragraphs 34 - 40 was placed on the view supporting the establishment of an exclusive economic zone. In order to achieve a more balanced reflection of the differing views, he proposed the insertion of a new paragraph after the proposed paragraph 37, which would point out that a relatively small number of States might derive benefit from the establishment of an economic zone, while the interests of the peoples of all other countries would suffer; that an equitable régime for the rational use and conservation of the living resources of the sea must be established on the basis of a rational combination of the interests of all States, including developing countries and States conducting distant-water fishing; and that the developing coastal States should be recognized as having priority rights in fishing, whereby they might annually reserve for themselves, in areas of the open sea adjacent to their coasts, that part of the permissible catch which could be taken by vessels of their flag.

He read out a draft of the paragraph he was proposing.

Mr. BEESLEY (Canada) expressed surprise that the representative of the USSR should have proposed a long and controversial amendment at such a late hour. The Committee could not discuss such an amendment without a written text; if it was accepted, his delegation would have to propose a further paragraph reflecting the views of delegations which did not agree with the views expressed in it.

Mr. NJENGA (Kenya) agreed that the Committee should have a written text of the proposed new paragraph, at the end of which the words "These views were rejected by the developing countries" might be added.

Mr. AGUILAR (Venezuela), supported by Mr. THOMPSON-FLORES (Brazil), Sir Roger JACKLING (United Kingdom) and Mr. GARCES GIRALDO (Colombia) appealed to delegations to speed up the adoption of the report. The oral submission of last-minute lengthy amendments requiring translation into other working languages would delay the Committee's work.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that the paragraph proposed by his delegation was merely the reflection of views which it had stated during the Committee's first 1972 session and repeated at the 85th meeting. Its insertion would achieve the balance essential in the Committee's report. With regard to the question of translation, he pointed out that his delegation was considering the new paragraphs proposed by the Rapporteur, despite the fact that they had not been translated into Russian and it had to rely on the oral interpretation.

The CHAIRMAN suggested that the Committee should adopt the original draft of paragraph 34 or else decide to finalize its report in New York. It seemed unlikely that a consensus would be reached on all the suggested modifications in the time left at the Committee's disposal.

Miss MARTIN SANE (France) said that her delegation wished to associate itself with the Chairman's appeal.

Mr. FRANCIS (Jamaica) said that his delegation considered the report to be extremely important, and that it was ready to adopt paragraph 34 as it stood. It therefore fully supported the Chairman's first suggestion.

Mr. STEVENSON (United States of America) said that his delegation also fully supported that suggestion. After all the efforts made to bring the present session to a successful conclusion, it would be a tragedy if the report were not adopted at the present meeting.

Mr. YANKOV (Bulgaria) said that his delegation fully supported the Chairman's first suggestion. If the Committee insisted on perfection, it would be much more difficult to attain the goal of adopting the report.

Mr. AGUILAR (Venezuela) said that his delegation also supported the Chairman's suggestion.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that his delegation recognized the need to adopt the Committee's report and that it therefore supported the Chairman's suggestion.

Mr. SANTA CRUZ (Chile) said that his delegation also supported the view that it was necessary to adopt the report at the present meeting, in order to provide the General Assembly with guidance on what the Committee had done.

Mr. THOMPSON-FLORES (Brazil) said that his delegation agreed with the Chairman's suggestion that it was necessary to adopt paragraph 34 more or less as it stood. He recalled, however, that it had been agreed at the 87th meeting that some minor amendments should be introduced.

The CHAIRMAN said that, if he heard no objection, he would take it that the members of the Committee could agree to adopt paragraph 34 with those amendments but without division into new paragraphs.

Paragraph 34, as amended, was adopted.

Paragraph 39 (new paragraph 40) (concluded)

The CHAIRMAN, having reminded the Committee that paragraphs 35 to 38 had already been adopted, invited it to resume consideration of paragraph 39 (the new paragraph 40), to which two amendments had already been adopted (88th meeting). He hoped that the Canadian and USSR delegations would not press for the inclusion of the changes they had suggested at the 88th meeting.

Paragraph 39 (the new paragraph 40), as amended, was adopted.

Paragraphs 40 and 41 (new paragraphs 41 and 42)

Paragraphs 40 and 41 (the new paragraphs 41 and 42) were adopted.

Paragraphs 42 and 43 (new paragraphs 43 and 44)

Mr. ROMANOV (Union of Soviet Socialist Republics) said that, with regard to the present paragraphs 42 and 43, his delegation had requested that it should be possible for Governments to give more detailed consideration to the question of the venue of the Conference on the law of the sea. It therefore would like to propose the insertion of a sentence to the effect that certain delegations wished to refer the question of the venue of the Conference to their Governments for consideration and, accordingly, reserved their position with regard to the invitations mentioned in the present paragraphs 42 and 43.

The CHAIRMAN recalled that it was the responsibility of the General Assembly to take a decision on the venue of the Conference. He asked the representative of the USSR whether he would be satisfied to have a reference in the present paragraph 45 to the fact that the USSR delegation reserved its position with regard to the location of the Conference.

Mr. ROMANOV (Union of Soviet Socialist Republics) said that his delegation could agree to that suggestion.

Paragraphs 42 and 43 (the new paragraphs 43 and 44) were adopted.

Paragraph 44 (the new paragraph 45)

Mr. BACKES (Austria) said that, having consulted the delegation of Chile, his delegation wished to insert, after the words "The Austrian invitation was also", the words "welcomed and".

The Austrian amendment was adopted.

Paragraph 44 (the new paragraph 45) as amended, was adopted.

Paragraph 45 (the new paragraph 46)

Mr. ROMANOV (Union of Soviet Socialist Republics) proposed that the following sentence should be inserted at the end of paragraph 45 (the new paragraph 46): "Certain delegations reserved their position with regard to the venue of the Conference."

The USSR amendment was adopted.

Paragraph 45 (the new paragraph 46) as amended, was adopted.

Part I of the Committee's report (A/AC.138/L.12/Add.1) as a whole, as amended, was adopted.

JOINT COMMUNIQUE OF THE GOVERNMENTS OF CHILE, ECUADOR AND PERU

Mr. SANTA CRUZ (Chile) said that, on the instructions of his Government and at the request of his colleagues from Ecuador and Peru, he would like to read out the following text of the joint communiqué of the Governments of Chile, Ecuador and Peru, which had been issued that day on the occasion of the twentieth anniversary of the Declaration of Santiago:

"The Governments of Chile, Ecuador and Peru, on the occasion of the twentieth anniversary of the Declaration of Santiago, by which they proclaimed as a principle of their international maritime policy the exclusive sovereignty and jurisdiction of each of them over the sea adjacent to the coasts of their respective countries up to a limit of 200 miles, including exclusive sovereignty and jurisdiction over the floor and sub-soil of that sea,

"1. Reaffirm the principles and purposes of that historic decision, which has now become a doctrine whose economic and social bases inspire the new philosophy of the law of the sea, which recognizes for coastal States the full disposal of their marine resources for the promotion of the development and well-being of their peoples;

"2. Note with legitimate satisfaction that the enthusiastic support on the various continents for the doctrine of the Declaration of Santiago is such that it may be regarded as one of the essential elements for concerting sovereign wills towards a new and more just law of the sea in keeping with the realities and needs of our time;

"3. Express their appreciation of the important services rendered to the three countries by the Permanent Commission of the South Pacific, whose valuable studies are contributing to a better knowledge of marine species and to the adoption of more appropriate standards and measures for their conservation and rational use;

"4. Reiterate their unbreakable will to maintain the closest co-operation for the defence of their maritime rights and for the attainment of an international order that would ensure the use and exploitation of the various areas of ocean space, as an instrument of greater prosperity and equity among nations.

"To that end, the Governments of Chile, Ecuador and Peru have agreed to issue this communiqué at Santiago, Quito and Lima on 18 August 1972".

CLOSURE OF THE SESSION

After an exchange of courtesies, the CHAIRMAN declared the session of the Committee closed.

The meeting rose at 11.10 p.m.