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

Third Session

LEGAL SUB-COMMITTEE

SUMMARY RECORDS OF THE TWELFTH TO TWENTY-NINTH MEETINGS

Held at Headquarters, New York,
from 12 to 28 August 1969

Chairman:	Mr. GALINDO POHL	El Salvador
Rapporteur:	Mr. BADAWI	United Arab Republic

The list of representatives is to be found in documents A/AC.138/INF.1/Add.6 and Corr.1, Add.7 and Corr.1, Add.8-11.

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(246 p.)

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CONTENTS

Third session

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SUMMARY RECORD OF THE TWELFTH MEETING

Held on Tuesday, 12 August 1969, at 3.35 p.m.

Chairman: Mr. YANKOV Bulgaria

OPENING OF THE SESSION

The CHAIRMAN recalled that at its spring session the Sub-Committee had not adopted either a report or any recommendations; nevertheless, its work had not been in vain, because that session had paved the way for further efforts to determine the extent of common understanding. Inter-sessional consultations had led to the preparation of a report by the informal drafting group (A/AC.138/SC.1/4), which would be available on the following day in all languages. The consultations had also served to show more precisely what were the controversial issues and where the areas of agreement lay, and had made the task of formulating the legal principles seem more feasible. He thanked all those who had taken part in the consultations, especially the members of the informal drafting group, whose report was an important contribution to the Sub-Committee's deliberations. The Sub-Committee's main task at the present session was to identify the principles and find the most acceptable legal formulation for them; he had therefore given priority to the question of principles in his suggested programme of work for the Sub-Committee (A/AC.138/SC.1/6). Without being over-optimistic, and without underestimating the difficulties and problems which had to be faced, he earnestly hoped that the present session would mark a step forward in the work of the Legal Sub-Committee. He declared the session open.

ADOPTION OF THE AGENDA (A/AC.138/SC.1/5)

The provisional agenda was adopted.

PROGRAMME OF WORK (A/AC.138/SC.1/6)

The CHAIRMAN said that after consultation with the Sub-Committee's officers he had ventured to draft a suggested programme of work for the Sub-Committee (A/AC.138/SC.1/6). In connexion with the first item the Sub-Committee might also consider - in accordance with the proposals made by the Chairman of the main Committee at the third session (A/AC.138/8) and the programme of work adopted by the Sub-Committee on 14 March 1969 (A/AC.138/SC.1/3) - all other questions mentioned in the relevant provisions of resolution 2467 A (XXIII), notably the questions of marine pollution and the reservation of the sea-bed for peaceful purposes. The second and third items in his suggested programme of work related

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(The Chairman)

to documents which were already before the Sub-Committee. He suggested that in discussing the third item members should be free to refer to other legal aspects of scientific research in addition to those mentioned in the note by the Secretary-General (A/AC.138/14 and Corr.1). The last item was the consideration of the report of the Sub-Committee itself. At the previous session members had felt that it would be premature to produce a report; but, as the twenty-fourth session of the General Assembly was approaching, a report would now have to be produced. The Legal Sub-Committee should also try to hold more meetings at the present session than it had held at the previous session.

The programme of work (A/AC.138/SC.1/6) was adopted.

Mr. OULD DADDAH (Mauritania) noted that in the report of the informal drafting group (A/AC.138/SC.1/4) there was no reference, in connexion with the use of the resources of the sea-bed, to the special needs and interests of the developing countries. As the developing countries attached great importance to that aspect of the matter, he suggested that a reference to their special needs and interests should be included in the drafting group's report, as indeed it had been included in the earlier programme of work (A/AC.138/SC.1/3).

The CHAIRMAN said that at the meeting of the officers of the main Committee and the Sub-Committees it had been agreed that the report of the informal drafting group should be circulated exactly as it stood with a foot-note explaining the informal nature of the consultations which had given rise to it. In considering the report the Legal Sub-Committee would be expected to modify the points contained in it as it saw fit, but initially it should recognize the informal nature of the document and be prepared to accept it for consideration in its original form. He suggested that, as the document had not yet been received by all delegations, the Sub-Committee should postpone discussion of it until the following day.

Mr. ARORA (India) supported the Chairman's suggestion but urged that the debate should begin in earnest on the following day, because the Sub-Committee had a heavy agenda to complete. He asked whether the Chairman intended that the report should be discussed as a whole or item by item - in other words, principle by principle. He himself had no particular preference for either approach.

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The CHAIRMAN said that, if members so wished, the Sub-Committee could first hold a general debate on the whole question of legal principles and then proceed to discuss the principles individually and try to reach agreement on the formulation of at least some of them. The question of legal principles had, however, already been discussed in general terms at some length, and if the items were taken up separately speakers would still be free to raise other points which they considered relevant. He noted that the items proposed by the informal drafting group corresponded closely to those listed in the earlier programme of work (A/AC.138/SC.1/3). He suggested that the Sub-Committee should take the report of the informal drafting group as a basis for discussion and consider one item at a time.

Mr. PHILLIPS (United States of America) expressed the hope that, even if the items in the report of the drafting group were considered one by one, delegations would be able to make general statements covering more than one item.

Mr. KULAZHENKOV (Union of Soviet Socialist Republics) thought that, although it would not be desirable to have a general debate, delegations should be able, if they wished, to refer to principles other than the one actually under consideration at any specific stage in the discussion. It might be difficult for delegations to confine their comments to one specific principle, without mentioning other aspects.

Mr. ENGO (Cameroon) felt that a general debate would be too time-consuming. The items should be considered one by one but delegations should be allowed to comment on the subject as a whole, if they desired to do so.

Mr. GAUCI (Malta) stressed the importance of making the best use of the limited time available to the Sub-Committee and concentrating on the actual principles. There was no need for a general debate, since the basic viewpoints had already been stated. The flexible arrangement outlined by the Chairman would allow delegations to confine their remarks to one specific item or, if they wished, to give the Sub-Committee the benefit of any new ideas of a general nature.

Mr. EVENSEN (Norway) was of the opinion that individual delegations should be left to decide whether or not their comments would be confined to one

(Mr. Evensen, Norway)

particular principle at a time. Since some of the principles were very closely related, it would be interesting to hear the views of members on a number of items.

Mr. BEESLEY (Canada) agreed that delegations should be able to state their views in the manner they considered most appropriate. It would not be possible to discuss one principle in isolation, without referring to the others; discussion of more than one principle at a time would not constitute a general debate.

Mr. DEBERGH (Belgium) recalled that the general discussion held in the Sub-Committee at the preceding session had not been an unqualified success. He stressed that, in order to avoid making the same error as before, he therefore favoured from now on a point-by-point discussion, on the understanding that each of the principles formed part of a single whole.

Mr. BADAWI (United Arab Republic) said that too much flexibility might detract from the orderly conduct of the Sub-Committee's work. As a compromise, delegations wishing to make general statements could perhaps do so before the items were taken up one by one.

Mr. MAURTUA (Peru) emphasized that delegations should have complete freedom to express opinions of a general character, since the principles had to be evolved from general, theoretical considerations.

Mr. KHANACHET (Kuwait) noted that the principles concerned were not new and had already been discussed at length at preceding sessions. There was therefore no need for another general debate on the subject. In the interests of efficiency, the items should be discussed one by one.

The CHAIRMAN suggested that the items should be discussed one by one, on the understanding that, during the discussion of an individual item, delegations would be free to refer to general or related topics.

It was so agreed.

Mr. ARORA (India) expressed the hope that the Sub-Committee would be told in advance which items were to be discussed at the meetings.

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Mr. KHANACHET (Kuwait) drew attention to an omission in the title of document A/AC.138/12 and Add.1. In order to follow the wording used in General Assembly resolution 2467 C (XXIII), the word "international" should be inserted before the word "machinery".

The meeting rose at 4.55 p.m.

SUMMARY RECORD OF THE THIRTEENTH MEETING

Held on Wednesday, 13 August 1969, at 3.30 p.m.

Chairman: Mr. YANKOV Bulgaria

CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4)

The CHAIRMAN said that the Sub-Committee would no doubt wish to base its discussions at the current session on the report (A/AC.138/SC.1/4) which had been prepared by the informal drafting group following the inter-sessional consultations held pursuant to a decision of the Committee at its sixth meeting on 28 March 1969. However, delegations might also wish to refer to the report of the Legal Working Group on its first session (annex II to document A/7230) of which paragraphs 13-19 were particularly relevant to the item under consideration, and also to document A/AC.138/7 concerning proposals and views relating to the adoption of principles. In accordance with the agreement reached at the last meeting, the members of the Sub-Committee should feel free to address themselves to items other than the one specifically under discussion if, in their view, such other items were logically related to it.

Mr. KOSTOV (Bulgaria) said that the informal drafting group had produced a very useful report which reflected a substantial measure of agreement among the various delegations represented on the Committee. It was to be hoped that the area of agreement would be further enlarged and that the Legal Sub-Committee would succeed in preparing a draft declaration of general legal principles which could be submitted to the General Assembly at its twenty-fourth session. As to the areas of disagreement which still existed, his delegation firmly believed that, if the admirable spirit of co-operation which had been demonstrated during the informal inter-sessional consultations were maintained at the meetings of the Sub-Committee, all differences could be overcome through further negotiation.

Mr. STEVENSON (United States of America) said that the report of the informal drafting group represented practical progress towards a generally agreed statement of principles. With a view to expediting agreement, he wished to make certain preliminary comments on the first four items of the report.

With regard to the first element mentioned under item 1, several delegations had pointed out that concepts such as the "common heritage of mankind" were for the time being without any specific legal content. His delegation agreed that such

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(Mr. Stevenson, United States)

expressions lacked precision but wished to stress that in any event it was more important to refine agreement on the specific features of the régime to be applied to the sea-bed and ocean floor beyond the limits of national jurisdiction, a task which logically precedes the question whether there was any general concept which might summarize all aspects of the legal status of the area.

There seemed to be broad agreement on the points raised in elements (ii) and (iii), but element (iv), which related to the exercise of jurisdiction and the granting of "exclusive rights", was more controversial. His delegation doubted the wisdom or desirability of these references in element (iv).

Element (vi) in item 1 did not, in his delegation's view, relate to the definition of the legal status of the area and should more appropriately be dealt with under item 4.

His delegation supported the idea expressed in item 2 that any statement of legal principles should make it clear that international law, including the United Nations Charter, fully applied to the area. It would be a mistake to look on this question as exclusively concerned with the applicability of the law of the high seas to that area of the high seas comprising the bottom. The fundamental point with which that item was concerned was that States did not escape the obligations of international law, and consequently did not lose the rights which it conferred, when conducting activities on the ocean floor. That proposition covered a great deal more than the rules or principles designed specifically to regulate conduct on the high seas; it also encompassed the basic rights and obligations relating to the use of force among States, the general principles of State responsibility, and the obligation to respect specific treaty provisions, such as those contained in the limited test-ban Treaty. During the informal consultations the question had also been raised as to whether reference should be made to the principles and norms of the future régime, as well as the existing legal standards applicable to conduct in the area. His delegation had taken the view that that would not be advisable because of the obvious fact that standards which had not yet been devised could not reasonably be applied to current activities.

With regard to item 3, which referred to the reservation of the area exclusively for peaceful purposes, his delegation was not opposed to the inclusion of a general statement on that subject in a statement of principles. In drafting such a general statement, however, care would have to be exercised not to prejudge

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(Mr. Stevenson, United States)

issues currently being negotiated by the Committee on Disarmament in Geneva.

With regard to item 4, it would not appear to be difficult to reach agreement on a general formulation regarding the use of the resources of the area for the benefit of mankind as a whole, taking into account the special needs of the developing countries. However, paragraphs 22 and 23 of the report raised the more controversial issue of the establishment of a future régime. His delegation agreed that a statement of principles should contain a commitment to establish an internationally agreed régime, and that it should spell out in general terms the more salient features of such a régime. It would not be realistic or useful, however, to speak of a régime which would reach beyond the exploration and exploitation of the resources of the sea-bed to cover other uses of the area. His delegation felt that the proposal to describe the régime as extending simply to the "exploration and use of this area" rather than the "exploration and exploitation (of the resources) of this area" (paragraph 23 of the report) would fundamentally alter the intended scope of the principle and retard agreement on it.

Paragraph 25 of the report outlined eight constituent elements of a régime, all of which were quite properly formulated in general terms. It would not, indeed, be appropriate to describe the régime in detail in a statement of principles. His delegation had reservations on two of the eight elements in particular. First, with regard to element (iii), his delegation questioned the desirability of including a specific reference to machinery in a statement of general principles. Secondly, with regard to element (v), he doubted whether it would be useful or realistic to make provision, in the régime, for functions essentially similar to those at present exercised in respect of certain commodities by the various international commodity agreements. His delegation attached particular importance to element (viii), which stated that a régime should "provide due protection for the integrity of investments in the exploitation of this area undertaken prior to the establishment of its boundaries".

Mr. CABRAL DE MELLO (Brazil) said that, as a member of the informal drafting group, his delegation was aware that the limited time available had prevented the group from giving the same detailed attention to all items.

(Mr. Cabral de Mello, Brazil)

The efforts of the group had, however, produced for the Committee a paper which, for the first time, set forth the main elements proposed for a statement of principles, as well as the difficulties attaching to each element. In his delegation's view, the divergence of views was still too wide to permit any agreement on principles in the near future.

Paragraphs 4-12 of the drafting group's report (A/AC.138/SC.1/4), for instance, showed that there was still substantial disagreement on the content of principles defining the legal status of the sea-bed and the ocean floor and the subsoil thereof. The concept of the common heritage of mankind was considered by many delegations to be the keystone of a legal régime for the area, and the Latin American delegations which had participated in the informal consultations had proposed that it should be defined in two statements, one constituting a denial of rights and the other constituting an assertion of rights. According to the first statement, the term "common heritage" would imply that the area could not be subject either to sovereign claims in public law or to appropriation in private law; according to the second statement, it would imply that all States should participate in the administration and regulation of the activities in the area, as well as in the benefits obtained from the exploration, use and exploitation of its resources. The concept of non-appropriation was, of course, generally acceptable but it was not comprehensive enough to serve as the key concept for a legal régime for the area; the Latin American delegations' formulation of the positive contents implied in the concept of common heritage, a formulation reproduced in paragraph 5 (vi) of the report, had, however, not proved generally acceptable.

Similar difficulties had been encountered in connexion with paragraph 5 (v), despite the fact that the exclusion of private appropriation might seem to be a logical corollary of the agreed principle that the area should not be subject to national appropriation.

As was clear from paragraphs 13-18 of the report, the difference of views on item 2 had not been so wide as in the case of item 1, but it was still considerable. There was agreement that the Charter of the United Nations and international law applied to the area, but it was felt that the scope of applicability of the two did not fully coincide, because existing international law

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(Mr. Cabral de Mello, Brazil)

applied only in a subsidiary way to the sea-bed and the ocean floor. Unless, therefore, it were specified which principles of international law applied to the area, a general statement of its applicability could be seriously misleading. For that reason his delegation had submitted the following draft provision on the subject during the informal consultations:

> "The exploration and use of the sea-bed and the ocean floor and the subsoil thereof, and the exploitation of its resources, shall be carried on in accordance with the Purposes and Principles of the Charter of the United Nations and an international régime to be established. In the elaboration of the said international régime the existing norms of international law shall be duly taken into account."

Item 4, on the use of the resources, had proved to be one of the most controversial subjects of all. Delegations had disagreed about the question whether the subject of the proposed principle was the whole area or only its resources, about the need to define a legal régime in great detail at so early a stage, about the specific content of the provisions of such a régime, and about the degree of emphasis to be given to the individual provisions. Moreover, even when agreement had been achieved on a specific element, it had been found difficult to produce a generally acceptable formulation. Obviously, a very wide divergence of views still persisted on the two most important issues: the application of benefits and the establishment of international machinery.

With regard to item 5, his delegation believed that elements (ii) to (vi) should be stated as necessary consequences of element (i). There should also be a statement to the effect that one of the main purposes of international co-operation in scientific research should be to strengthen the research capabilities of the developing countries.

On the subject of items 8 and 9, his delegation contended that it would be superfluous to include in the proposed principles an affirmation of the existence of the area of the sea-bed beyond the limits of national jurisdiction. The existence of that area had, after all, been the main assumption underlying resolutions 2340 (XXII) and 2467 (XXIII) and all the Committee's work. It was not surprising, however, that there had been no consensus on the boundaries of the

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(Mr. Cabral de Mello, Brazil)

area, since the whole question of the boundaries of maritime spaces still remained to be solved. It would be remembered that there were no agreed limits for the territorial sea, for fishery rights claimed by coastal States or for the continental shelf. His delegation therefore believed that the boundaries of the area with which the Committee was concerned should be settled as part of a broader agreement on limits for all maritime spaces.

Paragraph 29 (iii) of the report referred to a proposal made by his delegation which was concerned at the absence, in all the draft statements of principles hitherto considered, of any provisions relating to the international responsibility of States. Generally speaking, international law recognized the rights and obligations only of States. However, the pace of technological progress was such that, in the absence of a legal régime for the sea-bed, nationals of some States might well embark, in the foreseeable future, on activities involving exploration and exploitation of the sea-bed for which no State could be held responsible, and in disregard of the interests of the international community as a whole. The Treaty on the Exploration and Use of Outer Space contained a provision dealing explicitly with State responsibility for non-governmental activities in that environment.

In conclusion, he said that he had attempted to show that it would be unwise to place undue emphasis on the submission to the General Assembly of a draft statement of principles. It was obvious that real and legitimate differences still existed and that the serious national interests at stake could not now be abandoned merely for the sake of submitting a lofty declaration of principles to the General Assembly. The final statement should be one which gave satisfaction to the interests of all nations, and not merely to a handful of developed countries.

Mr. DEBERGH (Belgium) said that his delegation was most gratified at the genuine progress that had been achieved during the informal inter-sessional consultations among the delegations represented on the Committee. As the report of the informal drafting group indicated, the participants had clearly identified the difficulties inherent in the preparation of a statement of principles on the utilization of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction and had succeeded in reaching agreement on at

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(Mr. Debergh, Belgium)

least some formulations. The consultations had also led to a better understanding of the reasons underlying the different formulations and had thus reduced the area of disagreement. His delegation agreed with the Chairman that great strides had now been made beyond draft statements A and B; and during the current session it would therefore refrain from introducing a possible new draft statement of principles and, when it proposed any new formulations or amendments to formulations, it would do so within the framework of the report of the informal drafting group (A/AC.138/SC.1/4).

On the subject of item 1 in the report, his delegation had always doubted the usefulness of describing the area under consideration by the Committee as "the common heritage of mankind", since the term was, in fact, a neologism and meant different things to different delegations. His delegation had always felt that rather than attempting at the very outset to define the legal status of the sea-bed, the Committee should adopt the pragmatic approach of trying first to reach agreement on principles concerning the use of the sea-bed and ocean floor for the purposes specified in resolutions 2340 (XXII) and 2467 (XXIII), which were the promotion of international co-operation in the exploration and utilization of the sea-bed and the ocean floor and the subsoil thereof, and the exploitation of their resources for the benefit of mankind. It had thought that the Committee might, inter alia, determine - independently of any preconceived ideas which might exist on the subject - how a newly emerging common interest could best be served in view of present-day developments in international laws, international relations and technology.

The informal consultations had, however, led his delegation to believe that the "common heritage" concept had the special merit of embodying the spirit of all the other principles and might accordingly be treated as the keystone of the statement of principles. His delegation had therefore proposed that the words "asserting that this area shall be considered as part of the common heritage of mankind" should be included in the preamble to the statement. It was appropriate that they should be placed in the preamble because, although the principles for which formulations had hitherto been submitted were not all derived logically or automatically from the "common heritage" concept, they could undoubtedly be deduced from the general idea of the objectives which the international community was trying to achieve in the exploration and exploitation of outer space. There was also a logical basis for the proposed description of the area in question as "part of the common heritage", inasmuch as, once the concept had gained acceptance, it would be illogical not to extend it to all "hydrospace" - the high seas, the

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(Mr. Debergh, Belgium)

territorial waters, the contiguous zones, the continental shelf, the superjacent atmosphere - all of which, together with the sea-bed, formed an indivisible whole.

There was undoubtedly a close vertical interdependence between the sea-bed, the superjacent waters, the surface of the sea and the overlying air mass, and a corresponding horizontal interdependence between the high seas, the contiguous zone, the territorial waters and inland waters. The different legal régimes applicable to different uses of hydrospace and the fact that sections of it were subject to State sovereignty in no way altered the fact that hydrospace had but one natural function: to serve the interests of all mankind. His delegation accordingly submitted that the concept of "common heritage" was valid for all terrestrial hydrospace, regardless of purely conventional and arbitrary distinctions.

In the context of item 1, the Belgian delegation would have reservations about the formulation of element (vii), since it believed that all sections of the hydrospace had the same status. In fact, however, the question should be considered in conjunction with item 2, concerning the applicability of international law. In the first sentence of paragraph 11 of the report, the word "status" should therefore perhaps be replaced by the word "régime". In the context of item 2, the concept would be acceptable from the point of view of lex ferenda, which should include an element that did not appear in the régime of the superjacent waters - namely, that exploration and use should be carried out in the interests of mankind as a whole. The Belgian delegation could thus agree to the area being considered separately from the superjacent waters of the high seas, for the purposes of exploration, use and exploitation. On the other hand, the situation was different from the point of view of lex lata, which was relevant to the sea-bed and ocean floor only in so far as the legal régime to be applied to that area should respect the rules governing human activities in the other areas of the sea. There could therefore be no automatic extension of existing rules to the sea-bed.

Elements (vi) and (viii) should be considered under item 4, with which they were more closely related.

Mr. ARORA (India) expressed the hope that, despite the differences of opinion regarding many principles, the spirit of compromise which had been displayed would enable the Sub-Committee to draft a meaningful declaration or, failing that, at least to achieve agreement on a number of principles.

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(Mr. Arora, India)

With regard to element (i) in the formulations concerning legal status, it was perhaps true that the concept of a "common heritage of mankind" lacked specific legal content. However, a number of delegations felt strongly that the concept was fundamental to a declaration of principles and should be included. President Johnson had stressed that the sea-bed and ocean floor should remain the legacy of all human beings and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space specified that the exploration and use of outer space should be carried out for the benefit and in the interests of all countries and should be the province of all mankind.

There was general agreement on elements (ii) and (iii), although some delegations thought that element (iii) should be expanded to include the concepts of exclusive rights or jurisdiction. The view had been expressed that element (iv) was to some extent subsumed in element (v). Element (vi) had been discussed during the informal consultations before item 4 had been proposed for consideration; it might subsequently appear that it was covered by item 4. Element (viii) should also be considered in conjunction with item 4, with which it was closely connected.

Mr. BEESLEY (Canada) said that his delegation had reservations about the formulations which used the phrase "the common heritage of mankind". While it was true that the Sub-Committee was dealing with a new area of human activity, for which new concepts would have to be developed, the concept of the common heritage of mankind had no legal content and was unknown in international law. Its inclusion in a declaration of principles could have far-reaching juridical implications, whose precise nature was as yet unknown. The Sub-Committee should therefore first formulate the rules which would comprise the régime of the sea-bed and ocean floor, and then decide whether the concept of the common heritage of mankind was a suitable reflection of the proposed régime and whether it should be included in a declaration of principles.

The question had arisen whether a formulation should deal with the whole of the area beyond the territorial sea. While the Eighteen-Nation Disarmament Committee was already considering areas within national jurisdiction, the mandate

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(Mr. Beesley, Canada)

of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor was confined to the area beyond national jurisdiction. It would not therefore be possible to accept a formulation applicable to the area beyond the territorial sea over which States had "sovereign rights" for the purposes of the exploration and exploitation of resources.

The references to the principle that States might not appropriate the area in question should be broad enough to cover all systems of law irrespective of doctrinal differences and could perhaps be modelled on principle 4 of the "B" principles.

With respect to references to superjacent waters, it should be borne in mind that, while there was an interrelationship - both practical and legal, as evidenced by the Geneva Convention on the subject - between the sea-bed and the superjacent waters, the mandate of the Committee was limited to the sea-bed.

The meeting rose at 5.20 p.m.

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SUMMARY RECORD OF THE FOURTEENTH MEETING

Held on Thursday, 14 August 1969, at 3.25 p.m.

Chairman: Mr. YANKOV Bulgaria

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CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4) (continued)

Mr. VALLARTA (Mexico) said that some formulations contained in the report of the informal drafting group (A/AC.138/SC.1/4) recalled the provisions of the draft resolution submitted by his delegation to the First Committee at the twenty-third session of the General Assembly (A/C.1/L.430). The draft resolution reflected his Government's concern at the absence of basic legal principles which would facilitate the eventual establishment of a comprehensive legal régime. His delegation feared that, unless a declaration of general principles was adopted at the forthcoming session of the General Assembly, prejudicial situations of fact might arise in the absence of any prohibitions. There was an urgent need to agree on an instrument prohibiting national appropriation and claims or exercise of sovereignty in respect of the area. The declaration should also state that exploration, use and exploitation must be carried out exclusively for peaceful purposes and that the area belonged to all mankind and its resources should be used for the benefit of mankind as a whole, taking into account the interests of the developing countries. As to the exact wording of those principles, his delegation had an open mind; virtually all of the formulations submitted to the Committee were acceptable.

In his delegation's view, the concept "common heritage of mankind" was the basis for the prohibition of the exercise of sovereignty over, or appropriation of, the area. The idea could be stated in other words - in fact, his delegation had proposed an alternative wording in operative paragraph 1 of document A/C.1/L.430 - and it should at all costs be included in the declaration.

His delegation had no objection to elements (ii) and (iii) in paragraph 5 of the report. With regard to element (iv) in that paragraph, however, he felt that once it was established that a State could not exercise or claim sovereignty or sovereign rights over any part of the area, it would be unnecessary to refer to the granting of exclusive rights by that State. It also seemed unnecessary to include element (vii), which could be taken for granted, but his delegation would be able to accept the other elements. Many of them were obvious corollaries to the major principles and could possibly be included in a second declaration of principles at a later stage.

His delegation's position on item 2 was equally flexible. That item might even be left out of the declaration, particularly since certain delegations were opposed to it, and even those delegations which favoured its inclusion would not

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(Mr. Vallarta, Mexico)

feel that anything would be lost if it were omitted, since international law and the Charter of the United Nations would be applicable with or without a declaration.

The formulation of the principle expressed in item 3 should be very general so as not to prejudge the issues being negotiated by the Eighteen-Nation Disarmament Committee at Geneva.

With regard to item 4, his delegation agreed that there should be an international régime to guarantee the implementation of the principle in question. It would be a mistake, however, to delay the adoption of a declaration of legal principles until agreement had been reached on all aspects of the régime.

Mr. BERMAN (United Kingdom) said that the Sub-Committee had now reached a stage in its work where it could usefully proceed to the formulation and adoption of a set of principles. The main problem was to decide which principles were fundamental and should be included in the statement of principles and which principles could be more usefully discussed at a later stage in connexion with the establishment of an international régime for the area. In view of the urgent need to adopt a statement of principles, his delegation hoped that agreed formulations could in the near future be adopted.

The expression "common heritage of mankind" had given rise to considerable discussion in the Sub-Committee. While his delegation had no objection to the phrase as a sort of conceptual crystallization or a catchword summarizing the various material points agreed upon in the statement of principles, it felt that the expression was not a self-explanatory legal concept or one which would be familiar to persons versed in international law. The central focus of the Sub-Committee's work should be the specific principles enunciated in elements (ii) to (v) of paragraph 5, and not the more nebulous concept of the "common heritage of mankind". As regards elements (vi) and (viii), his delegation wished to associate itself with the views expressed by the representative of the United States. Element (vii) needed to be redrafted in less ambiguous terms; the present phraseology left room for a wide variety of interpretations.

Mr. ODA (Japan) expressed the hope that the members of the Sub-Committee could soon reach a consensus on a statement of principles. Their discussion should start with the presumption that there was an area of the sea-bed and the ocean floor underlying the high seas which lay beyond the limits of national

(Mr. Oda, Japan)

jurisdiction; and furthermore he believed there should be an agreed precise boundary for the area, which was necessary to withhold the expansion of national jurisdiction in terms of continental shelf. This situation was different from that of outer space. That boundary, however, would not necessarily have to be a fixed geographical line since the limits of the area might be drawn differently depending on the criteria used. For example, the area beyond the limits of present national jurisdiction with respect to exclusive reservation for peaceful purposes would be the area beyond the territorial sea. On the other hand, the area whose natural resources should be utilized in the interests of mankind was that which lay beyond the continental shelf. The concept of the area was functional and depended on the criterion selected for its definition.

The expression "common heritage of mankind" was subject to various interpretations. Its inclusion in a statement of general principles might give rise to unnecessary confusion in the establishment of a legal régime applicable to the area, and would therefore be undesirable.

His delegation supported the fundamental ideas expressed in elements (ii), (iii), (iv), and (v). The non-appropriation of the area was, in its view, one of the most fundamental legal principles governing the status of the ocean floor.

His delegation sympathized with the idea underlying element (v), namely, that no individual should be entitled to property rights over any portion of the area, but it felt that the concept of property did not need to be included in a declaration of principles.

With regard to element (vi), he said it was premature to refer to the administration and regulation of the activities in the area before discussing the question of possible international machinery in greater depth. Moreover, as other representatives had stated, the question of the participation of States in the benefits obtained from the exploration, use and exploitation of the resources of the area should be discussed under item 4. So far as element (vii) was concerned, his delegation took the view that the principle of the freedom of the high seas was applicable to the exploration and exploitation of mineral resources of the deep ocean floor. Nevertheless, if a new régime was established with respect to the ocean floor, the legal status of that area might be different from that of the superjacent high seas.

His delegation fully supported the concept underlying element (viii), but felt that that concept, too, might more appropriately be considered under item 4.

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Mr. KOULAZHENKOV (Union of Soviet Socialist Republics) said that the question of legal principles was one of the most important and complex questions on the agenda of the Sub-Committee. The discussions of that question in the Ad Hoc Committee and at the twenty-third session of the General Assembly had shown that the legal provisions applicable to the sea-bed must be considered in the light of the existing principles and norms of international law, including the Charter of the United Nations. The Legal Sub-Committee, fortified by its experience in discussing the question, was now in a position to carry out its mandate of elaborating legal principles "which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind", in accordance with the terms of General Assembly resolution 2467 A (XXIII).

The informal inter-sessional consultations, in which his delegation had participated, had accomplished a great deal of useful work. Particularly valuable was the analysis of the various proposals concerning legal principles and the identification of the constituent elements of those principles. General agreement had been reached on certain principles, while others required further elaboration before they could be acceptable to all delegations. It was significant that the principles on which agreement had been reached were of a general character, whereas the controversial formulations were often expressed in more detailed terms. The Sub-Committee should beware of overloading the general principles with details which might have the effect of impeding agreement. In many cases such details could more usefully be considered in future when the Committee would have the task of elaborating legal norms governing activities on the sea-bed and ocean floor beyond the limits of national jurisdiction.

One could not over-emphasize the importance of the principle of the reservation exclusively for peaceful purposes of the sea-bed and ocean floor, or, in other words, the prohibition of the use of the sea-bed for military purposes. The adoption of that principle would create favourable conditions for the exploration and use of the sea-bed and ocean floor for the benefit of all mankind.

His delegation had the impression that no one objected to the concept that there existed an area of the sea-bed and ocean floor beyond the limits of national

(Mr. Koulazhenkov, USSR)

jurisdiction. The adoption of that concept as a legal principle would help to allay any fears about the appropriation of parts of the area by individual States.

From that general principle a number of corollaries could be derived, including elements (ii) to (v). In his delegation's view, element (iii), taken together with element (v), adequately covered the ideas expressed in element (iv).

His delegation had repeatedly expressed its view that the concept of the "common heritage of mankind" was not a legal principle. The concept was subject to various interpretations, one of them being that the concept implied common ownership or some form of common ownership. If that was the case, the concept of res communis, which had already been rejected as inapplicable to the sea-bed beyond the limits of national jurisdiction, would be invoked to justify national appropriation of portions of the sea-bed. In any event, his delegation shared the view expressed by many others that academic discussions on the subject of that expression would distract the Committee from its consideration of practical problems and impede progress in the elaboration of legal principles.

The general principle that exploration and exploitation of the sea-bed should be carried out for the benefit of all mankind, taking into account the special needs of the developing countries, would serve the interests of all States and particularly those of the developing countries.

The importance of defining the term "the sea-bed and the ocean floor beyond the limits of national jurisdiction" had been emphasized on several occasions. The lack of a precise definition could be a serious obstacle to the formulation of legal norms to govern the exploitation of the sea-bed. The question would naturally require careful study, and it was important not to prejudge the solution to be reached or the manner of reaching it.

It had been suggested that the sea-bed should be considered separately from the superjacent waters of the high seas. There was, however, a natural link between the sea-bed and the marine environment, and there was a need for measures to prevent pollution of the marine environment as a result of the exploration and exploitation of the resources of the sea-bed. The International

(Mr. Koulazhenkov, USSR)

Law Commission had considered the problem of the sea-bed, and specifically the continental shelf, in the context of the general topic of the high seas. The 1958 Geneva Conference on the Law of the Sea had rejected a proposal that the general concept of the sea should be broken down into four separate concepts: the sea water, the living resources of the sea, the sea-bed and the air space above the sea. The 1958 Convention on the High Seas not only enumerated the freedoms relating to the marine environment (freedom of navigation and freedom of fishing) but referred specifically to a freedom concerning the sea-bed. In its report on the work of its eighth session (A/3159), the International Law Commission had stated that the draft articles concerning the law of the sea had not provided for special regulation of the exploration and exploitation of the subsoil of the high seas, because such exploitation had not yet assumed sufficient practical importance to justify special regulation. International co-operation in the exploration and exploitation of the sea-bed should permit rational use of the resources of the sea-bed and ocean floor for the benefit and in the interests of all mankind.

With regard to item 2, the Soviet delegation believed that contemporary international law, including the United Nations Charter, was fully applicable to the activities of States in all spheres. It understood the term "international law" to mean not only the legal norms embodied in international agreements and customary international law but also the general principles of international law which should govern relations among States, particularly in the development of international co-operation in the exploration and exploitation of the sea-bed and ocean floor. It was incorrect to say that international law applied to the sea-bed only in a subsidiary way because it related primarily to the use of the other parts of the marine environment. Such an approach would be a negation of the general principles and norms of contemporary international law governing relations among States.

The Soviet delegation had no objection to the principle that international responsibility for national activity on the sea-bed, regardless of whether the activity was carried out by government organs, non-governmental organizations or private individuals, rested with States.

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(Mr. Koulazhenkov, USSR)

The elaboration of specific legal norms governing the activities of States, particularly in the exploitation of the resources of the sea-bed beyond the limits of national jurisdiction, would be one of the Committee's future tasks, in accordance with General Assembly resolution 2467 A (XXIII).

The formulation for item 2 contained in the report of the drafting group was acceptable as a whole to the Soviet delegation.

Mr. EVENSEN (Norway) said that his delegation generally supported the elements formulated in the report of the drafting group for item 1, although there was some duplication of ideas. There were also some omissions. There was no reference to the principle that there existed an area of the ocean floor and the sea-bed beyond the limits of national jurisdiction. Paragraph 29 of the drafting group's report referred to the view that the existence of such an area was a fact and not a legal principle. Yet the existence of the area was certainly part of the prevailing system of international law and was generally accepted. Consequently, the first legal principle could state, for instance, that: "There exists an area of the sea-bed and the ocean floor and subsoil thereof which lies beyond the limits of national jurisdiction". Such a statement would not prejudge the question where the dividing line should be drawn between national continental shelves and the deep ocean floor. Alternatively, the idea could be included in a preamble to the principles.

The concept of the sea-bed and ocean floor being the common heritage of mankind was of value and should be included, even if it was lacking somewhat in clarity. Since some delegations were uneasy about the concept, it could be included in a preamble to the principles.

The first principle to be stated in the declaration should be the one covered by elements (iii) and (iv), concerning non-sovereignty. It could be worded as follows: "No State may claim or exercise sovereignty or sovereign rights over nor grant exclusive rights to any part of the sea-bed and ocean floor or its subsoil beyond the limits of national jurisdiction." It would perhaps be advisable not to prohibit the exercise of jurisdiction; a State might be allowed to exercise certain types of jurisdiction in the area, for example over its own nationals.

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(Mr. Evensen, Norway)

The next principle to be stated should be the prohibition of national appropriation or annexation. The ideas in elements (ii) and (v) could perhaps be combined in a formulation such as: "The sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction are not subject to national appropriation, nor may any State, entity or person acquire property rights over any part of this area whether by use, occupation or by any other means."

Certain reservations had been expressed regarding element (vii), concerning the superjacent waters. The notion embodied in the element might, however, be important because the status of those waters as part of the high seas should not be impaired. On the other hand, that notion was covered under item 6.

It was true that some of the ideas covered by elements (vi) and (viii) might be dealt with under items 2 and 4. If that proved impossible, the ideas could perhaps be included in two preambular paragraphs referring, first, to the fact that the exploration, use and exploitation of the area should be carried out for the benefit of all mankind and, secondly, to the idea contained in element (viii).

The principles concerning the peaceful use of the area, the prohibition of pollution, the freedom of scientific research and the freedom of the high seas were dealt with in separate items in the drafting group's report. It should be borne in mind, however, that they were legal principles of the same importance as those listed under item 1. Similarly, the international régime to be established to govern activities in the area - which was dealt with in item 4 of the drafting group's report - was closely related to the legal status of the area. Without some form of international régime and machinery, the principles to be formulated would be merely empty words.

Miss MARTIN-SANE (France) said that, although there were still considerable difficulties facing the Sub-Committee, the informal inter-sessional consultations had been most helpful in clarifying certain positions and highlighting the problems still to be solved.

The French delegation believed that the declaration of principles should be short, although it appreciated the need for a minimum number of guarantees.

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(Miss Martin-Sane, France)

It had supported the earlier "B" principles, with the addition of a certain number of other concepts, but would now follow the outline given in the report of the drafting group.

Her delegation was unable to endorse element (i) under item 1, which concerned the common heritage of mankind, because it was not clear what would be the exact legal implications of the concept. If the discussion could not dispel the basic uncertainties which existed in that regard, it might be necessary to envisage new legal formulations. The Belgian delegation had made an interesting suggestion in that connexion, with reference to a preamble to the declaration.

Subject to those considerations and to certain drafting changes, the French delegation had no basic objection to the other elements for item 1 listed in the report of the drafting group. She agreed with the remarks made by the United Kingdom representative on the subject of element (vii) and thought that the ideas in elements (vi) and (viii) could be more appropriately included under item 4.

With regard to item 2, the formulation given in paragraph 14 (i) of the drafting group's report was quite acceptable. The reference to the Charter of the United Nations meant that the law applicable to the sea-bed was broader than that embodied in the 1958 Geneva Conventions. Her delegation could also agree to add a reference to the applicability of the principles to be proclaimed in the declaration under consideration.

Mr. SCHRAM (Iceland) said that, while his delegation understood the reluctance of some countries to incorporate the novel term "common heritage of mankind" in a set of legal principles, it was in complete agreement with the philosophy and fundamental meaning of the term. As a compromise, the concept could perhaps be included not in the list of legal principles but in an operative paragraph immediately preceding them.

The formulation in element (vii) concerning the superjacent waters was rather unfortunate. While the régime governing the sea-bed would have to be considered in relation to the régime governing the superjacent waters, the Committee's terms of reference did not cover the superjacent waters and the

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(Mr. Schram, Iceland)

status of those waters should therefore not be mentioned in the enumeration of legal principles concerning the sea-bed. His delegation would have no difficulty in accepting a paragraph - perhaps in the preamble - stating that the principle of the freedom of the high seas should not automatically apply to the sea-bed and ocean floor. It had considerable reservations, however, about the existing wording of element (vii).

He fully supported the remarks made by the Brazilian representative at the preceding meeting on the subject of State responsibility. That concept should be an essential part of any future international treaty, since a new area of human activity was involved.

His delegation attached considerable importance to item 7, concerning pollution, and was glad that important work was already being done by international agencies. The issue was crucial to the whole question of the sea-bed and ocean floor and the Committee could help to resolve it for the benefit of all mankind.

Mr. PINTO (Ceylon) said that his delegation firmly believed in the existence of an area of the sea-bed and the ocean floor over which no State could claim or exercise sovereign rights or acquire property. It also maintained that all States should participate in the administration and regulation of the activities in the area as well as in the benefits obtained from the exploration, use and exploitation of its resources. In that connexion, the proposal in item 4 for the establishment of appropriate international machinery was of particular importance.

The phrase "common heritage of mankind" deserved to be included in the declaration of principles, as it suggested that all peoples would benefit from activities in the area concerned and that their economic growth would thereby be accelerated. However, as the phrase might have political connotations, it would be wise to determine its exact legal content as the debate progressed before deciding whether to include it in the declaration.

With respect to item 2, his delegation favoured a formulation which would make activities on the sea-bed subject to the relevant principles of international law, including the United Nations Charter. However, it questioned the usefulness of the reference to "the legal principles and norms to be

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(Mr. Pinto, Ceylon)

internationally agreed upon" in paragraph 18; once those principles were embodied in an international agreement they would become binding as international law, whether or not there was any reference to them in a declaration. He sympathized with the intention of those who had suggested the formulation, which was designed to dissuade any State or group from taking advantage of the time needed for the formulation of binding principles by acting in a manner which might prejudice the ultimate efficacy of those principles; but he thought the idea could be formulated more precisely in a separate paragraph in the declaration.

Although the Committee was not empowered to settle the question of boundary (paragraph 29 /ii7), it could discuss the question and agree upon recommendations for a solution. It might also discuss the mechanics of how to ensure international acceptance of the boundary.

His delegation endorsed the concept of State responsibility set forth in paragraph 29 (iii) and felt that the proposal should be strengthened along the lines of paragraph 5 of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. Moreover, entities other than States - for example, inter-governmental institutions - should also bear international responsibility for activities on the sea-bed.

The Committee should move on without delay from the analysis of concepts towards the formulation of a concrete draft of principles. The developing countries in particular felt the urgency of the situation, in view of the ever-widening gap between them and the developed countries. The sea-bed offered a new source of wealth and new hope for economic growth.

Mr. STEVENSON (United States of America) said that elements (ii) to (v) of item 1 were of crucial importance. At the present stage, it was desirable to avoid going into too much detail in the declaration; for example, special problems might arise with respect to elements (iv) and (v) because of the particular meaning of certain terms within a country's judicial system. The remarks of the representative of Norway with respect to jurisdiction and exclusive rights were most relevant in that regard. There was also some risk that the language might cause difficulties for certain countries during the period before a régime for the sea-bed had been established.

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Mr. PAVICEVIC (Yugoslavia) said that the report of the informal drafting group on the formulations proposed under the programme of work was an interesting and important document (A/AC.138/SC.1/4) as it indicated the areas of agreement as well as points of disagreement at the present stage of the debate and offered a basis for further discussion, in an effort to widen the scope of agreement and to diminish and eventually resolve the points of difference. His delegation had always been in favour of the early conclusion of a declaration of main principles.

Referring to the concept of "the common heritage of mankind", his delegation recalled the statement it had made during the second session of the Legal Sub-Committee stressing the fact that it had accepted the phrase "the common heritage of mankind" as a description of its position regarding that part of the sea-bed, recognizing the fact that the concept had to be discussed and elaborated into an appropriate and widely acceptable legal concept. However, in response to the objections raised by some delegations that the concept lacked legal content, that it was void of precision, etc., he would point out, as a counter-argument, that legal content would be given to that concept or any other concept through a common effort to formulate an international law that would reflect the interests of all countries. It could also be said that an idea usually preceded the process of elaborating upon it and rendering it precise. Furthermore, it was possible to argue that the concept was more political than legal. In his delegation's opinion there was an equally valuable counter-argument that the law represented a measure of policy, that all efforts in the Committee were based, motivated and reflected in respective national policies as well as in the desire to find such international legal instruments as would reflect the common interests of all. To the contention that it was a novel principle in international law, it could be said that today it was clear to all that they were primarily confronted with a progressive development of international law.

To the argument that the concept was based upon the traditional concept of "heritage" from civil law and that as such it could not be implemented into the relations among States, one could voice a counter-argument that a new international law was being created, together with new concepts and institutions which reflected the present development of technology, the political, economic and other realities of the present world as well as new problems, new needs and interests so that one

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(Mr. Pavicevic, Yugoslavia)

should not, through a formalistic approach, prevent the creation of such an international law as would reflect and satisfy new and prevailing realities.

His delegation felt that it was important to establish whether all delegation were prepared and willing to achieve certain main goals which should be reflected under the legal concept that would determine the legal nature of the sea-bed and its resources, irrespective of the connotation of the concept. He pointed out that those goals were: first, the internationalization of the area, details of which had been given in elements (ii) to (v) of paragraph 5 of the said document; secondly, the establishment and recognition not only of the "freedom" of access to the riches of the sea-bed or "equality of opportunity" in their exploitation, but also the rights of countries to participate in the exploration, exploitation and use of the resources of the sea-bed, and what was more important, their right to participate in an equitable sharing of the benefits derived therefrom. In that connexion he recalled paragraph 33 of the report of the Economic and Technical Sub-Committee contained in document A/AC.138/SC.2/6, which stressed that, for the development of the resources of the ocean floor, new forms of international co-operation should not reflect present inequalities and differences between developed and developing countries, and that they should provide not only for equality of opportunity, but also for equality in the actual enjoyment and equitable sharing of benefits derived from the exploitation of the resources of the ocean floor.

Thirdly, he pleaded for the right of all States to participate in the regulation and administration of the exploration, use and exploitation of that part of the sea-bed, without discrimination, in the interest and for the benefit of all mankind. He added that those ideas were contained in element (vi) of paragraph 5 of the report. His delegation recognized that all those three elements constituted the presently formulated legal content of the concept of the common heritage of mankind which his delegation supported.

The concept of a common heritage of mankind should be further elaborated to take into account other elements, such as the interests of developed and developing countries, maritime and land-locked countries, the size of a country's territory and coast, population density and related priorities.

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(Mr. Pavicevic, Yugoslavia)

His delegation could not agree with the suggestions proposing the transfer of element (vi) to other items in the report since it was actually dealing with the substantive components of the presently formulated concept of the common heritage of mankind. The right of States to participate in the administration and regulation of the exploration, exploitation and use of the sea-bed should be differentiated from the ways and means of their implementation, i.e., from the organizational element of those rights - the creation of an appropriate machinery which would allow the fulfilment of the recognized rights in an adequate manner. That was another question which would follow its own procedure of solution although closely connected with and derived from the legal régime which was expected to evolve.

With reference to elements (ii) to (v), his delegation expressed an opinion that they contained the necessary components for the idea of the internationalization of that region and a hope that real possibilities existed for drafting a formula acceptable to all. Referring specifically to element (v), his delegation was inclined to support the idea. However, since its formulation could give rise to certain problems, he felt that it merited further consideration.

He also supported the idea of element (vii) which had stressed the different legal nature and status of the sea-bed and the ocean floor and its subsoil from the superjacent waters and high seas. He stated that if the unity of the legal nature of the sea-bed and the high seas were applied, the principle of freedom on the high seas would actually prevent developing countries or land-locked countries from enjoying certain benefits from the natural riches which were hidden in the sea-bed. Conflicts of interests concerning the various uses of the sea (the high seas, the water in between the sea-bed and the surface of the sea, the sea-bed and its subsoil, etc.) should be solved through special international arrangements, and within the framework of and associated with the future international régime for the sea-bed.

Mr. ARORA (India) commended the Norwegian representative's approach to the formulation of principles. The phrase "common heritage of mankind" was important and should be included in the declaration, although it was too early to arrive at a precise formulation of the concept. Element (iv) of item 1 rounded off element (iii). He agreed with the Norwegian representative's interpretation of those elements, an interpretation which might allay the United States representative's fears.

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(Mr. Arora, India)

With respect to item 1 (vii), he noted that the Convention on the High Seas did not contain any significant principles relating to the sea-bed. The principles of international law applicable to that area were rudimentary; therefore, the Icelandic representative's comment on element (vii) was helpful.

He agreed with the representative of Ceylon that principles of international law must be agreed upon for the exploration, use and exploitation of the sea-bed. The formulation suggested in paragraph 18 should include a reference to "the legal principles and norms to be internationally agreed upon".

The meeting rose at 6.10 p.m.

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held on Friday, 15 August 1969, at 3.30 p.m.

Chairman: Mr. YANKOV Bulgaria

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CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4) (continued)

Mr. GORALCZYK (Poland) felt that the Sub-Committee should seek to adopt a declaration of general legal principles, even though such a declaration might be incomplete, rather than prolong its work in order to elaborate a more ambitious text. There appeared to be broad enough agreement on the desirability of elaborating a set of principles covering all the main problems relating to the legal status and the exploration and exploitation of the sea-bed and its subsoil beyond the limits of national jurisdiction. The declaration should restate existing binding norms of international law and should provide broad outlines for the elaboration of new legal instruments.

The Sub-Committee's task was more difficult than that of the drafters of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. The legal status of outer space had not been defined by binding legal norms, but in the case of the sea-bed such norms did exist, and they could not be changed by a mere declaration of principles.

The Polish delegation could not accept the present formulation of item 1 (i), embodying the controversial concept of a "common heritage of mankind", as it was open to many and often far-reaching interpretations. Paragraph 1 of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space had been cited in support of that concept. However, in that paragraph the exploration and use of outer space - but not outer space itself - were declared to be the province - but not the common heritage - of mankind. Although his delegation could not accept the formulation of item 1 (i), it fully supported the idea that the exploration and exploitation of the resources of the sea-bed and its subsoil beyond the limits of national jurisdiction should be carried out for the benefit and in the interests of all mankind, taking into account the special needs of the developing countries.

His delegation supported elements (ii) and (iii) of item 1, which were fundamental for the definition of the legal status of the area under discussion.

The wording of element (iv) seemed to be more controversial. Doubts had been expressed concerning the possibility of exercising jurisdiction in the area. He was speaking deliberately of jurisdiction "in" the area and not "over" it, and

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(Mr. Goralczyk, Poland)

did not consider "jurisdiction" to be synonymous with "sovereignty". Moreover, it was not clear what kind of "exclusive rights" were contemplated in element (iv). If the reference was to property rights, then the question should be dealt with in element (v).

As presently worded, element (vi) was not suitable for inclusion in a declaration of legal principles. However, some ideas contained in it might be discussed under item 4.

His delegation had no strong feelings about the suggestion that elements (vi) and (viii) should be linked. The wording of element (viii) was acceptable and could form part of a general description of the legal status of the area under consideration.

Paragraph 11 of the report clarified the meaning of element (vii). However, that meaning was to some extent contrary to the wording of item 2: Applicability of international law, including the United Nations Charter. In his delegation's view, the Geneva Convention on the High Seas did not make a distinction between the legal status of the sea-bed and its subsoil beyond the limits of the continental shelf and the legal status of the superjacent waters. However, consideration must be given to the applicability of all relevant norms, including the Geneva Conventions on the law of the sea.

Lastly, his delegation considered the inclusion of item 2 to be essential and hoped that a wording acceptable to all delegations would be found.

Mr. STEINER (United Republic of Tanzania) said that his delegation believed that the statement contained in paragraph 29 (i), to the effect that there was "an area of the sea-bed and the ocean floor and subsoil thereof underlying the high seas which lay beyond the limits of national jurisdiction", was a legal principle which should be enshrined in any future legal régime governing all activities in the area. His delegation did not agree that the statement was merely one of fact; international law recognized that there were areas of the sea-bed and the ocean floor and the subsoil thereof which lay within the limits of national jurisdiction, and it was only logical for it to recognize that there were certain areas which lay beyond those limits, however imperfectly the limits were defined.

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(Mr. Steiner, Tanzania)

His delegation believed that the ocean floor and its subsoil beyond the limits of national jurisdiction were the common heritage of mankind. As a member of the developing world, Tanzania was determined to see that mankind as a whole shared equally all the benefits to be derived from the exploration and exploitation of the area. It fully subscribed to the view that the concept of a "common heritage of mankind" must find a place in the declaration of legal principles to be formulated. The principle might be worded as follows: "The area of the sea-bed and ocean floor and the subsoil thereof, which underlies the high seas and which lies beyond the limits of national jurisdiction, is the common heritage of mankind."

His delegation had no difficulty in accepting the remaining elements of item 1. Element (vii) was particularly important, since the high seas were already the subject of an existing instrument of international law, and the distinction between the high seas and the area underlying them should be maintained.

With respect to item 2, his delegation welcomed the notion that international law, including the United Nations Charter, should be applicable to the area under discussion. It also believed that the area should be reserved exclusively for peaceful purposes (item 3).

Mr. SCIOLLA-LAGRANGE (Italy) said that the elements of the legal status of the area under discussion should be so worded as to be true rules of law, that is a source of definite rights and obligations for specific subjects of law. The wording of item (1) (i), while acceptable from the purely philosophical standpoint, was not a legal principle in the above-mentioned sense. His delegation could not endorse the Indian representative's view that the concept of a common heritage of mankind at present lacked legal content primarily because the concept had not yet been enshrined in a formal declaration. Its inclusion in such a declaration, in a wording which did not fulfil the objective requirements for being a legal principle, could not magically endow the concept with those necessary requirements. However, as his delegation fully subscribed to the philosophy behind the concept, it would agree to its incorporation in a preamble to the legal principles.

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(Mr. Sciolla-Lagrange, Italy)

His delegation fully endorsed element (ii). Elements (iii) and (iv) were also acceptable, although he preferred the wording in element (iii). It was unnecessary to include element (v), as the principle contained in it followed naturally from the statement in element (iii). He agreed with the United States representative that element (vi) should be considered in the course of the discussion of the régime to be established for the exploration and exploitation of the resources of the area.

With respect to element (vii), he noted that the principle of the separation of the area under discussion from the superjacent waters had never been affirmed by the Ad Hoc Committee, the General Assembly or the Committee itself, and that the usefulness of such a principle was highly debatable. Special measures for the sea-bed might prove necessary; but it was also true that some of the rules applicable to the superjacent waters could also be applied to the sea-bed. Therefore, the rigid formulation of the legal principle contained in element (vii) could not be justified.

Lastly, his delegation supported the wording of element (viii).

Mr. BODY (Australia) said that, rather than seek to formulate a minutely detailed set of principles covering every contingency, the Sub-Committee should strive to prepare a straightforward, but none the less precise and unambiguous, set of first principles that would serve as broad policy guidelines. In that connexion, his delegation felt that in some respects the elements contained in item 1 went beyond first principles on legal status. Some were obscure, some prejudged policy issues which had not yet been fully considered in the Committee, while some belonged under other items. Some, however, were incomplete.

He agreed with the representatives of Japan and Norway that it should be stated at the outset that an area existed which was beyond the limits of national jurisdiction. He also felt that a statement of principle should be included to the effect that, with due regard to the relevant provisions of international law, there should be agreed a precise boundary for the area. At the present stage, however, a definition of that boundary should not be attempted.

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(Mr. Body, Australia)

In the interests of simplicity and precision, the principles ultimately adopted on legal status should employ only what was to be found in elements (ii) and (iii) of item 1. The expressions "common heritage of mankind", "jurisdiction" and "exclusive rights", for example, were imprecise. However, there might well be scope for reference to some general concepts in a preamble to the declaration of principles to be adopted.

Items 2 and 3 were essential elements in any statement of principles on the subject.

Mr. GLASER (Romania) said that the task of elaborating principles to govern the activities of States on the sea-bed and ocean floor beyond the limits of national jurisdiction was a matter of the highest priority. It was not true, however, as some had suggested, that the area of the sea-bed beyond national jurisdiction represented the last lawless frontier. All States had the general obligation to respect the established principles of international law on the sea-bed as well as elsewhere. Nevertheless, a statement of principles specifically applicable to the sea-bed was urgently needed.

In the statement of principles, provision must be made to ensure mutual respect for national sovereignty on the part of all States, full equality of rights and observance of the principle of non-interference in the internal affairs of States. All the principles included in the statement must be of a practical and realistic character and be so worded as to obtain the support of all States.

His delegation felt that item 2 properly belonged among the elements listed under item 1, which dealt with the legal status of the area. Subsuming item 2 under item 1 would ensure the application of the United Nations Charter and would, accordingly, safeguard international peace and security in the area.

His delegation strongly supported item 4, which would ensure that the potential wealth of the sea-bed would be used to improve the living standards of all people throughout the world and to eliminate the gap between the developing and the developed countries, preventing all discrimination between States.

The reservation of the area exclusively for peaceful purposes was essential; the arms race must not be carried to the sea-bed. For instance, the emplacement of nuclear weapons on the sea-bed posed a particularly grave danger in that an accident might occur which would upset the entire structure of marine ecology with incalculable consequences for the future of life on earth as a whole.

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(Mr. Glaser, Romania)

The idea of prohibiting national appropriation of any part of the area must be one of the basic principles. The adoption of such a principle would be a necessary precondition to the exploitation of the resources of the area in the interests of mankind as a whole.

From the discussions which had taken place in the Sub-Committee, it was clear that there were certain general areas of agreement among delegations. Activities in the area, it was generally acknowledged, should not interfere with the freedom of navigation on the high seas, nor should such activities produce any adverse effects on the living resources of the sea, which were so vital as a source of food for the world's expanding population. As yet, there were no generally agreed formulations of those two principles; perhaps the relevant provisions of the 1958 Convention on the Continental Shelf could be instructive in that regard. There was also broad agreement on the need to protect the freedom of scientific research in the marine environment and to promote international co-operation in oceanographic research with a view to encouraging the participation of all States in the exploration of the area. Furthermore, no one disputed the need to include in the statement of principles a provision to prevent the pollution of the marine environment. Lastly, there seemed to be a consensus concerning the idea that States should be liable for damages resulting from the activities of their nationals on the sea-bed.

In other areas, agreement appeared to be more remote. The fact that certain principles were still disputed, however, should not discourage delegations from pressing ahead with the important work of codifying the existing areas of agreement. The development of international law was a progressive process and the adoption of a statement of principles would be merely the first step towards the full elaboration of the international régime applicable to the sea-bed. His delegation, for its part, was eager to make progress and would devote its most intense efforts to the codification of international law for the sea-bed.

Mr. BADAWI (United Arab Republic) observed that many delegations had referred to the concept of the "common heritage of mankind" as a notion devoid of legal content and subject to varying interpretations. His delegation, however, considered that that concept provided the necessary basis from which the specific

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(Mr. Badawi, United Arab Republic)

principles relating to the legal status of the area must be derived. The eight elements listed under item 1 could not logically be derived from the present theories of res communis or res nullis. Without reference to a general concept such as the "common heritage of mankind", the principles expressed in those elements would lack cohesiveness.

Elements (ii) to (v) were closely interrelated; in fact, elements (ii) and (iii) could usefully be combined into one element, stating that the area was not subject to national appropriation or claims of national sovereignty. Some delegations had objected to the term "jurisdiction"; in his view, the term was not vital to a statement of principles but could be included if such was the general wish. Other delegations had expressed reservations with regard to the question of property rights raised in element (v). It should be pointed out, however, that element (v) referred to "property" and not property rights. The adoption of elements (i) and (ii) would effectively preclude the acquisition of property in the area by any State or individual.

Several delegations had suggested that elements (vi) and (viii) should be considered under item 4. His delegation could not agree. Those elements were properly part of the definition of the legal status of the area.

With regard to element (vii), his delegation supported the alternative formulation proposed by the representative of Brazil and supported by the representative of Belgium.

Mr. RAMANI (Malaysia) said that, in his view, the elements listed under item 1 did not constitute a satisfactory definition of the area under international law. Those elements should be examined further from the point of view of the consequences which they implied.

With regard to the rather novel legal concept of the "common heritage of mankind", his delegation shared the view of many others that such a concept did not in and of itself provide the legal basis for the principles, as some delegations contended.

The 1958 Convention on the Continental Shelf had led to the general recognition of four separate concepts relating to the law of the sea: (1) sovereignty; (2) jurisdiction; (3) control; and (4) sovereign rights for limited purposes. While the concepts might not be mutually exclusive, in terms of the law of the sea they were conceptually differentiated.

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(Mr. Ramani, Malaysia)

It was an exceedingly complex task to draft rules to govern conduct in an area which, until 1958, had fallen under no State's jurisdiction and had been open to claim by any State. In the circumstances, the simplest way to deal with the problem of legal status would be to vest control of the area in the United Nations, which in the eyes of international law was a legal person capable of exercising rights. The United Nations would protect the interests of all States in the area and provide effective machinery for developing its resources for the benefit of all mankind.

Mr. GOWLAND (Argentina) said that the report of the informal drafting group provided a useful basis for the Sub-Committee's further work. Now that the report had identified the various controversial elements in the proposed formulations the Sub-Committee's task was to harmonize the different viewpoints. That work would have to be done very carefully with special regard for the national and international interests at stake.

With regard to item 1, his delegation agreed that under the present system of international law there was no provision for a régime which would ensure use of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction for the benefit of all mankind and, in particular, of the developing countries. The existing principles of international law concerning the high seas were not readily applicable to the sea-bed. A special international régime suited to the particular requirements of the area was clearly needed.

His delegation supported the view that the declaration of principles should be based on the concept of the "common heritage of mankind", which had been expressly referred to, with slight differences in wording, both by Ambassador Pardo of Malta in 1967 and by President Johnson of the United States in 1966. The declaration should recognize the existence of an area of the sea-bed beyond the limits of national jurisdiction which was the common heritage of mankind and, therefore, was not subject to national appropriation, claims of sovereignty or exclusive use. Moreover, sovereignty over it should not be acquired by use or occupation.

The application to the area of the freedoms of the high seas, in particular the freedom of exploitation, would not lead to a régime of international co-operation for the benefit of humanity. On the contrary, it would produce

(Mr. Gowland, Argentina)

inefficiency and disorder both with regard to the efforts made to exploit the resources of the area and with regard to the utilization of those resources.

As the concept of the "common heritage of mankind" was the foundation of the legal principles which would be enshrined in the declaration, his delegation could not agree to the proposal to relegate that concept to the preambular part of the declaration.

Concerning element (vii), it was important to state that the superjacent waters should be considered separately. For both physical and legal reasons, international law made a distinction between the waters of the high seas and the sea-bed.

It was important to elaborate the principles defining the legal status of the area. The consideration of the legal status of the area was not a pointless academic exercise which impeded the real work of designing the international régime to regulate activities in the area. The problem of the legal status of the area concerned the sovereignty and the security of States - concepts to which his delegation attached great importance.

Mr. BALLAH (Trinidad and Tobago) considered that it was unnecessary to state as a principle that there was an area of the sea-bed and the ocean floor and the subsoil thereof, underlying the high seas which lay beyond the limits of national jurisdiction. That was a fact, on the basis of which the Committee had been working for two years, and it did not have to be stated in peremptory terms. His delegation had no objection to mentioning the fact of the existence of such an area in a preambular paragraph.

There was an urgent need for a precise delimitation of the outer boundaries of the continental shelf. However, the Sub-Committee was not the proper forum for debating the question. It should merely point out, in its report to the Main Committee, the need for a review of the relevant Geneva Conventions.

His delegation did not share the doubts of some representatives with respect to the desirability of applying the term "common heritage of mankind" to the area under discussion. The objection that it was without specific legal content had been answered by the Indian representative, who had pointed out that the concept lacked legal content at the present stage because it had not yet been enshrined in a declaration of principles.

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(Mr. Ballah, Trinidad and Tobago)

That the concept was novel was hardly an objection. In an area in which there was little relevant international law, new concepts to meet new attitudes would have to be formulated.

With respect to the objection that the concept had political overtones, he noted that there could be no rigid separation between law and politics in contemporary international law. Delegates represented political entities, and the law reflected the political, social and economic interests of States. The concept of a common heritage of mankind was a useful rallying cry, for it symbolized the interests, needs, hopes, desires and objectives of all peoples. It focused attention on the question of legal ownership: the heritage referred to did not belong to any individual or State, but to mankind in general. His delegation fully agreed with the Brazilian representative that the concept was "the keystone of a legal régime for the area", and endorsed his interpretation of it. The concept should be stated in an operative paragraph of the declaration. The language of item 1 (i) was therefore acceptable to his delegation.

His delegation also found elements (ii) and (iii) acceptable.

Element (iv) presented some difficulty. As the first part of the element was a repetition of element (iii), it could be deleted. The use of "jurisdiction" in the second part was confusing, as it was not clear from the way the sentence was punctuated whether "jurisdiction" was not to be exercised over any part of the area or over nationals who were legally employed in the area. His delegation was grateful to the Japanese representative for having drawn attention to the fact that a State would retain jurisdiction over its nationals. His delegation would therefore prefer to see the present wording of element (iv) replaced by the words "except as might be provided in an international régime, no State shall claim or exercise exclusive rights or jurisdiction over any part of that area (paragraph 8)".

Element (v), which flowed naturally from elements (ii) and (iii), was acceptable to his delegation. However, it had not clearly understood the reservation expressed by the United States representative regarding the question of "property" in element (v), and would appreciate further clarification of that point.

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(Mr. Ballah, Trinidad and Tobago)

With respect to element (vi), his delegation supported the view that the second part, which was procedural, should be discussed under item 4 and that the first part could best be dealt with when the question of international machinery was discussed.

Element (vii) was an important one. His delegation did not question the need to draw a distinction between the sea-bed and the ocean floor on the one hand, and the superjacent waters on the other. However, care must be taken in elaborating the régime for the sea-bed and ocean floor to avoid introducing, even by accident, any element of conflict regarding rights and obligations in respect of the superjacent waters.

His delegation had no objection in principle to element (viii), concerning non-discrimination; however, in its view, a more precise formulation, spelling out a just and equitable formula for the determination of priorities, should be devised.

Mr. HOLDER (Liberia) said that his delegation had consistently supported the view that the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction should be regarded as the common heritage of mankind and should accordingly be used for the benefit of all. The Government of Malta had doubtless had such an idea in mind when it had first brought the matter before the United Nations, and the same idea had informed the General Assembly's decision to establish the Ad Hoc Committee. His delegation was therefore disturbed to find the concept challenged by certain members of the Committee. If the present system of international law satisfactorily applied to the sea-bed and ocean floor beyond the limits of national jurisdiction, there would have been no need for the General Assembly to set up the Sea-Bed Committee.

His delegation had no objection to elements (ii), (iii) and (viii) of item 1. Changes in the wording of those elements would also be acceptable, provided that they did not substantially alter the principles at present embodied in the elements.

With regard to element (iv), his delegation felt that the inclusion of the words "or jurisdiction; nor grant exclusive rights" seemed to prejudice the general intention to make use of the resources of the area. Under the system of law prevailing in his country it would be difficult, if not impossible, to grant

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(Mr. Holder, Liberia)

exploitation rights which were not exclusive, at least for a given period of time, and some form of jurisdiction would be indispensable to the exercise of those rights. The formulation contained in element (iii) was preferable.

The formulation of element (v) also presented difficulties. The system of law in his country provided that no one could unquestionably dispose of property without possessing prior ownership. Thus, if oil should by concession be extracted from the subsoil of the ocean floor, the concessionnaire could lawfully transfer ownership in the oil only if the concessionnaire possessed that ownership prior to the transfer. His delegation suggested that element (v) should be omitted from the statement of principles because of the confusion it might create and also because the concept expressed in it appeared to be provided for in the other elements.

The present wording of element (vi) appeared to create an obligation on the part of each individual State to "participate in the administration and regulation of the activities in this area". It would be preferable to redraft element (vi) to indicate that all States should have the right, but not the duty, to participate in the administration of activities in the area and that all States should participate in the benefits resulting from exploitation, and not merely have a right to do so.

Element (vii) appeared to be ambiguously worded. If it was intended to mean that the Committee's consideration of the sea-bed should exclude any consideration whatsoever of the superjacent waters of the high seas, then his delegation would suggest that the element should be omitted. If, on the other hand, the intention was to separate the status of the high seas from that of the sea-bed, then that should be clearly stated.

Mr. DEBERGH (Belgium) suggested that, since there was no controversy concerning elements (ii) and (iii) of item 1, the Sub-Committee should take note of the consensus on those elements.

His delegation had certain reservations regarding element (iv) which added two notions to element (iii); first, there was the question of jurisdiction which, in that context, was not intended to be synonymous with sovereignty. He agreed with the representatives of the United States and Norway that the concept of jurisdiction of a State should not be omitted. Moreover, it could extend beyond

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(Mr. Debergh, Belgium)

jurisdiction over physical persons and involve international private law, property law, the law of obligations and contracts, labour laws, and the like. Furthermore, if it was accepted that States were responsible for the activities undertaken on the sea-bed, such responsibility inevitably implied a certain degree of jurisdiction. On the other hand, the reference to exclusive rights was redundant since no State could grant rights which it did not legally have in the first place.

The formula submitted by his delegation for element (v) was intended to take into account the dangers and implications of private initiative taken independently of any internationally recognized authority. It responded in fact to a very real need: attempts had already been made to form an artificial island on the continental shelf of the United States of America. Similar constructions could be built on the reefs in the Pacific for the purpose of extracting the resources of the sea-bed. States should not be tempted to give their approval to "wild-cat" initiatives, or to recognize in their domestic law property rights which they might later have to defend and protect at the international level. For such reasons, it was essential to maintain element (v).

In order to avoid all possible loop-holes, his delegation suggested that the Committee should consider the following idea: "No one may undertake the exploitation of the sea-bed unless authorized to do so by a State or an intergovernmental organization."

There was a lacuna in item 1. Elements (ii) and (iii) dealt with the questions of appropriation and State sovereignty. But, as the representative of Liberia had pointed out, item 1 did not mention the question of resources extracted from the sea-bed. As the sole purpose of exploitation was appropriation with a view to utilization, it should be realized that the mere fact of extraction would give the entrepreneur - whether it be an individual, a State, or the United Nations itself - a right of property over the resources extracted.

He therefore suggested that the idea contained in the following formulation should be considered for inclusion in the statement of principles: "The appropriation of resources of this area shall be effected in accordance with the régime to be established on the basis of the principles contained in this declaration."

Mr. KOULAZHENKOV (Union of Soviet Socialist Republics) said that on the previous day he had formulated several principles relating to the sea-bed. Perhaps because of linguistic difficulties, they had not been considered in detail by the Sub-Committee. He therefore wished to repeat the formulations he had proposed: /...

(Mr. Koulazhenkov, USSR)

(1) there is an area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction, a more precise boundary of which shall be established; (2) the sea-bed and ocean floor beyond the limits of national jurisdiction is not subject to national appropriation and no State may claim or exercise sovereignty or sovereign rights over any part of the sea-bed; no one may acquire property rights over any part of the sea-bed by use, occupation or any other means; (3) the activities of States on the sea-bed shall be carried out in accordance with international law, including the Charter of the United Nations, and the legal principles and norms which will hereafter be agreed upon for the exploration, use and exploitation of the sea-bed; (4) the exploration and use of the sea-bed shall be carried out for the benefit and in the interests of mankind as a whole, irrespective of the geographical location of States; (5) States shall bear international responsibility for their national activities on the sea-bed, irrespective of whether such activities are carried out by governmental organs, non-governmental organizations or private persons.

Mr. RAZAKANIUO (Madagascar) said that the report, while not constituting a set of principles in itself, at least served to crystallize the Sub-Committee's ideas concerning the future declaration.

His delegation fully supported the inclusion of an affirmation of the existence of an area in the declaration. Although such an affirmation was not a juridical principle in itself, it would add weight to the declaration which the Sub-Committee would submit to the General Assembly. He therefore supported the proposal of Norway to include such an affirmation in the preambular part of the declaration.

With regard to item 1, he felt that the Sub-Committee had no need to confine itself to established formulae. Its work could lead to valuable innovations in international law, one of which would be the introduction of the common heritage of mankind. That concept represented a promise for future generations.

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(Mr. Razakaniuo, Madagascar)

He expressed his gratitude to the representative of India for his explanation of the concept of "jurisdiction" in element (iv) at the fourteenth meeting. Jurisdiction was applicable to the area and not to individual persons. However, so that there could be no misinterpretation of the term in future, it might be preferable to delete it.

With regard to element (vii), his delegation recognized the interdependence of the sea-bed and the superjacent waters and the surface of the sea. The indivisibility of the sea itself was recognized by the 1958 Geneva Convention. It was therefore advisable to bring the various régimes governing the marine environment into line. He did however feel that for the time being there should be separate régimes for the sea itself and the sea-bed. He therefore supported the inclusion of element (vii).

He fully supported item 2. In his view, the applicable instruments of international law would in particular include those relating to the freedom of the high seas, the conservation of natural resources, and the International Convention for the Prevention of Pollution of the Sea, whose purposes were basically identical with the purposes of the proposed declaration.

His delegation would support all efforts designed to achieve the objectives of item 3.

Mr. HARGROVE (United States of America) said that he wished to reply to certain questions raised during the discussions of the previous day. At least one reason why his delegation had expressed reservations about the use of the concept of property as employed in element (v) was that in the legal system of his country the concept of property - and a fortiori that of property rights - was very broadly interpreted. Any legal person permitted to exploit resources - as a licensee, for example - would possess a legal right, which even though quite circumscribed, would be regarded as a type of property or property right. Furthermore, such rights would presumably be properly described as "exclusive" and might very well be granted through or by States. Furthermore, inclusion of the notion of granting exclusive rights might present difficulties for States regarding activities taking place before the precise boundary of the area was defined.

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Mr. GOWLAND (Argentina) requested the Secretariat to prepare official translations of the informal proposals made by the USSR and Belgium.

The CHAIRMAN felt that an informal summary of the Sub-Committee's debates might be useful. With regard to item 1, it was encouraging that there was such a wide measure of agreement on elements (ii), (iii) and (viii). However, the Committee had reached no conclusions regarding the inclusion of the concept of a common heritage of mankind, (element (i)), the question of the separate régime for the sea-bed (element (vii) and element (vi)). Although it had not yet been fully discussed, it seemed that the Sub-Committee approved of the concept concerning the use of resources for the benefit of mankind as a whole (item 4). Elements (vi) and (viii) of item 1 would also be discussed more fully in the context of item 4. It seemed that an affirmation of the existence of an area (A/AC.138/SC.1/4, para. 29 (i)) was acceptable to the Sub-Committee as a whole, although it had not yet been decided whether such an affirmation should form part of the principles or of the preamble.

He suggested that the Sub-Committee should hold informal consultations on the points on which agreement was in sight, perhaps by means of an open-ended drafting group. The purpose of such a step would not be to draft exact formulations, but to reach some conclusions that could be stated in the report as a positive achievement of the session.

Mr. ARORA (India) thanked the Chairman for his informal summary. He felt, however, that it was premature to establish a drafting group before covering all the items. For example, the Sub-Committee had not formally discussed the question of the existence of an area beyond the limits of national jurisdiction, and elements (vi) and (viii) of item 1 were to be discussed more fully under item 4. He agreed that new formulations should be submitted to the Secretariat in writing but considered that a drafting group should not be established until all the items on the agenda had been discussed and all formulations and comments received. At the present stage, substantive discussions would be far more helpful to the Sub-Committee.

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The CHAIRMAN explained that he had not intended to make a formal proposal and that his remarks had referred only to item 1. He had put forward his ideas for consideration by the Sub-Committee in order to assist it in drafting its conclusions for insertion in its report to the General Assembly.

OTHER MATTERS

The CHAIRMAN informed the Sub-Committee that the general summary report of the Symposium on the International Régime of the Sea-Bed, held at the Institute of International Affairs at Rome from 30 June through 5 July 1969, would be available to members shortly. On behalf of the Sub-Committee, he expressed his appreciation to the Institute for its valuable work.

The meeting rose at 6.50 p.m.

SUMMARY RECORD OF THE SIXTEENTH MEETING

Held on Monday, 18 August 1969, at 11.15 a.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4) (continued)

Mr. BAZAN (Chile) said that it was the absence from international law of legal instruments dealing expressly with the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction that had led the General Assembly to instruct the Committee to study the elaboration of legal principles and norms directly applicable to that area. The area was, of course, governed by the general rules of international law, and the Convention on the High Seas had granted all States the right to lay cables and pipelines on the sea-bed, but otherwise the legal vacuum was so great that it had not yet been determined whether the area was res nullius or res communis.

Since delegations appeared to be unanimous in believing that the area in question was not subject to national appropriation by any State and that no State might claim sovereignty or jurisdiction over it, the Sub-Committee could be said to have agreed that it was not res nullius. That, however, meant that all States had equal rights in the area, as it was the property of all nations and all peoples - in short, the property of mankind. Similarly, the General Assembly's instruction to the Committee to ensure the exploitation of the resources of the sea-bed for the benefit of mankind was not an expression of generosity, but a recognition that the area and its resources belonged to mankind. Accordingly, the Chilean delegation fully supported the formulation reproduced in paragraph 5 (i) of the report (A/AC.138/SC.1/4).

Some delegations had objected to that formulation on the grounds that the phrase "the common heritage of mankind" lacked precision and legal content. None, however, were opposed to the essential idea it expressed. What was important to his delegation was that the idea of a condominium of all States should be incorporated in the principles for the legal status of the area and it was his hope that the Sub-Committee would in the near future reach agreement on the form of words in which to express it.

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(Mr. Bazan, Chile)

His delegation supported the idea of supplementing the initial statement of principle by the detailed formulations contained in sub-paragraphs (ii), (iii), (iv) and (v) of paragraph 5 of the report. The wording of those elements might need to be revised for the sake of clarity, but their inclusion would facilitate the interpretation of the basic principle and commit all States to respecting mankind's common ownership of the sea-bed.

The Chilean delegation disagreed with the view that element (vi) should be removed from item 1 and considered in connexion with item 4. The formulation was an essential element of the definition of the area's legal status: the statement that the area was not subject to national appropriation logically required the corollary that it should be exploited only in the manner agreed upon by all States and in such a way as not to deprive them of the benefits resulting from its exploitation. Item 4, on the other hand, was concerned solely with the adjective law governing the exercise of those rights.

In conclusion, he expressed the hope that the Sub-Committee would find it possible in the near future to reach a consensus on the "common heritage" principle. By so doing, it would have fulfilled its basic responsibility of providing the foundation for successful international co-operation in the exploitation of the sea-bed and the utilization of its resources for the benefit of mankind.

Mr. KHANACHET (Kuwait) said that the report of the informal drafting group provided tangible evidence of the spirit of conciliation that had prevailed in the informal consultations and of the genuine efforts of all participants to remove some of the difficulties. The drafting group was to be commended on producing a clear, concise and objective report which not only incorporated all the principles which it considered essential to the legal structure of a system for exploring and utilizing the sea-bed, but also clearly defined the positions of individual delegations and groups. For that reason, his delegation believed that the report should be used as a basis for the Sub-Committee's deliberations and consultations, and as a text on which, with appropriate amendments, the unanimous agreement of all delegations might be secured.

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(Mr. Khanachet, Kuwait)

The principle defined in paragraph 5 (i) of the report should, in his delegation's opinion, be the keystone of any future system for the exploration and exploitation of the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction. Those delegations which were hesitant about or opposed to the inclusion of the "common heritage of mankind" concept in the principles concerning the legal status of the area had contended that the phrase was vague and liable to misinterpretation, that it did not correspond to any element of international law or that it had no legal content. The fears and suspicions implicit in such objections were unjustified. The introduction of a new concept into international law was not an unprecedented occurrence: after all, the institution of the League of Nations and, subsequently, of the United Nations, had required the jurists of the time to expand the body of international law to accommodate new concepts and endow them with legal content. The area with which the Committee was concerned was a new environment and one which gave all mankind the hope of a better life, and for that reason alone delegations should not allow purely formal objections to delay the definition of its legal status.

Acceptance of the principle stated in paragraph 5 (i) would obviate many of the difficulties which had arisen in connexion with elements (ii) and (v). As formulated in the report, the distinction between the two appeared to be that, whereas element (ii) was intended to exclude appropriation by any State, element (v) covered States, companies or other organizations, and private individuals. Some delegations feared that such a phrase as "any part of this area" might be interpreted as excluding the resources of the area and accordingly permitting appropriation or ownership of the resources. Agreement on the "common heritage" concept would, of course, dispose of such difficulties, but in the absence of such agreement, he suggested that the formulations should be so revised as to exclude appropriation by States, organizations and private persons of the area and its resources.

His delegation agreed with the substance of elements (iii) and (iv) but believed that some amendment of the wording was required in order to indicate that while no State might claim territorial jurisdiction over any part of the area,

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(Mr. Khanachet, Kuwait)

States would be required to exercise their jurisdiction over the activities of their nationals within the area. Element (vi) was also acceptable to his delegation in principle; the concept might, however, be better expressed as "All States shall be eligible to participate... in this area and shall participate in the benefits ...".

The separation of the sea-bed from the superjacent waters, as contemplated in element (vii), was not in his delegation's view, a practical possibility. The two areas were organically interdependent and it would be illogical to establish legal provisions for the sea-bed without taking account of their impact on the superjacent waters, or the impact on them of existing international law and custom on such matters as fishing rights. What was really required was the co-ordination of existing law with the future legal régime for the sea-bed.

Finally, his delegation supported the inclusion of element (viii): scientific exploration of the sea-bed, as part of the common heritage of mankind, should be accessible to all States and to their nationals.

Mr. CABRAL DE MELLO (Brazil) observed that there was still some difference of opinion with regard to elements (iv) and (v). In their comments at the previous meeting, the representatives of Belgium and the United States had mentioned certain difficulties that arose in connexion with the concepts of jurisdiction and property. In a spirit of conciliation, his delegation had endeavoured to recast elements (ii), (iii), (iv) and (v) in a new formulation which would read: "1. This area shall not be subject to national appropriation by any means and no State shall exercise or claim sovereignty or sovereign rights over any part of it; 2. Except as might be provided in an international régime to be established, no State shall claim or exercise jurisdiction or exclusive rights over any part of this area and no one shall acquire property over any part of it". The reference to jurisdiction, exclusive rights and property rights in the context of the legal régime to be agreed upon for the area could perhaps solve the difficulties and provide a form of language acceptable to all. In the course of the informal consultations, it was the United Kingdom representative who had suggested mentioning the concepts of jurisdiction and exclusive rights

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(Mr. Cabral de Mello, Brazil)

in the context of the legal régime; his own delegation had merely added the concept of property, since, as was mentioned in paragraph 9 of the report, several delegations had insisted on the need for clearly stating that the area was not subject to appropriation by private persons or entities.

Mr. MLADEK (Czechoslovakia) said that it was imperative to stress once again the need for defining the precise boundary of the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction. The final solution to that question would have a significant effect on any participation by land-locked States in further work in that area. He wished to endorse the formulation proposed in that connexion by the USSR delegation at the previous meeting and he was also of the opinion that the idea of the existence of the area and the necessity for a more precise definition of its boundaries should be stated in the preamble of the future declaration of legal principles.

His delegation could not agree with the view that the concept of "common heritage" should be regarded as a legal principle. However, non-sovereignty and non-appropriation were essential aspects of item 1 and he preferred to see them formulated in two separate paragraphs. In addition, the formulation in one paragraph of the principle of non-appropriation either by States or by their nationals would eliminate some difficulties attaching to element (v). In view of the discussion which had taken place concerning elements (vi) and (vii), he proposed that they should be considered at a later stage. Element (viii) was to some extent related to item 4 and he felt that it could be included in that item if necessary. He had no objection to the formulation of item 2 suggested in paragraph 18 of the report and, in conclusion, wished to propose the insertion of the following in the preamble of the future declaration: "The General Assembly, affirming that there exists an area of the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter described as "this area"), a precise boundary of which should be agreed upon". And, in the operative part of the declaration: "Declares: 1. No State may claim or exercise sovereignty or sovereign rights or jurisdiction over, nor grant exclusive rights to, any part of this area. 2. No part of this area is subject to any

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(Mr. Mladek, Czechsolovakia)

appropriation - either by States or by nationals - by use or occupation or by any other means. 3. All activities in this area shall be carried out in accordance with international law, including the Charter of the United Nations, and the legal principles and norms to be internationally agreed upon for the exploration, use and exploitation of this area."

Miss MARTIN-SANE (France), speaking in connexion with item 3, observed that General Assembly resolution 2467 A (XXIII) called upon the Committee to study further, taking into account the studies and international negotiations being undertaken in the field of disarmament, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which might be agreed upon in that respect. Obviously, to study further meant to study in detail. Certain delegations had referred to the competence of other bodies and the possibility of interference in their work, but she refused to believe that those comments reflected any lack of confidence in a Committee which included representatives of most of the world's maritime Powers. Her delegation felt that the whole question must be examined thoroughly, and the most appropriate forum for such an examination would be the main Committee. Moreover, it was not possible to draw up a detailed declaration of principles without full knowledge of the results of the exchange of views and negotiations which were taking place. If the Committee wished to define a principle, it must arrive at a clear and simple text. The sea-bed and ocean floor must be reserved exclusively for peaceful purposes, but coastal States were concerned with defence problems. Consequently, there was the question of defining the area which was to be reserved for peaceful purposes and she wondered whether the Committee was in a position at the present time to settle that question. While it was true that the USSR delegation had made a proposal in the course of the informal consultations, the proposal had not received unanimous support. Accordingly, the declaration of principles could only state, as the Belgian delegation had suggested, that the sea-bed and ocean floor must be reserved exclusively for peaceful purposes in an area beyond a coastal strip the limits of which were yet to be agreed upon.

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Mr. KOULAZHENKOV (Union of Soviet Socialist Republics), referring to item 3, said that the problem of prohibiting the military use of the sea-bed was one of the most pressing problems concerning that area since if effective steps were not taken at the present stage to prohibit such use the arms race would be extended to the sea-bed, which would then become a source of tension and conflict. On the other hand an agreement to demilitarize the sea-bed would create a favourable atmosphere for international co-operation in the utilization of the sea-bed and would clear the way for the solution of questions of international law arising out of the expansion of the activities of States with regard to the sea-bed. In resolution 2340 (XXII), the General Assembly had drawn attention to the need for a solution to the question since developing technology was making the sea-bed and the ocean floor, and the subsoil thereof, accessible and exploitable for military purposes. Prompted by such considerations, the USSR Government had, at the first session of the Committee and subsequently in a memorandum on urgent measures to halt the arms race which had been considered at the twenty-third session of the General Assembly, raised the question of prohibiting the military use of the sea-bed and reserving it exclusively for peaceful purposes. A draft treaty on that subject had been submitted by the USSR to the Eighteen-Nation Committee on Disarmament for consideration. The formulation of specific legally binding measures prohibiting the use of the sea-bed for military purposes lay within the competence of the Eighteen-Nation Committee on Disarmament, but the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction could make a definite contribution by including a principle on the reservation of the sea-bed exclusively for peaceful purposes as an essential part of the legal principles which the Committee was to elaborate in accordance with resolution 2467 A (XXIII). At the previous session, his delegation had analysed existing international practice in the application of the concept of "reservation exclusively for peaceful purposes" and it was clear that that concept must rule out any military activity and not just so-called "defence" activities, compatible with the Charter of the United Nations. To state, as some delegations suggested, that only aggressive military activities were to be considered incompatible with the principle of reservation exclusively for peaceful purposes would change nothing in the present situation and would not prevent the extension of the arms race to the sea-bed and ocean floor. In

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(Mr. Koulazhenkov, USSR)

order to avoid any differences of interpretation, the principle of the reservation of the sea-bed exclusively for peaceful purposes should be more clearly defined, and he accordingly proposed the following wording:

> "The sea-bed and the ocean floor, and the sub-soil thereof, beyond the limits of the maritime zone of coastal States, the boundaries of which must be agreed upon in international negotiations in the field of disarmament, shall be utilized exclusively for peaceful purposes; all military activities shall therefore be excluded and any form of military utilization shall be prohibited."

In submitting that proposal, the USSR delegation was not attempting to prejudge the work of the Eighteen-Nation Committee on Disarmament.

Mr. GORALCZYK (Poland) said that it was necessary to accept the principle set forth in item 3 so as to prevent a further extension of the arms race. The demilitarized area should also include the continental shelf beyond the maritime zone. In October 1968, the German Democratic Republic, Poland and the Union of Soviet Socialist Republics had concluded a convention on the Baltic Sea which contained a provision to the effect that the continental shelf must be reserved solely for peaceful purposes. The principle of reservation exclusively for peaceful purposes was acceptable to all delegations, although there were differences regarding the precise content of the principle and the boundaries of the area to which it was to apply. The Committee should confine itself to acceptance of the general principle and leave the question of the detailed norms of application to the Eighteen-Nation Disarmament Committee. His delegation was prepared to accept the wording of the formulation proposed by the Union of Soviet Socialist Republics.

Mr. ODA (Japan) fully supported the idea that all activities in the area should be carried out in accordance with international law, including the Charter of the United Nations. Accordingly, the formulation of item 2 contained in paragraph 18 of the report was acceptable to his delegation, with the understanding that the expression "international law" included the time-honoured principle of the freedom of the high seas - one which in no way precluded the possibility of international agreement on new legal principles and norms governing the exploration, use and exploitation of the area. Such principles and norms would be special rules supplementing the freedom of high seas as general rules.

(Mr. Oda, Japan)

It was incumbent on all mankind to make every effort to prevent the spread of the arms race to the sea-bed and the ocean floor and he therefore endorsed the principle of reservation of the area exclusively for peaceful purposes. It was probable that the deliberations of the Disarmament Committee in Geneva would lead to a convention prohibiting military uses of the sea-bed and the ocean floor and, therefore, although it was highly necessary for the Committee to be kept informed of the deliberations taking place in the Disarmament Committee, it would not be appropriate for the Committee to enter into a detailed discussion of the matter at the present stage. Moreover, "the area", as referred to in item 3, should be taken to mean the area beyond the territorial sea and, on that understanding his delegation felt that it would be sufficient for the declaration of legal principles to contain a simple statement that "this area should be exclusively reserved for peaceful purposes".

Mr. ARORA (India) said that his delegation looked forward to hearing comments on the compromise formulation for item 1 which had been proposed by the Brazilian representative.

As could be seen from the report of the informal drafting group, although there were areas of agreement on some principles, there were major differences of views between two main schools of thought. Interestingly enough, the positions taken by different delegations did not fall into any set ideological or regional pattern; nor did the same set of countries necessarily hold the same views on all principles. For example, one school held that an international régime should encourage international co-operation among States for the exploration, use and exploitation of the resources of the area, but that the initiative should be left to States to undertake operations for the development of those resources. In accordance with national priority and regardless of the needs and aspirations of the international community, States would proceed with their plans, seeking to enrich themselves as they thought best, and an international body or authority would merely register claims relating to activities for exploring and exploiting the resources of the area. In other words, there would be maximum freedom to exploit resources under a nominal international régime. The other main school of thought considered that the management of the resources of the area and the regulation of activities should be undertaken by some international body which

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would hold the area in trust for the international community. Such a body might not itself undertake exploitation of the resources but would issue licences for operations and conduct the development of those operations in the interests of mankind as a whole, taking into account the special needs and interests of the developing countries.

On the question of the exploitation of resources before an international régime was established, one school of thought held that international law relating to the high seas was applicable to the sea-bed and ocean floor beyond the limits of national jurisdiction and that it should warrant the broadest possible freedom to exploit the resources of that area pending the establishment of an international regime. The other school of thought, while it might or might not challenge the applicability of the law of the high seas to the area, held that it was dangerous to suggest that the resources of the area could be freely exploited when no régime to govern their exploitation and other uses had yet been developed or was immediately in sight.

There were also two points of view on the question of the exploration of resources: first, that there should be freedom of exploration only in respect of purely scientific research, information concerning which should be made available in advance and the results of which should be accessible to all; and, second, that commercial firms should also enjoy freedom of exploration even though they might intend to use the results of their research to develop the resources of the area for commercial purposes. Arguments in favour of the second point of view were, first, that existing international law was adequate to cover the foreseable exploitation of the resources of the area and that the laws governing the freedom of the high seas were also applicable to the sea-bed and ocean floor beyond the limits of national jurisdiction; secondly, that future exploration of the resources of the area should be free and that no criteria, conditions or restrictions were necessary to ensure that such freedom would apply exclusively to scientific exploration; and, thirdly, that freedom of access to the resources of the areas should be recognized for all, without any discrimination, possibly on condition that some notification of operations might be required or some standards of exploitation taken into account. The other school of thought held, first, that the sea-bed and the ocean floor were

(Mr. Arora, India)

the common heritage of mankind; secondly that a régime should be developed based on principles which would ensure that the sea-bed and the ocean floor, and the sub-soil thereof, and their resources should be exploited for the benefit of all mankind, taking into account the special needs and interests of the developing countries in accordance with resolution 2467 A (XXIII); thirdly, that the régime should apply to the area as a whole and not only to its resources; and, fourthly, that international machinery should be established to protect the interests of the developing countries and that the world community should be represented in the administration of the area.

His delegation was strongly in favour of the adoption of a declaration of principles and would welcome any compromise formulations which took into account the ideas which had been put forward in the Sub-Committee. The report of the informal drafting group represented a good basis for discussion in the Sub-Committee and for the report which the Rapporteur would prepare for submission to the main committee.

Mr. OULD HACHEME (Mauritania) commended the informal drafting group on its report, which reflected his delegation's views on the question of legal status and the establishment of an international machinery to ensure the utilization of the sea-bed and the ocean floor beyond the limits of national jurisdiction for peaceful purposes. At the previous session of the Legal Sub-Committee, his delegation had spoken of the need to study the question of international co-operation to provide the developing countries with the means necessary to protect their territorial waters. It had proposed that the problem of the protection of the territorial waters and the waters beyond the limits of national jurisdiction of the developing countries should be mentioned in the relevant paragraph of the programme of work, had drawn attention to the seventh preambular paragraph of resolution 2467 A (XXIII), and had suggested that the Sub-Committee should mention the need to protect the interests of the developing countries in its report to the main Committee. That was a very important aspect of the question and concerned the interests of all the developing countries. He hoped that the informal drafting group would find a suitable formula for inclusion either in the report now under consideration or in that to be submitted to the main Committee. His delegation was concerned over the present situation, in which the territorial waters of States were being

(Mr. Culd Hacheme, Mauritania)

constantly violated and the limits of the continental shelf pushed back for the benefit of the technologically advanced countries and to the detriment of the developing countries. As President Johnson had said, the sea-bed and the ocean floor should not become the object of colonial rivalry but should be used for the benefit of all mankind.

Mr. VALLARTA (Mexico) said that his delegation's position on the question of the reservation of the sea-bed and the ocean floor exclusively for peaceful purposes had been stated in the Eighteen-Nation Committee on Disarmament and could be found in document ENDC/PV.426 of 7 August 1969.

The meeting rose at 1.20 p.m.

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SUMMARY RECORD OF THE SEVENTEENTH MEETING

Held on Tuesday, 19 August 1969, at 11 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4) (continued)

Mr. PAVICEVIC (Yugoslavia) said that his delegation recognized the existence of an area of the sea-bed and the ocean floor underlying the high seas and beyond the limits of national jurisdiction which should be proclaimed the common heritage of mankind. It would support the inclusion of such a statement in the preamble of a declaration of principles.

At the same time his delegation was aware of the imprecision of the limits of this area, of the need to define its precise, internationally agreed, boundaries; it is also aware of the imperfections of the Geneva Convention on the continental shelf and of the need for its revision.

He again stated that the finding of a solution to this problem, as well as the solution itself, was primarily political; it must therefore be dealt with as such, through appropriate means and at an appropriate time after thorough preparation, most probably at an international conference. He did not share the opinions of those who thought that this Committee should also try and find a solution to the problem.

His delegation noted that the questions of the creation of an appropriate international régime and of the boundaries of the territory of the sea-bed, to which it would apply, were so inter-related that their solution should be sought and reached concurrently. In the view of his delegation, it was more important to seek a solution to this problem in an appropriate way than to argue whether it was essential to include in the declaration of principles a statement to the effect that limits of national jurisdiction should be defined. However, he would not oppose such an inclusion in the preamble to the declaration, bearing in mind the Geneva Convention on continental shelf.

His delegation considered elements contained in sub-paragraphs (i), (ii) and (iii) of paragraph 14 on "the applicability of international law and the United Nations Charter" to be complementary and mutually non-exclusive. Those elements, if combined, could provide an acceptable formulation of relevant principle or principles of the declaration.

His delegation supported the view that all ideas contained in sub-paragraphs (i), (ii) and (iii) should be incorporated into the declaration of principles, since they were logically, legally and politically inter-dependent.

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(Mr. Pavicevic, Yugoslavia)

He considered that in an attempt to find a widely acceptable formulation of the principle relating to this matter, the idea expressed in paragraph 18 should be followed, combining at the same time as many of the elements contained in paragraph 14.

Referring to item 2 as a whole, he observed that direct references were made only to the "activities in this area". While his delegation supported it, he wished to point out that a declaration of general principles should also contain the idea that "relations among States" concerning the sea-bed as well as on the sea-bed, should be based upon the principles of the United Nations Charter.

With regard to item 3 - "reservation exclusively for peaceful purposes" - his delegation fully supported the complete prohibition of any kind of militarization of the sea-bed and the ocean floor beyond the limits to be determined by international negotiations. It was especially important to prohibit the emplacement of nuclear weapons and other weapons of mass destruction as well as the means for their delivery on the sea-bed and the ocean floor and its subsoil. Recognizing the need to prohibit all military uses of the sea-bed, his delegation was strongly in favour of the uses of the sea-bed exclusively for peaceful purposes.

His delegation considered that sub-paragraph (i) of paragraph 19 - "reservation exclusively for peaceful purposes" - as well as the idea of sub-paragraph (iii) (c) - "beyond a coastal strip the limits of which are yet to be agreed upon" - could be widely acceptable since they were less controversial, although of a very general character. If those two elements could constitute a generally acceptable formulation of that principle, his delegation would support it, with an understanding that an arms race would be prevented from conquering the sea-bed through an international convention.

The ideas contained in sub-paragraph (iii): (a) beyond the twelve-mile maritime zone of coastal States; and (b) beyond the limits of national jurisdiction were, at this moment, and for the purpose of the task of the Committee, prejudicial because the limits beyond which the sea-bed would be used exclusively for peaceful purposes were not delimited and would be agreed upon through international negotiations. Alternatives in sub-paragraph (ii) (c) seemed to his delegation less clear and less precise. In fact, they were already covered by sub-paragraph (i). Furthermore, his delegation was ready for further exchange of views on the possible uses of the alternatives contained in sub-paragraphs (ii) (a) and (ii) (b).

His delegation welcomed the new formulation submitted at the previous meeting by the representative of the Soviet Union as a useful contribution to the Sub-Committee's efforts to define the important principle expressed in item 3. /...

Mr. DEBERGH (Belgium), referring to item 1, said that the formulation suggested by the representative of Brazil at the last meeting provided an excellent synthesis of elements (ii), (iii), (iv) and (v) and took account of the Belgian delegation's views concerning jurisdiction, the granting of exclusive rights and the acquisition of property rights. The word "property" as used in the formulation proposed by the representative of Brazil should not necessarily be understood in its literal sense but rather taken to imply a conglomerate of individual rights, such as the right of use. That interpretation of the term "property rights" made it easier to comprehend the significance of the term from the standpoint of its social value, which was also a factor of some importance for the study which the Committee was undertaking. His delegation was therefore pleased to endorse the Brazilian formulation.

He recalled that at the fifteenth meeting he had suggested that item 1 should include the principle that no one should undertake the exploitation of the sea-bed unless authorized to do so by a State or an intergovernmental organization. Such a provision appeared in the Declaration of Principles on the Exploration and Use of Outer Space. Though private enterprises would not play an appreciable role in that field for some time to come, if ever, they could not be excluded a priori from the exploration of the sea-bed. Without going so far as to speak of the possibility of piracy, it was quite easy to envisage that certain private initiatives might give rise to friction, disturbances and anarchy in which States themselves might become involved. Accordingly, the Belgian delegation suggested the following formulation: "The activities of non-governmental organizations and of private persons in the area must be authorized and kept under constant surveillance by a State or an intergovernmental organization."

At the Sub-Committee's fifteenth meeting he had also raised the question whether the mere fact of extracting the resources of the sea-bed would or would not give an entrepreneur - operating within the framework of the international régime - property rights over the substances extracted. As he had not heard any reactions on that subject, he assumed that he had, in fact, been engaging in a petitio principii. Nevertheless, he thought it had been useful to draw attention to that question, even if the answer were self-evident.

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(Mr. Debergh, Belgium)

As for item 2, his delegation regarded the formulation set forth in paragraph 18 as a satisfactory synthesis of the principles which applied to the item. In his view, however, more emphasis should be placed on the importance of the United Nations Charter. He accordingly suggested that the phrase "including the Charter of the United Nations" should be replaced by "in particular the purposes and principles of the Charter of the United Nations,".

His delegation strongly supported item 3 and believed that an effective control system should be established to ensure the reservation of the sea-bed exclusively for peaceful purposes. However, only a general statement, acceptable to all delegations, should be included in the declaration. He suggested the following combination of elements (i) and (iii) (c): "The sea-bed and ocean floor beyond a coastal strip the limits of which are to be agreed on shall be reserved exclusively for peaceful purposes". Ultimately, the question of prohibiting the militarization of the sea-bed would have to be dealt with in a treaty, which would be universally applicable. A statement of principles by the United Nations would entail only moral obligations. He therefore suggested that the declaration should include a statement to the effect that an international treaty should be concluded as soon as possible for the purpose of preventing an arms race from taking place in the area.

Mr. SCHRAM (Iceland), referring to item 2, said that although the relevant principles of international law clearly applied to the area in question, the existing body of international law was by no means adequate for dealing with the situations which might arise in connexion with the exploration and exploitation of the sea-bed. On the other hand, such a principle of traditional international law as the freedom of the high seas was not applicable to the sea-bed because it would raise the spectre of anarchic exploitation in the area. It was therefore necessary to state that, while the existing norms of international law were to be taken into account, activities on the sea-bed must be carried out in accordance with the Charter of the United Nations and the principles agreed upon for the exploration and exploitation of the area.

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(Mr. Schram, Iceland)

Item 3 was one of the most important items under discussion by the Sub-Committee. His delegation strongly believed that the sea-bed and the ocean floor should be used exclusively for peaceful purposes and that, in particular, a treaty should be negotiated to prohibit the emplacement of all nuclear weapons in the area. Since the same question was being considered by the Eighteen-Nation Disarmament Committee, the Sub-Committee should defer detailed discussion on the subject, while taking account of the idea expressed in paragraph 1 of the original draft resolution submitted to the Ad Hoc Committee on the subject by the Soviet delegation (A/AC.135/20).

His delegation had always supported the idea that a considerable portion of the financial proceeds resulting from the exploitation of sea-bed resources should be allocated to the needs of the developing countries. The principle expressed in item 4 would also provide an opportunity for dedicating a portion of those proceeds to international community purposes - an important factor when one considered the financial situation of the United Nations. It also seemed equitable to have special regard for the interests of the nearest coastal State or States, possibly allowing them a share in the proceeds of exploitation. The companies and enterprises developing the resources of the area should, in his delegation's view, be given economic incentives.

It was extremely important for the Committee to submit to the General Assembly a declaration containing at least some general principles instead of merely a report on the various views expressed in the course of debate. His delegation felt that there were certain general principles which met with general agreement: (1) that there is an area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction; (2) that no State might claim or exercise sovereign rights over that area; (3) that the area, as subsequently defined, should be reserved exclusively for peaceful purposes; (4) that an international régime should be established for the area; (5) that the exploration and exploitation of the area should be conducted in accordance with international law, including the Charter of the United Nations and principles subsequently developed for those purposes; (6) that the exploration and use of the area should be carried out for the benefit of all mankind, irrespective of the geographical location of States, having special

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(Mr. Schram, Iceland)

regard to the needs and interests of the developing countries, and international community purposes; (7) that pollution should be prevented and obligations and the liabilities of States established in that respect.

Mr. EVENSEN (Norway) said that he agreed with those who considered that a general reference to the applicable principles of international law should be included in the statement of principles. The existing rules of law were fragmentary; they did not even regulate, still less solve, the many novel and complex problems connected with the sea-bed. His delegation believed, however, that a mere reference to the applicability of existing international law, including the United Nations Charter, would not be sufficient. The Committee, under its mandate, had the obligation to elaborate the legal principles and norms needed to ensure the peaceful uses of the sea-bed and the ocean floor for the benefit of mankind.

His delegation supported the formulation contained in paragraph 18 with the deletion of the words "(in due course)", which were superfluous and confusing.

Mr. OLISEMEKA (Nigeria) said that his delegation subscribed to the views that had been expressed by a number of delegations on item 3. While efforts to formulate an agreed principle on the subject should continue, the Sub-Committee should be guided by the provisions of resolution 2467 A (XXIII), which required it to take into account the studies and international negotiations being undertaken in the field of disarmament.

His delegation maintained the position which had been outlined by the Nigerian representative at the 411th meeting of the Eighteen-Nation Disarmament Committee: that the area of the sea-bed under discussion should be reserved exclusively for peaceful purposes, that there was a need to delimit the boundaries beyond which the prohibition of military activities would apply and that the application of the prohibition to the area beyond a twelve-mile maritime zone of coastal States was reasonable, subject to certain exemptions which his delegation had specified. His delegation would, for the moment, keep an open mind on the further elaboration of the "peaceful purposes" principle. It wished,

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(Mr. Olisemeka, Nigeria)

however, to urge all members to bear in mind that, as Nigeria had pointed out in the Disarmament Committee, the sea-bed question seemed to offer favourable prospects for agreement in the field of disarmament and that such an opportunity should not be let slip while the arms race in that new environment was still a possibility rather than a reality.

On the subject of item 1, his delegation subscribed to the concept expressed in element (i) and shared the view that it was a cardinal concept which should constitute a legal principle. The substance of the other elements listed in paragraph 5 of the report was acceptable to his delegation, provided that they were taken as an honest extension of that key principle. The form of words in which they were expressed was a matter of detail on which agreement might be reached at a later stage, provided the wording did not vitiate the spirit of the "common heritage" concept for reasons which his delegation could neither share nor approve.

His delegation also supported the formulation for item 2 contained in paragraph 18 of the report, with the similar reservation that the final text should be such that it did not serve the narrow interests of any one nation.

Mr. ARORA (India) said that his delegation disagreed with the assertion made at an earlier meeting that the question of whether the text of a principle concerning the applicability of international law (item 3) should refer to the norms and principles of the future international régime was a subsidiary one. On the contrary, the matter was extremely relevant to the consideration of the standards to be applied in the conduct of activities in the area prior to the establishment of an agreed international régime.

While it was true that the subject-matter of item 3 was being discussed by the Eighteen-Nation Disarmament Committee, the Sub-Committee was still required under its terms of reference to develop principles for the use of the sea-bed exclusively for peaceful purposes. The boundaries of the area within which activities of certain types would be prohibited could, however, appropriately be the subject of a recommendation to the General Assembly by the Disarmament Committee.

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(Mr. Arora, India)

He had referred in an earlier statement to the divergence of opinion among members of the Sub-Committee concerning item 4. Those who believed that the future legal régime should apply to the area as a whole, and not merely to the resources, believed that there might in future be uses of the sea-bed, other than exploitation, which required regulation. That was only one of many reasons why the proposed régime should be able to deal with the area and its resources comprehensively. His delegation therefore supported the general formulation on the exploration, use and exploitation of the area contained in paragraph 20, subject to the deletion of the words in parentheses, and the formulation concerning an international régime contained in paragraph 22, subject to the same amendment. His delegation also accepted the description in paragraph 24 of the general purpose of the régime.

His delegation had considered each of the formulations concerning the detailed provisions of that régime, which were reproduced in paragraph 25, in the light of its compatibility with the principle that the area was the common heritage of mankind and that the international authority which administered it would hold it in trust for mankind. By that standard, only element (i) (a) of the suggested formulations concerning the application of benefits was satisfactory. None of the formulations suggested for element (ii) was entirely adequate, since no provision was made for the phasing-out of economic incentives once the initial hazards of operations on the sea-bed had been reduced. His delegation preferred the first formulation suggested for element (iii), because the functions it envisaged for the proposed international authority were such as to enable that authority to ensure that the area was regulated for the benefit of all mankind, taking due account of the needs of the developing countries.

Element (v) was not, as some delegations had contended, beyond the scope of the proposed régime. That would be true only if the function of the international authority was to be the management of resources, rather than the regulation of activities in the area. Element (vii) expressed a principle which should be embodied in the régime. On the remaining elements - (iv), (vi) and (viii) - his delegation had no comment to make at the moment.

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(Mr. Arora, India)

His delegation had no desire to challenge the principle that there should be freedom of scientific research and exploration in the area with which the Committee was concerned. Purely scientific research would not be adversely affected by the type of controls referred to in elements (ii) and (iii) of item 5. The kind of commercial exploration which often masqueraded as scientific research did, however, need to be treated differently, and for that reason criteria should be established to distinguish between scientific and commercial exploration.

Mr. KOSTOV (Bulgaria) said that in resolutions 2340 (XXII) and 2467 (XXIII) the General Assembly had set itself the important goals of preventing the spread of the arms race to the sea-bed and ocean floor, and of ensuring that the area was used in the interest of all mankind. Clearly, it was essential to establish conditions which would guarantee reservation of the area exclusively for peaceful purposes and his delegation firmly supported the prohibition of all military activities on, and all military uses of, the sea-bed and ocean floor, as a prerequisite for any type of peaceful utilization of the area for the benefit of man. Indeed, the final report of the Symposium on the International Régime of the Sea-Bed held recently at Rome had stated that, with the advancement of technology, the prospects of using the sea-bed for military purposes had generally increased and that any further increase in that field would mean the reduction of the areas available for peaceful exploration, exploitation and scientific research. Naturally, the political aspect of the question could not be overlooked. The problem was a matter of concern to the public at large, which was demanding a rapid solution through the conclusion of appropriate agreements. The Sub-Committee should endeavour to establish a general principle which would facilitate the adoption of practical measures by the Eighteen-Nation Disarmament Committee. The theory of the admissibility of non-aggressive military activity was unsound, since there was no type of military activity, whether aggressive or non-aggressive, which could serve the interests of all mankind. On the other hand, no formulation should prejudice the right of States to defend themselves against an act of aggression.

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(Mr. Kostov, Bulgaria)

In his view, the term "the area" should comprise the whole of the area beyond the territorial sea, as the principle would then extend to the continental shelf. Such an approach was justifiable under international positive law. As his delegation had already pointed out, by virtue of the provisions of the 1958 Geneva Convention, the rights of States over the continental shelf were not unlimited and covered only the exploration and exploitation of its resources. However, the limits of the prohibition could subsequently be agreed upon within the framework of the international negotiations on disarmament. He felt that the formulation proposed at the previous meeting by the USSR delegation provided an acceptable compromise. In the meanwhile, he reserved the right to refer to the Belgian proposal at a later date.

Miss MARTIN-SANE (France) said that activities relating to the use of resources in the interests of mankind as a whole could and should be undertaken only in accordance with principles which were explicit enought to safeguard those interests, taking into account the special needs of the developing countries. In her view, some of the elements proposed in item 4 served that purpose. Her delegation was prepared to accept the formulation contained in paragraph 20 of the report, including the words "of the resources", which were necessary if the intention was to establish a régime to govern the new use of the resources of the area. For example, agreements already existed for the laying and maintenance of submarine cables and pipelines, and a new régime should therefore apply specifically to the use of the resources of the area. Having accepted that principle, she was therefore able to endorse the formulation expressed in paragraph 22 of the report, omitting the word "legal".

Underlying the first element of paragraph 25 there were two considerations - the interest of mankind as a whole and the special needs of the developing countries. In order to serve both those ends, the régime must dedicate, as feasible and practicable, a portion of the value of the resources recovered from the area to international community purposes and must take into account the special needs of the developing countries. As for economic incentives, no firm would undertake the exploration and exploitation of the sea-bed and ocean floor unless it was assured of some benefit from its operations. Accordingly, it would

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(Miss Martin-Sane, France)

be useful to retain element (ii) (a). It would not be reasonable to conceive of the establishment of an organ to manage the resources directly and her delegation would therefore reject the proposal contained in element (iii) (b), since it presupposed the establishment of an operational body. On the other hand, the proposals set forth in elements (iv) to (viii) merited favourable consideration. General Assembly resolution 2467 C expressed the idea that international machinery, far from hindering exploration and exploitation, must encourage such activities. However, a further effort was required to condense, in as few lines as possible, the description of the function of such machinery, which should promote effective international co-operation in the area. At the same time, her delegation was fully aware of the merits of the idea expressed in element (v), that it would be desirable, for example, to adopt measures to minimize the fluctuations of prices of raw materials in the world market in order to take into account the economic effects of exploitation. Lastly, it would be more fitting if element (viii) was dealt with under the heading of the régime to be established.

Mr. GOWLAND (Argentina), referring to item 2, said that the exploration and use of the sea-bed and the exploitation of its resources must be undertaken in accordance with the international régime to be established, so as to ensure the achievement of the goals of the Organization, bearing in mind the purposes and principles of the Charter - above all, the maintenance of international peace and security. The régime must, moreover, ensure respect for the sovereignty and territorial integrity of States and one of its principal aims would be to safeguard the interests of coastal States and to promote economic development, especially in the developing countries. The principles of international law governing the high seas were not fully applicable to the sea-bed and ocean floor, as that area required a special international régime, within a legal framework which would allow exploration and exploitation to be conducted efficiently yet equitably, having due regard for the interests both of the States and enterprises making the investments and of the developing countries and coastal States. Certain norms of international law, such as the freedom of the high seas and the freedom of exploitation, far from producing a system of international co-operation for the benefit of mankind, could lead to some

(Mr. Gowland, Argentina)

disorder, whereas the present needs of the world community called for economic utilization of the sea-bed and ocean floor in a spirit of genuine international co-operation.

His country firmly believed in the need explicitly to state the principle of reservation exclusively for peaceful purposes - one which had been incorporated in a draft resolution (A/C.1/L.437) which his delegation had co-sponsored at the twenty-third session of the General Assembly. The detailed elaboration of the principle and the preparation of an international agreement required a great deal of time and study and, as far as the military aspects of the problem were concerned, the body most competent to negotiate international agreements and discuss methods of prohibiting all non-defensive military uses of the area, particularly the emplacement of nuclear weapons and other weapons of mass destruction on the sea-bed and ocean floor, was the Eighteen-Nation Committee on Disarmament. Nevertheless, it was indispensable for the Committee to proclaim the principle in the future declaration and his delegation would give careful attention to the specific proposals which had been made.

Mr. PINTO (Ceylon), referring to item 3 observed that the report raised not only the question of defining the precise limits of national jurisdiction with a view to issuing a declaration on reservation of the area exclusively for peaceful purposes, but also the question of whether that definition would be the same as for the boundary of national jurisdiction, as referred to in paragraph 29 of the report, for the purposes of a declaration of general principles. While his delegation would wish to give further thought to the matter, it felt that failure to arrive at precise definitions would not necessarily be an obstacle to the formulation of either declaration, although it was essential to move toward such a definition or definitions before embarking on the next step of concluding international conventions.

With regard to item 4, he supported the views of the Indian delegation and was in substantial agreement with the formula contained in paragraph 21 of the report. As for paragraph 25, his delegation favoured the formulation contained in element (i) (a) and regarded the two parts of element (iii) as complementary to one another. Elements (iv), (v), (vi) and (vii) were also acceptable, but elements (ii) and (viii) merited further consideration at a later stage, after the broad terms of a declaration had been agreed upon.

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(Mr. Pinto, Ceylon)

Concerning the content of paragraph 29 of the report, he hoped that the Committee would make recommendations regarding the means of establishing, as soon as practicable, a precise internationally agreed boundary for the deep ocean floor and the sea-bed and the subsoil thereof beyond the area over which coastal States might exercise sovereign rights. If an international conference was envisaged, such as a conference for the revision of the Geneva Convention on the continental shelf, a good deal of preparation would be required and it would be advisable for the Committee to indicate at its current session whether it felt that early action was required. Moreover, in order to expedite the Committee's task, the members of the informal drafting group might, perhaps, be asked to consider the feasibility of holding a negotiating and drafting session in an endeavour to agree upon a draft of the declaration which would command general support.

The meeting rose at 1.5 p.m.

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SUMMARY RECORD OF THE EIGHTEENTH MEETING

Held on Wednesday, 20 August 1969, at 11.10 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4) (continued)

Mr. PARDO (Malta) said that the Committee still seemed unable to establish a firm base which would constitute a positive step towards the agreed goal of how best to ensure the common interests of mankind in the peaceful uses of the sea-bed and its exploration and exploitation for the benefit of all countries. Technology, on the other hand, was making very rapid advances. In addition, the advantages offered by the utilization of the sea-bed for defence purposes continued to receive great attention. Failure to move towards agreement would mean that the area, and particularly the resources that were to be explored and exploited for the benefit of all countries, would be reduced to almost nothing. His delegation gave first priority to the determination and consolidation of areas of agreement, as the basis for further progress. Fundamental disagreements within the Committee could not be resolved by the repetition of generic arguments and it was necessary to demonstrate through methodical and detailed analysis that only one solution to the problems connected with the sea-bed was truly in the over-all interests of mankind. It would not be possible to achieve that end until the Committee formally registered the points of agreement in a resolution and found formulations for points of disagreement that kept all options open, both for those who supported and those who opposed a specific point of view. Nevertheless, his delegation would endeavour, by appealing to reason and well understood national interests, to convince all members of the international community of the necessity for co-operation in the establishment of an international régime which would provide for efficient administration of the sea-bed and its resources, would become a vehicle for equitable distribution of the wealth of an area which did not belong to any one country, and would ensure that at least one area of the planet was used exclusively for peaceful purposes.

He was of the view that little progress towards the practical realization of common goals would be made unless the difficulties were resolved systematically. He feared that the attitudes of some delegations would indefinitely delay the achievement of vital objectives and would almost certainly increase dissension within the Committee. One course which had been advocated informally was based on the assumption that passage of time without

(Mr. Pardo, Malta)

action by the General Assembly could be advantageous to poor countries, but nothing could be further from the truth. Apart from the fact that the mere passage of time and the repetitive discussion of generalities were unlikely to cause a change in the position of delegations, it must be remembered that accessible sea-bed resources were being claimed, though not always exploited, at ever increasing distances from the coast. Consequently, the prospect of deriving substantial economic benefits for mankind as a whole, and for the poor countries in particular, from the exploitation of resources in the area beyond national jurisdiction diminished as national claims extended to ever deeper waters, unrestricted by any action on the part of the General Assembly. Moreover, although the adoption of a resolution by the General Assembly could lead, for example, to the establishment of new organs, it could not lay the foundations of a viable legal régime for the sea-bed and ocean floor, if the régime was not acceptable to the world's more powerful States.

There were three subjects of discussion which were not palatable to all: first, the necessity for defining the precise area of the sea-bed beyond the limits of national jurisdiction; secondly, the application of the concept of common heritage; and thirdly, the establishment of international machinery. On the first point, it was doubtful that internationally ruled exploitation could be carried out if the area governed by an international régime was not properly defined. With a precise definition of the area, serious consideration could be given to the subject in the proper context of the nature of the legal régime applicable to the sea-bed beyond national jurisdiction. Nevertheless, at the present preliminary stage, although desirable, it was not essential to state directly in any declaration of principles that the area required further definition; the matter could be dealt with more exhaustively at a later stage. Nor was it essential to set forth in the operative part of a declaration that the sea-bed and ocean floor beyond the limits of national jurisdiction was a common heritage of mankind, provided that the declaration contained nothing incompatible with that concept. Lastly, on the question of international machinery, his delegation would be content with a statement of the need for international arrangements and the basic objectives of such arrangements. The most practicable form of arrangements could then be discussed the following

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(Mr. Pardo, Malta)

year. He also agreed with the representative of Ceylon that the task of finding acceptable formulations on points of disagreement might be facilitated by setting up an informal drafting group.

Element (i) of item 1 of the report was acceptable to his delegation, although he would point out that "common heritage of mankind" was not a principle as such. Rather, it was a legal theory or concept from which principles were to be deduced as and when the need arose. He would suggest the insertion in element (ii) of the words "or any part thereof" after the phrase "This area". In element (iii), the words "any part of this area" should be replaced by the words "this area or any part thereof". The suggestion contained in paragraph 8 was more precise than the wording of element (iv); however, his delegation would amend the formulation to read: "Except as may be provided in an international régime, no State shall exercise jurisdiction or grant rights over any part of this area". Element (v) was unnecessary, since no State could grant exclusive rights over the sea-bed and, consequently, no person could acquire property thereon. While the basic concept of element (vii) was acceptable, it would nevertheless require careful reformulation. The present working of element (viii) and particularly the reference to international law, could be dangerous. Some countries considered activities on the sea-bed to form part of the freedoms of the sea to which all States were entitled and the element could therefore be used to justify free competitive exploration and exploitation of the resources.

Concerning item 2, the suggestions contained in paragraphs 14 and 18 were not entirely satisfactory and should be recast so as to read: "Activities in this area shall be undertaken in accordance with the relevant principles of international law, with the principles and purposes of the Charter of the United Nations, with the principles contained in this declaration and, as from the date of their adoption, with such legal principles and norms as may be agreed upon for the exploration and use of this area and the exploitation of its resources". Present international law relating to the sea-bed was both fragmentary and ambiguous and, apart from the freedom to lay submarine pipelines and cables, any prolonged use or exploitation of the sea-bed beyond national

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(Mr. Pardo, Malta)

jurisdiction should be undertaken only under conditions agreed upon by the international community. At the same time, his delegation had no objection to a reference to the universally recognized principles of international law, such as the obligation of States to have reasonable regard for the interests of other States in their activities. Similarly, it was more accurate to refer to the principles and purposes of the Charter, as it was doubtful whether all Articles of the Charter formed part of international law. Lastly, the principles and norms to be formulated could only be binding on States from the date of their adoption.

Ideally, he would wish to see the entire sea-bed and ocean floor reserved exclusively for peaceful purposes. Remote as that ideal might seem, he was reluctant to endorse any formulations under item 3 which implied that a coastal strip or a maritime zone, however narrow, might be used for purposes other than peaceful. Consequently, it would seem preferable to state: "This area should be reserved exclusively for peaceful purposes, without prejudice to the wider area which may be agreed upon." While he would not disagree in principle to the addition of a sentence to the effect that all forms of military activity should be excluded from the sea-bed and ocean floor within the agreed limits, he thought that its insertion might be premature, mainly because there was an ever-increasing interrelationship between scientific and military activities which should be clarified in the appropriate forum before the General Assembly could be asked to pronounce itself on the exclusion of all forms of military activity on the sea-bed. Secondly, there was the problem of whether it was possible to verify, with the technology now available, that all forms of military activity were in fact excluded from the sea-bed. Until the technical aspects of the matter had been examined far more closely, it might be better to have a simple statement stressing the need for the reservation of the ocean floor exclusively for peaceful uses.

Mr. ODA (Japan) said that element (iii) of paragraph 25 of the report should be discussed under the item entitled "Consideration of the legal aspects of the report submitted by the Secretary-General pursuant to

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(Mr. Oda, Japan)

resolution 2467 C (XXIII) regarding international machinery (A/AC.138/12 and Add.1)", suggested by the Acting Chairman in document A/AC.138/SC.1/6. In discussing item 1, his delegation had pointed out that the problem of the participation of all States in the administration and regulation of activities in the area should be considered solely in conjunction with the international machinery which might be established for the exploration and exploitation of the resources of the area. Future discussion on the subject of international machinery should not be prejudiced by any hasty conclusion reached at the present stage, when the Committee was discussing the declaration of legal principles. It would be better not to include any expression which might affect the future position regarding international machinery, until all the details were considered by the Committee.

In item 4, the term "exploration and use" employed in operative paragraph 2 of General Assembly resolution 2467 A (XXIII), should not be interpreted to include activities which were not essentially directed towards the exploitation of natural resources. Furthermore, he felt that the natural resources to be used for the benefit of mankind should be submarine mineral resources only. There was no justifiable reason for including living marine resources on the sea-bed. In addition, his delegation considered that a division of authority over fishing, on the basis of what was caught and how it was caught, would simply give rise to unnecessary problems. On that understanding, the formulation "Use of the resources for the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries" was acceptable to his delegation.

With regard to item 4, his delegation, while recognizing that the means of implementation of element (i) (b) would require further careful study, stated that the idea in that element could be acceptable. It was obvious that any international régime should make provision for economic incentives to encourage governmental or private enterprises to undertake exploration and exploitation of the mineral resources of the sea-bed. Accordingly, Japan endorsed the ideas behind element (ii) of the same item. As for element (vi), he felt that it should be discussed under item 6. While having no objection to the idea expressed in element (viii) of item 4, his delegation questioned the appropriateness of including a provision of such a transitory nature in a declaration of legal principles.

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(Mr. Oda, Japan)

Japan strongly advocated the principle of freedom of scientific research expressed in item 5. Further study of the marine environment would contribute to the rational exploitation of its resources. Although the Convention on the High Seas did not refer explicitly to the freedom of scientific research, there was no legal barrier in international law to impede the free pursuit of scientific research on the high seas or on the sea-bed. In the past, some coastal States had interfered with the freedom of scientific research, claiming national jurisdiction over areas of the high seas, in particular, those over the continental shelf. His delegation firmly believed that scientific research at least in the area beyond the national jurisdiction should remain open to all without discrimination and without interference by any State.

His delegation supported the idea that the results of scientific research conducted in the area should be accessible to all interested nations and that international scientific co-operation should be fostered with a view to the participation of all countries in such research. However, research should not be hindered by excessively complicated requirements relating to prior dissemination of information on the aims and scope of research projects.

It was important to make a distinction between scientific research for the purpose of obtaining better knowledge of the marine environment and exploration as a prelude to subsequent commercial exploitation. In that respect, the title of item 5, which referred to freedom of exploration as well as to freedom of scientific research, was misleading and might give rise to unnecessary confusion. Exploration in anticipation of eventual exploitation of marine resources should be regulated by the international régime to be established. Moreover, scientific research should not serve as a basis for claims of entitlement to exploitation rights.

Lastly, scientific research should be reconciled with the other legitimate uses of the high seas. It was important to prevent excessive collection of specimens, undue disturbance of marine ecology or seismic investigations that might cause damage to the marine environment.

Mr. KHANACHET (Kuwait), referring to item 2, said that the idea of applying the existing body of international law to the sea-bed beyond the limits of national jurisdiction was an entirely new juridical concept. Although there

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(Mr. Khanachet, Kuwait)

could be no doubt that existing international law did apply to the area, it was also true that existing instruments of international law, such as the 1958 Convention on the High Seas, had not been drafted with the special needs of the sea-bed in mind. It was therefore necessary to elaborate an international legal régime dealing specifically with the sea-bed and regulating the exploration and exploitation of its resources.

His delegation completely endorsed element (i) of item 2. The United Nations Charter was perhaps the most important document which could regulate international conduct in the area, ensuring its protection as the common heritage of mankind. The declaration of principles would be incomplete without a reference to the unquestioned applicability of that document.

Believing that, in the elaboration of the international régime, the existing norms of international law should be duly taken into account, his delegation was able to lend its full support to the formulation contained in paragraph 18 with the omission of the phrase "(in due course)".

With regard to item 3, his delegation felt that the body most competent to discuss the technical and military aspects of the reservation of the sea-bed exclusively for peaceful purposes was the Eighteen-Nation Disarmament Committee. The Sea-Bed Committee should, nevertheless, express itself on that item, as it was authorized to do so under the terms of reference laid down in General Assembly resolution 2467 A.

With regard to item 4, his delegation supported the general formulation contained in paragraph 21 of the report and hoped that that text would meet with general agreement in the Sub-Committee.

As to paragraph 25, his delegation supported the formulations contained in paragraph (i) (a) and (b). It had no objection to a portion of the value of the resources recovered from the sea-bed being placed at the disposal of the United Nations to enable it to widen the scope of its activities. Another portion should be set aside for assistance to the social and economic development programmes conducted under the auspices of UNDP and other United Nations organizations.

On the subject of economic incentives, his delegation held the view that any conditions established should apply equally to governmental organizations, intergovernmental organizations, private organizations or combinations of public and private organizations wishing to invest in the exploration and exploitation of marine resources.

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(Mr. Khanachet, Kuwait)

His delegation in principle supported the idea of establishing international machinery which would be authorized to exercise control over the development of marine resources. That would be the best possible way to ensure protection of the interests of the developing countries and exploitation of the resources of the area for the benefit of all mankind. The existence of such machinery would be an effective safeguard against the extension of any form of neo-colonial exploitation to the sea-bed. Needless to say, such machinery could not be established overnight; careful consideration of the relevent economic, technical and political factors would require lengthy international negotiations. The future régime must be founded on the broadest possible concept of international co-operation and be fully representative of the international community. In the view of his delegation, the main purpose of the international machinery would be to organize and administer the exploitation of the resources of the sea-bed. It was also possible that, at some future date, the international machinery might itself undertake certain operational activities, but its chief function would always be the regulation of the activities of other entities in the area.

Mr. BERMAN (United Kingdom) recalled the statement made by the representative of France at the 16th meeting to the effect that General Assembly resolution 2467 A (XXIII) authorized the Committee to study in detail the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor (item 3). Although the United Kingdom delegation would not oppose the adoption by the Committee of a simple and concise provision on the subject as part of a statement of principles, it would not be logical to discuss the detailed aspects of this subject in anticipation of the outcome of the negotiations in the Eighteen-Nation Committee on Disarmament, which was at present studying the question of disarmament measures on the sea-bed. With regard to the statement of the representative of the USSR at the same meeting, his delegation had extreme reservations as to the meaning the USSR representative had sought to ascribe to the phrase "peaceful purposes". The Committee should not prejudice the outcome of the disarmament negotiations in Geneva by accepting sweeping formulations.

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(Mr. Berman, United Kingdom)

The basic concept contained in item 4 was one of the major elements in General Assembly resolutions 2467 (XXIII) and 2340 (XXII), both of which his delegation had co-sponsored. The United Kingdom had never interpreted the Convention on the Continental Shelf or customary international law as permitting coastal States to extend the areas over which they had sovereign rights for the purposes of exploration and exploitation to the middle of the deep oceans; it was therefore a proposition of law, and not of pure fact, that there was an area of the sea-bed and its subsoil which lay beyond the limits of national jurisdiction. The central concept in relation to the legal status of that area was that of non-appropriation by claim of sovereignty or by any other means. During the inter-sessional consultations, his delegation had suggested a formula which would resolve the problems that had arisen over such subsidiary questions as jurisdiction and exclusive rights; that formula had been supported by Trinidad and Tobago, Brazil, Malta and other delegations and general agreement on those points appeared to be at hand. It was a necessary corollary of the existence of the area and its status under existing international law that the exploration and exploitation of the natural resources of the area should be regulated by an international régime which, to be effective, should be established by an international agreement or agreements to which a great majority of States should be parties. On the question of whether the words "exploration, use and exploitation" should apply to the area as a whole or only to its resources (A/AC.138/SC.1/4, para. 20), his delegation held that there was no warrant whatsoever for giving the wider interpretation to resolution 2467 (XXIII). The preamble and operative paragraph 2 (a) of part A of the resolution and the preamble and operative paragraph 1 of part C referred to the exploitation of the resources of the area. He did not agree that the formulation contained in paragraph 21 of the informal drafting group's report was derived from operative paragraph 2 (a) of resolution 2467 A (XXIII) since, although that sub-paragraph referred to the promotion of international co-operation in the exploration and use of the area, it referred to the exploitation of its resources for the benefit of mankind. It would be unwise to jeopardize the large area of agreement on that question by entering into controversial questions as to the possible

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extension of the international régime to other activities which might take place on the sea-bed. Finally, his delegation did not see how any international régime could be effective unless its precise geographical coverage was established in advance. It therefore supported the formulations contained in paragraphs 20 and 22 of the informal drafting group's report, with the inclusion in each case of the phrase "of the resources" and, in the latter formulation, the inclusion of the word "agreed" and the deletion of the word "legal". At the same time, there should be a reference to the establishment of a boundary for the area in terms similar to those contained in paragraph 29, sub-paragraph (ii), (a) or (b). He asked for clarification of the remarks made by the representatives of Ceylon and India at the previous meeting concerning economic incentives (paragraph 25, sub-paragraph (ii)). His delegation attached great importance to the inclusion of those elements in any international régime since unless investment was encouraged there would be no exploitation. The representative of Ceylon had implied, however, that the encouragement of investment was of secondary importance and the representative of India had said that such encouragement should be phased out.

With regard to item 5, his delegation attached the highest importance to the question of freedom of scientific research. It was clear that mankind's knowledge of the nature, configuration and characteristics of the sea-bed was limited and that a substantial increase in such knowledge was essential to the effective and orderly exploitation of the resources of that area. The Committee therefore had an urgent duty to promote all possible means of acquiring such knowledge and should not allow its deliberations to create any new impediment to the freedom of scientific research. There was a grave danger that if the freedom of scientific research was qualified, it might be destroyed entirely. It was surprising that States should fear research operations, whether on the continental shelf or on the sea-bed, as an attempt by the nations concerned to further their own selfish interests or to establish prior rights to the exploitation of the resources of the area. There was a very clear distinction between pure scientific research and commercially oriented exploration and he doubted whether any delegation had sought to maintain that the freedom of scientific research extended also to the latter. The two types of investigation were already distinguished in the

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(Mr. Berman, United Kingdom)

Convention on the Continental Shelf and it would be equally necessary to make this distinction in any international régime which might be established for the area beyond the limits of national jurisdiction. Like the representative of Japan, he could not accept the proposition that existing international law did not provide the proper framework for scientific research in the sea-bed and the subsoil thereof; those who wished to change the existing law must show clearly why such such changes were required. Furthermore, any international régime would have to contain a provision similar to that contained in article 5 (1) of the Continental Shelf Convention under which exploration and exploitation activities were not permitted to interfere with fundamental oceanographic or other research undertaken with the intention of open publication; there should not, however, be any provision requiring the consent of the coastal State in respect of any research since in the case of the sea-bed beyond the limits of national jurisdiction there was by definition no adjacent State whose special interests had to be taken into account. He proposed the following formulation for the Sub-Committee's consideration:

> "There shall be no restriction on the freedom of scientific research in or concerning the sea-bed and subsoil beyond the limits of national jurisdiction, nor shall the exploration of this area and the exploitation of its resources result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication. States shall promote international co-operation in the conduct of scientific research in or concerning this area, and shall take appropriate measures to ensure the widest possible accessibility of the results of such scientific research."

For his delegation's views on the question of pollution (item 7), he referred members to the remarks made on that subject by the United Kingdom representative at the 20th meeting of the Economic and Technical Sub-Committee.

He hoped the Sub-Committee's report would embody a synthesis of the views expressed in the debates and emphasize those items on which agreement had been reached as well as those on which agreement was still pending.

Miss MARTIN-SANE (France), speaking in connexion with item 5, said that at the present stage France did not have the technological and financial means

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(Miss Martin-Sane, France)

to undertake a vast programme of economic exploitation of the sea-bed and the ocean floor. However, its research laboratories were actively engaged in scientific exploration of the area. Her delegation therefore wished to express the interests of the research workers, namely that there should be the greatest possible freedom allowed in scientific exploration and research.

Two points had been raised. The first concerned the importance of taking the legitimate needs of the developing countries into account; the second related to the general problem of guarantees under an international régime with regard to non-appropriation and the exclusion of sovereign rights. With regard to the first point, her delegation agreed that mention should be made of the fact that all States had a duty to promote scientific research by the developing countries. As her delegation had said at the third session of the Ad Hoc Committee, such co-operation could take many forms such as training or the provision of equipment. However, in scientific research it was difficult to draw the line between development and under-development since a young State with limited material and financial resources might have scientific research workers whose abilities might benefit the more technologically advanced countries. Her delegation therefore preferred a broad formulation to cover all types of assistance.

With regard to the second point, her delegation understood the concern of some delegations to obtain precise guarantees concerning the manner in which scientific research was conducted lest it be used as a cover for a preliminary stage of economic exploitation. An appropriate formulation might, however, be found to allay their fears without derogating from the freedom of scientific research - a formulation such as that contained in paragraph 26 (vi) of the informal drafting group's report - but such a principle should be included under item 1. There had, in fact, apparently been general agreement on a similar principle contained in paragraph 5 (iii) and repetition of a principle attenuated rather than strengthened it. Her delegation was therefore not in favour of including it under item 5. However, France appreciated the fact that States might wish to increase their scientific knowledge and to ensure that the data compiled was of a scientific nature. It therefore supported the idea that the results of such research should be made accessible. That might, however, give rise to administrative and secretarial problems for laboratories, and scientists

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(Miss Martin-Sane, France)

should not be asked to bear the whole burden of automatically communicating all the data which they compiled. In paragraph 27 of the informal drafting group's report, it was suggested that other elements might be stated as necessary consequences of the freedom of scientific research and the obligation to make the results of scientific research accessible might fall within that category. On the other hand, although her delegation was not opposed to the prior communication of research programmes, it did not consider it essential and felt that to some extent it infringed on the freedom of scientific research. It should, however, be possible to find a satisfactory formula to cover that point.

Under item 5, her delegation proposed the following formulation:

"Scientific research shall be free and without any discrimination. States shall promote international co-operation to that end and the results of scientific research shall be made accessible."

In connexion with item 7, her delegation attached great importance to the question of pollution and, in the Inter-Governmental Maritime Consultative Organization, France had played an important role in deciding on a number of international instruments designed to prevent pollution.

The meeting rose at 1.15 p.m.

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SUMMARY RECORD OF THE NINETEENTH MEETING

Held on Wednesday, 20 August 1969, at 9.5 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4) (continued)

Mr. DEBERGH (Belgium) said that the subject matter of item 4 had been excellently summarized by a distinguished contemporary oceanographer in the words: "Developing the ocean is a shared responsibility of all nations, with shared benefits for all". The Economic and Technical Sub-Committee had expressed the same idea in greater detail in the following passage from its interim report (A/AC.138/SC.2/6, para. 33):

> "... for the development of the resources of the ocean floor new forms of international co-operation should... provide not only for equality of opportunity [for developed and developing countries] but also for equality in the actual enjoyment and equitable sharing of benefits derived from the exploitation of the resources of the ocean floor."

The report also recorded the view that, in the case of the non-replaceable resources of the sea-bed, the international community would benefit from sharing with the operator the proceeds from the sale of his product, a process in which the special interests and needs of the developing countries would be taken into account. It was such considerations that had induced his delegation to suggest during the informal consultations a formula to the effect that the régime applicable to the resources of the sea-bed should be established as early as possible in one or more international arrangements, in the form of treaties, conventions or other instruments.

His delegation, like those of Japan and the United Kingdom, believed that operative paragraph 2 (a) of resolution 2367 A (XXIII) made a clear distinction between the principles and norms for promoting international co-operation and the "régime", the purpose of which was to ensure the exploitation of the resources for the benefit of all mankind. The Sub-Committee's submissions on the régime should merely be a set of principles and norms for regulating activities in the area and should not include detailed provisions for the administrative structure of any future international machinery. The Belgian delegation would hesitate to subscribe to the view that an authority was essential for giving effect to the régime. If there were any justification for establishing an agency representative of the international community, it was rather that the resources of the sea-bed were now coming to be regarded

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(Mr. Debergh, Belgium)

as common property. The most important requirement for the proposed régime was, in his delegation's opinion, that it should satisfy the economic and other requirements which would enable it to meet the interests of humanity as a whole, and not merely be confined to distributing the profits from the exploitation and use of the resources of the area.

His delegation agreed, first, with the definition of the general purpose of the régime, as given in paragraph 24 of the report of the informal drafting group.

Of the elements suggested for inclusion in the régime (paragraph 25), he supported elements (i) (c) and (ii) (b) and (c). Element (iii) (a) however, implied that an authority would be essential for the implementation of the régime. As his delegation did not hold that view, it would prefer element (iii) (b).

Element (iv), as it stood, merely begged the question and might with advantage be replaced by the following: "Take into account the international community's desire to add to the existing inventory of minerals and not to waste non-renewable resources".

Elements (v) and (vi), on the other hand, were inappropriate in a description of the proposed régime, since they concerned matters to be dealt with in another, and wider, context of international relations. His delegation would prefer to consider them under item 6 of the Committee's programme of work.

It had no special comment to make on elements (vii) and (viii).

In considering freedom of scientific research and exploration, the subject of item 5, both Sub-Committees had been confronted with the problems of distinguishing between pure scientific research and the type of exploration which was one phase of the economic process culminating in exploitation. The word "exploration", in fact, was legitimately used to describe two types of activity which differed only in their aims, not in the methods employed. It should be borne in mind, however, that pure scientific exploration very often had an economic "spin-off". His delegation believed that all members of the Sub-Committee would agree on the following criteria: scientific research proper was characterized by the disinterested nature of its operations, whereas exploration for the purpose of locating deposits of potential economic value was

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(Mr. Debergh, Belgium)

designed to produce immediate commercial benefits and was in fact a first stage in the exploitation of the resources. His delegation believed that exploration of the second type should be regulated by the régime under discussion. Naturally, as it had a commercial purpose, its results would be suppressed for reasons of industrial secrecy and in order to avoid competition. In scientific oceanography, however, co-operation had already become the rule.

The inclusion of a third criterion to the effect that scientific programmes should be published in advance and their results made generally accessible as early as possible should thus make it possible to guarantee the traditional freedom of scientific research proper. That was not a new idea, since the Economic and Technical Sub-Committee had also stated in paragraph 59 of its interim report that: ".... The results of research in the areas of the sea-bed... should be freely accessible to all.... It appears feasible to reconcile this principle with the proposition that prospectors be given exclusive rights to explore an area for a specified period". The very idea of "exclusive rights of exploration" would obviously be contrary to the principle of the freedom of scientific research, if the proposed criteria were not accepted.

On the other hand, once those criteria had been established, there did not seem to be any need to state that scientific research should not be used as a basis for claiming rights of exploitation. If that principle were included, it would suggest that the authors of the declaration had not made any distinction between research proper and commercial exploration; and that would seem to imply that right of exploitation did not necessarily have to be established within the framework of the proposed régime. It should be noted that the obligations thus imposed on the scientific community were far less onerous than those imposed under article 5 (8) of the Convention on the Continental Shelf.

The question of the limits of the Continental Shelf inevitably had to be considered in any discussion of freedom of research and exploration on the sea-bed. The very fact that such research was or would in the near future be possible at any depth invalidated the criterion of exploitability laid down by the Geneva Convention. Since each coastal State could adopt its own interpretation of the term, the lack of a precise definition of the limits of the continental

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(Mr. Debergh, Belgium)

shelf therefore constituted a far more serious obstacle to the exercise of freedom of scientific research than the minor inconveniences which might arise from the rule his delegation had suggested - a rule which was in fact - recognized already in practice, particularly in the context of international scientific co-operation, which was the special concern of IOC and was to be intensified under the Long-Term Programme and the arrangements for the decade.

Mr. NJENGA (Kenya) said that his delegation considered element (i) of item 1 to be the cardinal proposition from which all the other elements flowed and from which legal norms for equitable and just exploration, use and exploitation of the area would or should emanate. It was the Sub-Committee's duty not to dismiss the concept as vague and unarticulated but to work out the legal principles and norms to regulate interrelations in the new frontiers of inner space. Elements (ii) and (iv) served merely to elaborate what was meant by common heritage. In that connexion, his delegation preferred the formulation of element (iv) to that of element (iii). Moreover, it understood that the intent of element (v) was to prohibit the acquisition of property otherwise than through internationally agreed channels and procedures. Elements (vi) and (viii) were, again, derived from the concept of common heritage. The remaining formulation, element (vii), expressed what his delegation considered to be an essential component of the legal status of the area; different international rules applied and different interests prevailed in the superjacent waters and air space above them and such rules and interests were only indirectly relevant to the area of the sea-bed and ocean floor beyond national jurisdiction.

In considering item 2 it should be borne in mind that the area with which the Committee was concerned was a largely uncharted sphere in international relations. That being so, it would be idle to expect existing international law to deal with the area. Until recently no State had been actively engaged in the area and accordingly no conflicts of interest had arisen requiring the formulation of new international law. The Charter of the United Nations and such international treaty provisions as those relating to freedom of navigation, fisheries and the laying of submarine cables would, of course, continue to apply in so far as they were relevant. Nevertheless, because they were necessarily inadequate, his delegation wished to submit that the following formulation would better convey the correct position:

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(Mr. Njenga, Kenya)

"All activities in this area shall be carried out in accordance with the principles of this declaration as well as the legal principles and norms to be internationally agreed, but in such a manner as not to conflict with the existing principles of international law, including the Charter of the United Nations."

His delegation would have no difficulty in accepting for item 3 a formulation which would exclude all military activities and all military uses from as wide as possible an area of the sea-bed and ocean floor. His delegation found much merit in the suggestion that the area to be covered by the prohibition should be that beyond a coastal strip the width of which would be agreed at an international conference. The aim should be to formulate a treaty on those matters as soon as possible. In any event a detailed account of the proceedings of the Eighteen-Nation Disarmament Committee should be considered in any such negotiations.

His delegation associated itself with the view that item 4 represented the most important aspect of the Sub-Committee's deliberations. It held that the scope of the item covered all activities in the area and not merely the distribution of its resources; the concept of common heritage implied that all nations - large and small, developed and developing, coastal and land-locked - should be associated with all phases of the exploration, exploitation and use of the resources of the sea-bed. Moreover, it was vital that a substantial portion of the resources should be allocated to the developing countries.

His delegation accepted, however, that there would be a need, at least in the initial stages, to provide economic incentives to entrepreneurs operating in the area. The granting of such incentives would, of course, have to be balanced against the legitimate claims of the developing countries, and other problems, such as the interests of the coastal States and the economic interests of States whose livelihood might be jeopardized by competition from the resources of this area, had to be taken into account. No registry for claims could achieve those aims; the competing interests could be harmonized only by establishing strong international machinery with powers to licence and control activities in the area, to allocate the resources between entrepreneurs and developing countries and to promote international co-operation. There was no reason why such machinery should not eventually be given responsibility for actual exploration and exploitation of the resources, either alone or in co-operation with other agencies.

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Mr. STEVENSON (United States of America), explaining his Government's interpretation of item 3 of the report, said that the test of whether an activity was "peaceful" was whether it was consistent with the United Nations Charter and other international law obligations. Accordingly not all military activities were precluded by a reservation exclusively for peaceful purposes.

With respect to item 5, his Government considered scientific research to be the key to increasing knowledge of the sea-bed and felt that it was essential to promote international co-operation in the field. Scientific research already enjoyed a special place in the law of the sea. Although it was not explicitly mentioned in article 2 of the Convention on the High Seas, the International Law Commission, in its 1956 report containing the draft articles on the law of the sea, had specifically noted that the freedom to undertake scientific research was one of the freedoms of the high seas. With that legal foundation in mind, his delegation supported the inclusion of element (i). The phrase "for peaceful purposes", which concerned matters considered under item 3, should not be included. A provision ruling out interference with scientific research carried out with the intention of open publication, as was suggested by the second half of element (i), merited inclusion. Such a provision would be analogous to article 5, paragraph 1, of the Convention on the Continental Shelf.

While the timely dissemination of plans for and results of scientific programmes was clearly desirable, freedom to conduct scientific research existed as a matter of principle and not as a conditional right. His delegation was therefore strongly opposed to the third approach suggested in paragraph 27, and favoured the first approach. With respect to element (iv), international co-operation in scientific research could take many forms, and care should be taken not to select one or two to the exclusion of others. The important point was that scientists of different States - developed and developing alike - should be encouraged to conduct co-operative scientific activities.

Elements (ii), (iii) and (v) must be considered together. In some States all oceanographic activites were conducted under a national scientific programme, while that was not the case in other States. In the United States, oceanographic activities were conducted by private universities and institutions as well as by universities and institutions supported by the individual States. While his

(Mr. Stevenson, United States)

delegation would favour principles providing for timely dissemination of plans for and results of national scientific programmes, his country had a long tradition of independence in the case of research by private institutions and it believed that the statement of principles should do no more than provide that States should encourage their nationals to follow similar practices. The international scientific community, and particularly the oceanographic community, had a highly developed system for disseminating information peculiarly suited to its particular needs. Neither the precise method nor the precise time for such dissemination should be tampered with, and the Sub-Committee should limit itself to a general statement of principle.

There appeared to be general agreement on the inclusion of at least the first three elements of items 6 and 7, although there were doubtless differences of opinion regarding the precise language in which they should be expressed and regarding the propriety of listing the particular harmful effects in element (iii) or the language of that element.

His delegation also favoured the inclusion of element (iv).

The question of liability (element (vii)) was very complex. After due consideration the Sub-Committee might wish to refer to the question only in the enumeration of the general features of the future régime, recognizing that in the mean time the general principles of international law regarding liability would of course be applicable.

The provisions of items 6 and 7 should not be overburdened with detail. For example, with respect to element (x), while the elaboration of a procedure such as that specified in the statement of principles introduced by the United States the previous year would be useful, his delegation was prepared to consider the views of delegations preferring a less detailed statement.

As for items 8 and 9, element (i) should be included in any statement of principles, as it represented the legal foundation upon which the entire statement rested. The statement should also include a principle regarding the establishment of an internationally agreed precise boundary for the area beyond the limits of national jurisdiction, as was implied in element (ii). That principle would reflect no conclusion regarding the location of the boundary and should state that the exploitation or other use of any portion of the area prior to the establishment

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(Mr. Stevenson, United States)

of the boundary would not prejudice its eventual location. The foundation would thus be laid for careful international consideration of a precise boundary.

With respect to elements (iii) and (iv), his delegation questioned the appropriateness of including provisions regarding State responsibility and enforcement in a statement of general principles and feared that consideration of their full implications for individual States could substantially delay the achievement of general agreement.

Mr. CABRAL DE MELLO (Brazil) said that his delegation had no doubt about the paramount importance of increasing scientific knowledge of the marine environment. All measures designed to serve that end and to promote the widest possible dissemination of information, having due regard for the needs of developing countries, deserved special consideration by international organizations. Nevertheless, scientific knowledge also meant power, and it was logical that States should claim some reasonable limitation to the unqualified affirmation of the principle of the freedom of scientific research - the results of which were potentially applicable to economic, military, political and other ends. Even the results of purely scientific research, in whatever area it was conducted, could have significant implications for the security and economic development of coastal States.

He fully agreed with the Argentine view that there was no difference in concept between research and exploration and that the consent of the coastal State must be obtained for any research into the continental shelf. Brazilian legislation governing research and exploration on the continental shelf and in territorial and internal waters made no distinction between the two types of activity. With regard to the conduct of research in areas under its jurisdiction, his Government considered it essential to safeguard its right to priority and, in some cases, exclusivity. As the marine environment constituted a whole, coastal States should have some voice with regard to research in areas of the sea-bed adjacent to zones under their national jurisdiction. If they did not, research on the sea-bed could become a pretext for research on the continental shelf, in disregard of article 5 of the Geneva Convention. Paragraph 58 of the interim report of the Economic and Technical Sub-Committee (A/AC.138/SC.2/6)

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(Mr. Cabral de Mello, Brazil)

referred only to pure scientific research and clearly recognized that other uses of the high seas and the continental shelf might sometimes require limitations to the general principle of freedom of scientific research. None welcomed such limitations but, given current political and economic realities, there was a clear need for them. The Sub-Committee should eventually proceed to a broad discussion of the economic, political and security aspects of the principle of freedom of research, while the study of the scientific aspects should be left to the Intergovernmental Oceanographic Commission.

The marine environment should be open without discrimination to scientific research for peaceful purposes. States should promote international co-operation in such research to facilitate the participation of nationals of different States in common research programmes, to disseminate its results to all as swiftly as possible and to strengthen the research capabilities of the developing countries, with prior communication of research programmes. Scientific research did not imply any right of exploitation.

Mr. HASAN (Pakistan) said that, despite the difficulties inherent in the preparation of a declaration of legal principles and despite the divergent interpretations of various concepts, his delegation felt that the spirit of goodwill and co-operation which had characterized the Sub-Committee's deliberation would enable it to achieve the desired goals.

His delegation believed that it was essential that the sea-bed and the ocean floor beyond the limits of national jurisdiction should be considered to be the common heritage of mankind (item 1 (i)).

Elements (ii) to (v) overlapped to some extent. His delegation fully subscribed to the concept in element (ii). Because of the divergent views expressed concerning it, element (iv) should be revised.

Element (vi) introduced an additional legal factor. It was necessary to clarify how States would participate in the administration and regulation of the activities in the area under consideration. The element should be drafted so as to provide that all States would have the right to participate in the administration and regulation of the activities in the area and were entitled to the benefits obtained from the exploration, use and exploitation of the resources of the said area, and that no infringement of that right would be permissible

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(Mr. Hasan, Pakistan)

through any arrangement, national or international. Element (viii) should find a place in the proposed declaration.

With respect to item 2, activities in the area should be undertaken in accordance with the generally accepted norms of international law and the Charter of the United Nations. However, it was unwise to formulate a declaration of legal principles in terms suggesting that it was based on expectation of a future arrangement which might or might not materialize. If reference were made to an international régime it should be specified that the régime should be under the aegis of the United Nations.

His delegation supported the principle in item 3. It would comment on the formulation of the principle when there had been an opportunity to discuss in depth the implications of the prohibition of military activities in the area at the disarmament negotiations at Geneva.

Mr. SCIOLLA-LAGRANGE (Italy) said that his delegation had always supported the principle embodied in item 2 and believed that the norms and principles which the international community might elaborate in respect of the exploration, use and exploitation of the area under discussion should be added to the existing body of international law. It therefore supported the formulation contained in paragraph 18, which should include the phrase "in due course", which was at present in parentheses.

His delegation also supported the principle in item 3. However, it felt that the Committee should await the results of the discussions of the Eighteen-Nation Committee on Disarmament at Geneva before engaging in an exhaustive debate on the item. In so doing, it would be acting in accordance with operative paragraph 3 of General Assembly resolution 2467 A (XXIII).

The Italian delegation had always endorsed the principle in item 4. It agreed with those who felt that the words "exploration, use and exploitation" should apply only to the resources of the area. Effective norms of international law already governed the area itself and those norms should not be modified.

Paragraph 25 of the report contained a number of specific norms which might be used to define the structure of the international régime. His delegation had expressed its views on the régime in the Economic and Technical Sub-Committee. With respect to element (i), it was in favour of establishing royalties for the

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(Mr. Sciolla-Lagrange, Italy)

benefit of the international community, in accordance with the concept reflected in sub-paragraph (b) of that element. His delegation also supported the inclusion of element (ii).

With respect to element (iii), Italy believed that the international machinery should meet the following requirements: (1) it should be simple and effective; (2) its structure should not be too cumbersome or bureaucratic; and (3) it should provide a legal guarantee for titles to exploration and exploitation, guarantees of the stability of the relevant regulations and the means to establish equitable royalties for the benefit of the international community. Lastly, it should establish reasonable standards of conduct to ensure that other maritime activities and interests were not harmed or endangered.

With respect to item 5, his delegation was convinced that the success of activities in the area, to be carried out for peaceful purposes and in the interest of mankind, depended on full freedom of scientific research. It therefore favoured those formulations in paragraph 26 which encouraged research, publication, accessibility and dissemination.

Mr. SMIRNOV (Union of Soviet Socialist Republics) recalled that his delegation had already stated its position on items 1 to 3, putting forward specific proposals. It shared the views of the many delegations which had urged that a legal régime should be established to regulate exploitation of the resources of the area in question. He emphasized, further, that the absence of a precise definition of the boundaries of the sea-bed and ocean floor could prove a serious obstacle to the formulation of a declaration of legal principles and norms. Paragraph 25 of the report of the Informal Drafting Group indicated thirteen specific requirements for a régime. It was, however, apparent from statements made during the current debate that those requirements could hardly command general support at the present stage. The Sub-Committee should therefore concentrate on fulfilling the mandate given to it by the General Assembly in operative paragraph 2 (a) of resolution 2467 A (XXIII). The lack of economic and technical information was such as to preclude the formulation of specific requirements for a régime at the present stage. The whole question was of such moment that there was no room for improvisation. Furthermore, the interests of all States must be taken into account.

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(Mr. Smirnov, USSR)

As to the question of international machinery, the Committee had done no more than hold an exchange of preliminary views on the report of the Secretary-General in document A/AC.138/12. The structure, nature and functions of such machinery had yet to be defined and clearly needed careful study. Furthermore, the substance of element (vi) of item 1 was also obliquely connected with the question of the establishment of international machinery and there was no justification for its inclusion in a declaration of principles. Many delegations, including his own, regarded the establishment of international machinery as a doubtful proposition. The questions of a régime and machinery were not necessarily inseparable. As the contents of the General Assembly resolution 2467 (XXIII) indicated, the existence of a distinction between régime and machinery had been established and accepted. The establishment of a legal régime did not necessarily presuppose establishment of any machinery. There could be a régime which contained no machinery. Among others, sub-paragraphs (i), (ii), (v) and (viii) of paragraph 25 also required very thorough study.

His delegation, like that of the United Kingdom, believed that the future legal régime would take the form of an international agreement. It also felt that it should be described specifically as a "legal" régime. It was clear to all delegations that a régime for exploitation of the resources of this area would have to be evolved and that time was needed for a study of its requirements. His delegation therefore proposed the following formulation with regard to that régime: "Subsequently, a special legal régime regulating the exploitation of the resources of the sea-bed and ocean floor shall be worked out."

His delegation's position on item 5 had been stated at the Sub-Committee's previous session. The freedom of scientific research was an established norm of international law and a prerequisite for oceanographic research. It was the basis for broad international co-operation in the exploration of the sea-bed and ocean floor and for the activities of the Intergovernmental Oceanographic Commission. International co-operation in this field presupposed the co-ordination of efforts by individual States, the execution of joint research programmes, the exchange of the results of such research, assistance in developing scientific bases and training of specialists. Affirmation of the principle of freedom of

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(Mr. Smirnov, USSR)

scientific research, with a statement concerning the need to promote international co-operation in the field, would be of major importance to all who wished the wealth of the sea-bed to be at the service of mankind. After careful consideration of paragraph 27 of the Drafting Group's report, his delegation proposed the following formulation: "The sea-bed and the ocean floor are open for scientific research and States shall promote international co-operation in the carrying out of such research". His delegation did not consider that the freedom of scientific research and exploration should be subject to any requirement such as the prior communication of programmes of scientific research or the subsequent communication of their results. Research programmes were, in any case, submitted to the Intergovernmental Oceanographic Commission and results disseminated to all States through existing channels.

As to items 6 and 7, new activities in new areas inevitably created legal problems since they had to be reconciled with so-called traditional types of activity. In the recent past, such problems had arisen with regard to activities on the continental shelf and had been resolved by the Geneva Convention of 1958. The approach taken in that Convention with regard to the reconciliation of traditional and new activities was of major importance in the present instance. The approach to the solution of the question of the national legislation of individual States was equally important. The concern of States that their interests should be safeguarded was understandable and justified and his delegation proposed the following formulation: "The activities of States in connexion with the sea-bed shall not infringe recognized freedoms of the high seas and shall not interfere with navigation, fishing, scientific research or the safeguarding of the living resources of the sea".

The specialized agencies, and IMCO in particular, were devoting considerable attention to the question of pollution. The elaboration of a legal principle dealing with pollution would be a most significant step. His delegation proposed the following formulation which covered elements (iii), (iv) and (v) in paragraph 28: "Appropriate national and international measures shall be taken to ensure that activities carried out on the sea-bed do not cause pollution of the marine environment and other harmful effects, particularly radioactive contamination". With regard to element (ix) in paragraph 28, his delegation thought it premature to discuss the right of coastal States to take appropriate

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(Mr. Smirnov, USSR)

measures to protect their shores and coastal waters against pollution. In that connexion, he drew attention to operative paragraphs 2 and 3 of resolution 2467 B (XXIII).

Mr. ARORA (India) said that his delegation regarded element (i) as the crux of the whole of item 6. It should properly be combined with element (viii) to form one basic guideline. It was most important that due consideration should be given to the rights of coastal States, which must have an opportunity to express their views on activities affecting them. As to element (ii), it was generally recognized that there should be no unjustified interference with the freedoms mentioned in the Geneva Convention on the High Seas. The Sub-Committee should confine itself to those freedoms, stating that there should be no unwarranted infringement of them. Elements (iii) to (vi) could serve as guidelines in a declaration. Element (vii) was of major importance and should be mentioned under item 6. It could also be incorporated in a regime governing activities in the area. Furthermore, it would be as well to include some reference to liability under element (iii) of items 8 and 9.

Element (ix) require further elaboration. The precise nature of the "appropriate measures" contemplated were obscure; nor was it clear whether they were to be applied within or without national jurisdiction.

The meeting rose at 11.10 p.m.

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SUMMARY RECORD OF THE TWENTIETH MEETING

Held on Thursday, 21 August 1969, at 11.15 a.m.

Chairman:	Mr. YANKOV	Bulgaria
later,	Mr. GALINDO POHL	El Salvador

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CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4) (continued)

Mr. BAZAN (Chile), referring to item 2, said that none of the formulations contained in paragraphs 14 and 18 of the report were fully acceptable to his delegation because they were vague as to what norms of international law applied to the sea-bed. His delegation agreed that certain general principles of international law, such as those relating to the use of force among States or the general principles of State responsibility, were applicable and would be so whether or not they were specifically referred to in the declaration.

A distinction must be made between the norms which were applicable in the area, such as those to which he had referred, and the norms applicable to activities in the area, which had yet to be elaborated. Since there was no instrument of international law specifically regulating activities in the area, with the exception of certain provisions relating to such matters as the laying of submarine cables and pipelines, it was misleading to state that "activities in this area shall be carried out in accordance with international law". That formulation encouraged the mistaken view that, in the absence of relevant norms, activities in the area could be regulated under the norms relating to the freedoms of the high seas. The fact that international law was mentioned first of the elements in the present formulation might be construed as indicating that international law should take precedence over other norms. However, that was not the order of priority laid down in article 38 of the Statute of the International Court of Justice, which stated that the Court in deciding disputes concerning international law should apply first of all international conventions expressly recognized by the contesting States; secondly, international custom and finally, the general principles of law recognized by civilized nations. In his delegation's view, there was great danger in leaving open the possibility that States might interpret the formulation in question as authorizing the extension of the principles of the freedoms of the high seas to the sea-bed. The norms to regulate activities in the area should be stated in the order in which they would apply, precedence being given to the principles of the declaration itself. In matters not covered by the declaration, the relevant general principles of international law would clearly apply. His delegation accordingly proposed that the formulations contained in paragraphs 14 and 18 should be replaced by the following:

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(Mr. Bazan, Chile)

"All activities in the area shall be regulated by the principles of this declaration and, with respect to matters for which no provision is made, by the general principles of international law."

He did not consider it necessary, for the purposes of the formulation he proposed to refer to the future machinery to regulate exploration and exploitation in the area, since that subject would be dealt with in other principles. Similarly, the reference in the previous formulations to the Charter of the United Nations could be omitted since, apart from its purposes and principles, the Charter had little relevancy to activities in the area. Moreover, reference would be made in the declaration to those purposes and principles in connexion with the reservation of the area exclusively for peaceful purposes.

The idea of reserving the sea-bed and the ocean floor beyond the limits of national jurisdiction exclusively for peaceful purposes had the full and unconditional support of the Chilean Government. However, it should be stated in the declaration of principles in very general terms in order not to interfere in any way with the disarmament negotiations in Geneva. His delegation preferred a formulation such as that contained in sub-paragraph 19 (ii) (c).

With regard to item 4, his delegation preferred the formulation in paragraph 21 of the informal drafting group's report. It was clear that the principle required the establishment of international machinery which, in his delegation's view, was well defined in the formulation in paragraph 23. Any further provisions to be elaborated should be considered in conjunction with the Secretary-General's report on the question of establishing international machinery (A/AC.138/12 and Add.1), which the Sub-Committee had not yet had time to consider.

Mr. SCHRAM (Iceland), speaking in connexion with item 7, said that the question of pollution of the marine environment was one of the most important the Sub-Committee had to consider. In the Ad Hoc Committee some delegations had originally felt that the question was outside that Committee's terms of reference,

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(Mr. Schram, Iceland)

but it had adopted a resolution which had subsequently formed the basis of General Assembly resolution 2467 B (XXIII). The note by the Secretary-General (A/AC.138/13), submitted pursuant to operative paragraph 4 of that resolution, gave an account of the work already undertaken and of a meeting of the various United Nations agencies concerned. The joint group of experts on the scientific aspects of marine pollution had also discussed the question in March 1969 and was preparing reports on various aspects of the problem. The Inter-Governmental Maritime Consultative Organization, which was the United Nations organization best qualified to deal with control of pollution in the whole marine environment, had also done valuable work on the problem, as could be seen from its note to the Committee (A/AC.138/15). For some years, IMCO had been dealing with the problem of oil pollution from ships and its Maritime Safety Committee had now instructed its Sub-Committee on Marine Pollution to study the problems raised in resolution 2467 B (XXIII) and to make proposals for the prevention and control of pollution of the sea, land and air by ships, vessels and other equipment operating in the marine environment. The work on pollution control in the marine environment was therefore already being undertaken, and the Committee's immediate task was to attempt to produce a generally acceptable formulation of principles on the question for incorporation in a declaration of general principles. Apart from the 1954 International Convention for the Prevention of Pollution of the Sea by Oil, there were no international treaties or international legal obligations concerning the duty of States to refrain from pollution of the marine environment and that situation should be remedied.

His delegation was in general agreement with the elements contained in sub-paragraphs (iii), (iv) and (ix) of paragraph 28 of the informal drafting group's report, but felt that they could be combined. It was important to emphasize that appropriate safeguards should be adopted against the dangers of pollution arising from the exploration and exploitation of the resources of the sea-bed and ocean floor and against other harmful effects on the marine environment, in particular on the living resources found there, and that coastal States should be granted the necessary rights to take appropriate measures for the protection of living and other resources in their coastal areas where pollution detrimental to those resources had occurred or was imminent. A formulation along

(Mr. Schram, Iceland)

those lines would meet the requirements of the situation. It was essential to include a stipulation concerning the defensive rights of coastal States; States would undoubtedly consider it a right of self-defence to take action beyond their shores in cases of grave threats of pollution and such a right should be defined and recognized by the international community. Pollution control must be one of the major objectives of any future international régime for the sea-bed and ocean floor.

On the question of liability, the Sub-Committee's report should emphasize that damage to the marine environment caused by activities in the area should entail liability and that States were responsible for the activities of their nationals.

He hoped that the wide measure of agreement reached on item 7 would be reflected in the Sub-Committee's report and thereby establish the basis for the adoption of a general principle on the subject.

Mr. ODA (Japan) said that he first wished to clarify his delegation's position with regard to the three approaches to the question of freedom of scientific research and exploration mentioned in paragraph 27 of the informal drafting group's report. His delegation preferred the first approach since the freedom of scientific research was an unconditional freedom to be enjoyed by any nation on the high seas. In order to promote international co-operation in improving knowledge of the marine environment, all nations might be encouraged to make the results of their scientific research accessible to all interested nations, but the question of free access to the results of scientific research was a different matter from the freedom of scientific research in the marine environment.

With regard to items 6 to 9, activities in connexion with the exploration and exploitation of the submarine mineral resources of the sea-bed and ocean floor beyond the limits of national jurisdiction were subject to the rules and regulations governing the uses of the superjacent waters of the high seas. In his delegation's view, moreover, in any use of the water column of the high seas reasonable regard should be paid to any other legitimate interests of States in that area. There should be no impediment to navigation and fishing, no undue interference with the laying and maintenance of submarine cables and pipelines and no damage to animal and plant life in the marine environment as a result of pollution by oil leaking from an installation on the sea-bed for exploration or exploitation or seismic

(Mr. Oda, Japan)

investigation. Article 2 of the Convention on the High Seas provided that the freedoms comprised in the freedom of the high seas should be exercised with reasonable regard to the interests of other States in their exercise of the freedom of the high seas. According to article 5 of the Convention on the Continental Shelf, on the other hand, exploration and exploitation must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea. Those concepts appeared to be reflected in elements (i) and (ii) of paragraph 28 of the informal drafting group's report and he reserved the right to state a preference between the two at a later stage. He assumed that element (i) was intended to mean that the exploration and exploitation of the resources of the area should be carried out only with reasonable regard for the interests of all States in their exercise of the freedom of the high seas.

His delegation was prepared to support the underlying thought in element (iii), but thought that articles 24 and 25 of the Convention on the High Seas were worth considering in that respect. Harmful effects upon the marine environment as a result of pollution or contamination of the sea waters were not easy to estimate. However, his delegation had no difficulty in accepting the idea that other legitimate uses of the high seas should be properly protected from any contamination or pollution resulting from the exploration and exploitation of the submarine mineral resources in the area beyond national jurisdiction.

With regard to element (v), although safety measures might be suggested on the international level and some uniform standards for national safety measures might be desirable, it was a matter for the domestic authorities to deal with. In that connexion he drew attention to article 10 of the Convention on the High Seas.

His delegation questioned the need to include the idea contained in element (vi) in the declaration of legal principles. It appeared to have been borrowed from the legal principles governing outer space. But, whereas outer space had until recently not been governed by any legal régime, there were already regulations relating to mishap, distress or danger occurring in the course of the exploration and exploitation of submarine mineral resources in the area of the high seas superjacent to the sea-bed and ocean floor beyond the limits of national jurisdiction. Article 12 of the Convention on the High Seas, for instance, could apply. Activities in outer space had so far been carried out by astronauts, who

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(Mr. Oda, Japan)

were respected as envoys of mankind, but that was not so in the case of the exploration and exploitation of the ocean floor. Although that area should certainly be exploited for the benefit of all mankind, the incentive to invest capital in it arose from the demand of each nation or enterprise to benefit from the exploitation of its resources.

His delegation found element (vii) acceptable without the phrase in parentheses. The question of whether a State was liable for damages caused by the activities of private enterprises incorporated in that State or those of its nationals, or only for damage caused by activities carried out with its authorization was, however, a very complex legal problem which required further careful study in connexion with the question of international machinery.

It was not clear whether element (viii) was intended to give a specific State special interests in the exploration and exploitation of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction. There appeared to have been a wide measure of agreement on the basic principle that all nations had equal right of access to such resources and that they should be utilized for the benefit of all mankind and it would be incompatible with that principle to give coastal States the right to some preferential share of the benefits. He would like further clarification as to what kind of appropriate measures were envisaged in element (ix). His delegation fully supported the idea that the marine environment should be protected from contamination resulting from the exploration and exploitation of the resources of the area, but felt that element (ix) might lead to unwarranted interference by a coastal State with exploration and exploitation carried out beyond its national jurisdiction.

With regard to elements (i) and (ii) in paragraph 9, he wished to reaffirm his delegation's position as stated at the Sub-Committee's 14th meeting concerning the existence of an area of the sea-bed and ocean floor beyond the limits of national jurisdiction and the definition of its boundary. He did not consider it appropriate to include in element (ii) a specific reference to the Convention on the Continental Shelf since, although that Convention had become effective among some forty States, not all of its provisions necessarily reflected the rule of customary international law. That point had been explicitly made in the recent judgement on the North Sea Continental Shelf case delivered by the International Court of Justice. As he understood it, the International Court of Justice held

(Mr. Oda, Japan)

that only the fundamental régime of the continental shelf had become a rule of customary law while the details of the régime still remained to be discussed. His delegation therefore preferred sub-paragraphs (a) and (b) of element (ii) to sub-paragraphs (c) and (d).

Mr. Galindo Pohl (El Salvador) took the Chair.

Mr. ENGO (Cameroon) said that, if the Committee failed to formulate concrete principles, that failure would be due largely to members' insistence upon stating firm positions. He felt that such terms as "this area" and "the sea-bed and ocean floor beyond the limits of national jurisdiction" could be included in a declaration of principles without prejudice to their subsequent definition. At the present stage, the formulation in paragraph 29 (ii) (b) of the report would be sufficient. The argument that the concept of common heritage was new to international law was invalid. The world was witnessing the formulation, codification and progressive development of international law and there were only a limited number of spheres in which anyone could say that generally accepted principles existed. Quite often, jurists of the so-called "old world" tended to lose sight of the nature of modern international society, and the law which had evolved from the experience of the "old world" did not necessarily receive the sanction of the younger nations which had recently achieved self-determination. It was part of the Committee's task to spell out the legal content of a theory or concept as fundamental as "common heritage". International conflicts in the twentieth century had made everyone aware of the dangers of creating or permitting the existence of areas which might lead to further conflict or frustrate attainment of the ideals expressed in the Charter of the United Nations. Declarations and conventions relating to various topics, particularly the use of outer space and the law of the high seas, obviously constituted proof of the recognition of that danger. With the limited knowledge available, no scientist or politician could yet adequately tell the full extent of the possible dangers and treasures of the sea-bed. Exploration and exploitation of its natural resources for the purposes of scientific, technological and economic advancement, and the resulting co-operation among States in that field were clear examples of the inexhaustible advantages which could be derived from the area. Moreover, the spirit that had launched the programmes of the First and Second Development Decades had given birth to the ideas embodied in the notion of "common heritage" and there

(Mr. Engo, Cameroon)

was reason to hope that a definition would emerge as the various aspects of the underlying principle unfolded.

His Government continued to believe that an international régime must be established, with the sole aim of ensuring the welfare of mankind and the equitable distribution of benefits in the interests of peace. Furthermore, the method of establishment must be such that no single nation or group of nations could gain over-all control.

His delegation supported the formulation contained in element (i) of item 1 and hoped that it would be placed in the operative and not the preambular part of the declaration. There was some basis for separating the ideas contained in elements (ii) and (v), since the former dealt with national appropriation and the latter was concerned with persons who did not act on behalf of their State of origin. While he endorsed element (iii), he felt that it would be unrealistic to use the word "shall" in element (vi). Despite goodwill on their part, some States were not in a position at the present stage of their development to participate in the process of exploration and exploitation. However, the benefits must accrue to all mankind, since it was essential, in the pursuit of lasting peace, to attempt to bridge the dangerous gap between the rich and poor nations. He approved of element (vii) but wished to point out, in connexion with element (viii), that the problems attaching to the Anglo-Saxon concept of property rights, which had been referred to by the United States representative at an earlier meeting, would not arise if all exploration and exploitation was conducted under the auspices of an international régime. Nothing should be done which would, either directly or indirectly, permit States to have any sovereignty, jurisdiction or rights whatsoever over the area. So far as item 3 was concerned, if all nations refrained from belligerency, defensive measures would be totally unnecessary. His delegation found item 4 acceptable, being of the view that social and economic development were essential to world peace. At the same time, he would add that use of the resources must be for the benefit of all mankind and not only of the developing countries.

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Mr. GORALCZYK (Poland) considered that a more systematic approach was required in dealing with some of the problems of items 6 to 9. For example, the liability of States involved in the exploration, use and exploitation of the sea-bed and ocean floor and the subsoil thereof was dealt with in element (vii) of item 7 (paragraph 28), while the closely related issue of State responsibility came under element (iii) of item 9 (paragraph 29).

In his view, some of the formulations of items 6 to 9 were too detailed to be included in any declaration of principles and could be considered at the second stage of the Committee's work, when the time came to discuss legal norms. Furthermore, additional study was required on some matters, such as the right of coastal States to take appropriate measures to protect their shores and coastal waters against pollution occurring outside their national jurisdiction. The work of IMCO on similar problems, such as the prevention of oil pollution resulting from accidents to ships at sea, clearly reflected the complexity of that subject. It was also too early to speak of such matters as procedures to be followed in the event of anticipation of possible harmful interference with other activities and the implementation of the principles of the declaration.

His delegation was inclined to support the ideas underlying elements (i) to (vi) in paragraph 28, but was firmly convinced that the elimination of any unjustifiable interference in the exercise of the recognized freedoms of the high seas was a sine qua non for the exploration and exploitation of the mineral resources of the sea-bed. He also attached particular importance to the problem of appropriate safeguards against pollution which might arise from the exploitation and use of the area.

While he accepted the idea that damage must entail liability, he felt that the words in parenthesis in paragraph 28 (vii) certainly required further examination, since the formulation qualified the general idea of compensation of all damage suffered as a result of activities of exploration and exploitation and would prejudice the acceptance of liability based on the notion of fault. In his opinion, the Committee was not in a position to take a final decision on the matter at that stage. Actually, objective liability, or liability based on the notion of risk, might be more appropriate in that connexion.

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(Mr. Goralczyk, Poland)

He agreed with the suggestion that the preamble to a declaration of principles should contain a statement regarding the existence of an area of the sea-bed and ocean floor beyond the limits of national jurisdiction. Such a statement should also confirm that the area could not be the subject of national appropriation and that the limits of national jurisdiction could not be extended beyond a reasonable distance from the coast or beyond a reasonable depth. That view had been recognized by the Ad Hoc Committee which, in its report (A/7230, p. 48), had stated that none of the members of the Legal Working Group had suggested that either international law or article 1 of the Convention on the Continental Shelf authorized the extension of limits for an indefinite distance into the deep ocean floor. In addition, he considered that it was imperative to arrive at an early settlement of the question of an internationally agreed precise boundary of the continental shelf and of the area beyond national jurisdiction, if the unreasonable extension of the jurisdiction of coastal States was to be prevented.

Mr. SCIOLLA-LAGRANGE (Italy) said that he failed to see how the Committee could ignore the problem of ascertaining whether an area of sea-bed and ocean floor beyond national jurisdiction existed and, if so, where. Identification of the area under discussion necessarily meant establishing the boundary between national jurisdiction and the area beyond such jurisdiction. The 1958 Geneva Convention on the Continental Shelf, although it reflected some uncertainty as to the exact interpretation of the boundary, confirmed the principle of the delimitation of the continental shelf, which could in no case be confused with the ocean as a whole.

In addition, any decision on the reservation of the area exclusively for peaceful purposes presupposed an evaluation of political, social and economic interests. Such an evaluation could not be undertaken without proper definition of what might be termed the "territorial" application of the régime - something which would involve both demarcation of the boundaries and the settlement of special questions such as those relating to internal and marginal seas.

Mr. BODY (Australia) said that the principle expressed in the title of item 4 was acceptable to his delegation, which also favoured the establishment of an international régime governing the exploitation of the resources of the area. The subject of an international régime, however, required a great deal of further

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(Mr. Body, Australia)

consideration, and it would surely be premature for the Sub-Committee at the present stage to attempt the elaboration of comprehensive principles with respect to a régime, incorporating such detailed matters as those set forth in paragraph 25. His delegation would support the adoption of a principle stating simply that there should be agreed, as soon as practicable, an international régime governing the exploitation of the resources of the area. Indeed, the Committee should concentrate its efforts in general on the adoption of a set of basic guidelines without going into too much detail or engaging in over-ambitious discussions.

His delegation took the same view in relation to paragraph 5 (vi). It would be premature to adopt the formulation proposed in the first part of sub-paragraph (vi) without first considering in detail the nature of any international régime. His delegation could, however, accept the second part of that formulation relating to participation in the benefits arising out of exploration and exploitation of the area.

The principle of non-discrimination expressed in paragraph 5 (viii) was unexceptionable, but his delegation was not wedded to the specific wording of the present formulation.

With regard to item 4, his delegation shared the view of those who maintained that a future régime should do no more than regulate exploration in the area and exploitation of its resources. In his opinion, no consensus could be obtained for the proposition that the scope of the international régime should extend to all activities conducted in the area.

His delegation endorsed the principle of freedom of scientific research and exploration as expressed in item 5. While noting that others had stressed the need to avoid the imposition of conditions that might discourage scientific research, Australia felt that in the best interests of the international community, publicity should be given to all oceanographic research programmes and that the results of such programmes should be accessible to all. That did not mean, however, that States or individuals should be placed under an obligation to publish the results of research.

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(Mr. Body, Australia)

His delegation supported the formulation of a principle dealing with pollution and other hazards, but reserved the right to speak further at a later date on the details of any such formulation and in particular on the complex question of liability.

With regard to item 8, his delegation considered that the existence of an area beyond national jurisdiction should be stated as one of the basic principles and that a further principle referring to the need for boundary delimitation should be included. However, no definition of boundaries should be attempted by the Committee at the present stage.

Miss MARTIN-SANE (France) thought that the Sub-Committee had progressed in its work to the point where it could usefully consider the inclusion of certain general concepts in a preamble to the declaration of principles. Those general concepts would be a sort of summation of the purport of the declaration of principles but, because of their general nature, would not have the binding legal force of the principles enunciated in the operative part of the declaration.

A first concept which might be appropriate in the preamble was that of the "common heritage of mankind". A number of delegations had referred to the regrettable imprecision of that concept. Her delegation was willing to consider alternative formulations; in particular, it favoured the idea of referring to the area as "international public domain". Nevertheless, the expression "common heritage of mankind" would be acceptable to her delegation as a synthesis of the main principles of the declaration.

Another idea which should be stated in the preamble, if national appropriation of the area was to be precluded, might be recognition of the existence of an area of the sea-bed and ocean floor beyond the limits of national jurisdiction, the precise boundaries of which would have to be determined. On that subject her delegation preferred the formulation set forth in paragraph 29 (d). She agreed with the representatives of the United Kingdom and Yugoslavia that the question of boundaries could not be settled until the features of the international régime governing the area were agreed upon.

While not yet in a position to express her Government's views on the question of State responsibility referred to in paragraph 29 (iii), she anticipated that the formulation would prove acceptable since it recalled a similar provision in the Treaty on Outer Space.

The meeting rose at 1.10 p.m.

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SUMMARY RECORD OF THE TWENTY-FIRST MEETING

Held on Friday, 22 August 1969, at 11 a.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4) (continued)

Mr. DEBERGH (Belgium) said that, as a result of a misunderstanding, certain proposals made by his delegation at the seventeenth meeting had been reproduced in document A/AC.138/SC.1/7, which had been circulated to members of the Sub-Committee as an official document. That had not been the intention of the Belgian delegation which, at the beginning of the present session, had expressed its agreement with the Chairman's remark that all the different draft statements introduced earlier had been rendered obsolete by the outcome of the informal consultations, which had made it possible to set forth points of agreement and disagreement in a single document. In the circumstances, his delegation believed it was wrong to introduce new formulations which might upset the delicate balance which had been achieved at the outcome of the informal consultations. It had always considered, and still considered, that nothing should be done which might crystallize the positions of different delegations and different groups on any ideas which represented a step backward from the opinions expressed by the informal group, and might therefore constitute an obstacle to further agreement. His delegation therefore wished the formulations in question to be given their proper status - namely, the status of informal suggestions like the proposals contained in document A/AC.138/SC.1/4 and the many suggestions made by delegations during the present session.

Mr. KOULAZHENKOV (Union of Soviet Socialist Republics) said that his delegation, after learning that the proposals of the Belgian delegation had been circulated as an official document, had requested that certain proposals made by the USSR during the discussion of the report of the informal drafting group should be disseminated in the same fashion. However, in view of the statement just made by the representative of Belgium, he would now ask the Sub-Committee not to consider the document containing the USSR proposals (A/AC.138/SC.1/8) as an official document. His delegation favoured the approach adopted by the informal drafting group, namely, that all suggested formulations should be regarded as informal in the interests of expediting agreement.

The CHAIRMAN took note of the statements made by the representatives of Belgium and the Soviet Union and said that the Committee would consider the documents in question to be unofficial.

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Mr. KOSTOV (Bulgaria) expressed appreciation to the representatives of Belgium and the USSR for the spirit of co-operation and understanding they had shown.

Mr. HARGROVE (United States of America) said that he, too, was grateful to Belgium and the USSR for the co-operative and helpful position they had taken in relation to their proposed formulations. The procedure the Committee had agreed on, namely, to base its discussions on the report of the informal drafting group, had enabled it to make good progress and should not be abandoned. His own delegation would also like to make some informal suggestions which, however, would not represent an exhaustive presentation of the United States position on all the elements coming under every item in the report, although their content would be readily understandable to those who had followed the statements of his delegation in the debate.

First, he proposed the following formulations for item 1. Element (i): "There is an area of the sea-bed and ocean floor and the subsoil thereof, underlying the high seas, which is beyond the limits of national jurisdiction". Elements (ii) and (iii): "No part of this area shall be subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means." Element (viii): "This area shall be free for exploration and use by all States on a basis of equality and in accordance with international law."

Next he proposed that item 2 should read: "Activities in this area shall be conducted in accordance with international law, including the Charter of the United Nations, and in the interests of maintaining international peace and security and promoting international co-operation, scientific knowledge and economic development."

For item 4, on the subject of the establishment of a régime, his proposed formulation was: "There shall be established, as soon as practicable, an internationally agreed régime governing exploration and exploitation of the resources of this area."; for item 4, element (viii): "The régime shall provide due protection for the integrity of investments in exploitation of this area undertaken prior to the establishment of its boundary."; and for item 5: "In order to further international co-operation in the scientific investigation of the deep ocean floor, States shall: (a) make timely dissemination of plans for and results

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(Mr. Hargrove, United States)

of national scientific programmes concerning this area; (b) encourage their nationals to follow similar practices concerning dissemination of such information; (c) encourage co-operative scientific activity regarding this area by personnel of different States."

Mr. ARORA (India) expressed appreciation for the statements made by the representatives of Belgium and the Soviet Union and said that his delegation, notwithstanding the present unofficial nature of the documents in question, would give the formulations set forth in them the same consideration as it would have given to an official document. In his present statement, he wished to clarify India's position on certain items which had been discussed earlier, to express its views on certain proposals and to raise a few questions.

With regard to item 1, his delegation wished to reiterate its firm belief that element (i) constituted the indispensable basis of any declaration of principles. He recalled that at the 15th meeting the representative of Malaysia had said that the simplest way to deal with the problem of legal status would be to vest control of the area in the United Nations (A/AC.138/SC.1/SR.15, page 9). In his view, such a solution might not prove to be so simple as it seemed and might give rise to a number of complications. He would therefore appreciate further clarification of the very interesting ideas developed by the representative of Malaysia. He would also be grateful if the representative of Malaysia could explain how the four legal concepts to which he had referred in his statement could best be dealt with in a declaration of principles.

Concerning elements (ii) to (v) of item 1, his delegation supported the formulation proposed by the representative of Brazil (A/AC.138/SC.1/SR.16, page 5). It also accepted element (vi) with the modified wording proposed by the representative of Kuwait (A/AC.138/SC.1/SR.16, page 5).

With regard to element (vii), his delegation endorsed the remarks made by the representative of Iceland at the 14th meeting and would support a formulation along the following lines: "Any freedoms laid down in the Convention on the High Seas shall apply to the sea-bed only so far as provided by the régime to be set up."

Elements (vi) and (vii) of item 1 should, in his view, properly be part of item 4. He quite agreed with the remarks made by the representative of Malta at the 18th meeting to the effect that the present wording of element (viii), and particularly the reference to international law, could be dangerous. The present

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(Mr. Arora, India)

formulation implied that the freedoms of the high seas would apply to the sea-bed; consequently States would have free rein to explore and exploit the resources of the area before an international régime was established.

In reference to item 2, his delegation was able to accept the proposal made by the representative of Belgium at the 17th meeting of the Sub-Committee (A/AC.138/SC.1/SR.17, page 4) and the formulation proposed by the representative of Malta at the 18th meeting (A/AC.138/SC.1/SR.18, page 4), with the deletion of the phrase "as from the date of their adoption".

Concerning item 4, his delegation had consistently maintained that the words "exploration, use and exploitation" applied to the area as a whole and not only to its resources. Consequently, the restrictive interpretation of paragraph 2 (a) of General Assembly resolution 2467 A (XXIII) put forward by the United Kingdom representative at the 18th meeting was unacceptable to his delegation, which maintained that it was impossible to consider the resources in isolation from the area which contained them.

On the question of international machinery, his delegation endorsed the formulations set forth in paragraph 25, sub-paragraph (iii) (a) and (b) of the report. There was still some confusion in his mind, however, as to the position of the United States representative on that question, and he would appreciate clarification.

Paragraph 22 referred to the establishment of an "international (legal) régime". In the view of his delegation, the word "legal" in that context meant simply that any régime to be established would be defined in legal terms and enshrined in an international agreement or agreements - having the force of law. His delegation, however, did not attach importance to the inclusion of the word "legal" and considered that the possibility of setting up an administrative authority or machinery was definitely not excluded.

In connexion with item 5, he felt that the words "for peaceful purposes" in element (i) should be retained. At the Sub-Committee's 18th meeting, the representative of France had said that element (vi) was already covered under item 1 and therefore need not be included under item 5. But although the right of sovereignty might have been dealt with elsewhere the right of exploitation had not, and that at least should be mentioned in any formulation under item 5. Both suggestions mentioned in element (iv) were important in the view of his delegation and he wished to stress the importance of international co-operation. With

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(Mr. Arora, India)

reference to the United Kingdom representative's remarks at the 18th meeting concerning the question of pure scientific research and research for commercial purposes, India believed that certain criteria should be established to distinguish the two forms of research.

On items 6 and 7, he said that element (vii) was a very important provision. It should be clearly stated that damage caused by activities in the area should entail liability, otherwise States might consider that they had a right to cause damage, which was clearly not the case. His delegation would consider the possibility of deleting the words in parentheses since they might be confusing.

With regard to items 8 and 9, his delegation agreed with the formulation for element (i), which should be included in any draft declaration since it provided the basis for the Committee's work. The question of State responsibility (element (iii)) was important in the same way as the question of liability for damage in element (vii) under items 6 and 7. The principle of State responsibility had already been accepted in the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space and in article VI of the Treaty on Principles governing such activities, and it was therefore difficult to understand why there should be any hesitation in accepting it in the present instance. With regard to element (iv), since the United Nations was competent to authorize a declaration, it should also be competent to secure its observance and it was therefore of some importance that the declaration should include some provision concerning the implementation of the principles and objectives of the declaration.

Mr. EL HUSSEIN (Sudan) said that the report of the informal drafting group (A/AC.138/SC.1/4) marked a step forward in the Sub-Committee's work and provided a useful basis for the formulation of specific principles. In connexion with item 1, he said that his delegation considered element (i) to be fundamental, since that principle should be the basis for any other legal principles to be formulated. He failed to understand the argument that the concept of the common heritage of mankind was without any specific legal content and he wondered whether that view was based on existing rules of international law. The legal status of the area beyond the limits of national jurisdiction was not certain under the existing rules of international law, and neither *res nullius* nor *res communis* applied to that area. That did not mean, however, that the

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(Mr. El Hussein, Sudan)

Committee could not propose new concepts and ideas which, through a proper legal process, could be given legal content. The concept of the common heritage of mankind was at the present stage as meaningful as any other principle and he hoped that it would subsequently be given legal recognition in a convention or a treaty. He was pleased to note that element (ii), in paragraph 5, was acceptable to all delegations. While his delegation was in favour of the idea expressed in element (vi), it felt that it should be included under item 4. It also agreed with the idea expressed in element (vii), since the legal status of the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction was different from that of the superjacent waters. The rules of international law applicable to the high seas did not necessarily apply to the sea-bed, and the Committee's mandate did not cover the area of the high seas. The only connexion between the two questions was the need to ensure that the rules applied to the sea-bed and ocean floor did not affect existing freedoms of the high seas. His delegation attached particular importance to element (viii), but considered that it could be included under item 4.

His delegation endorsed the idea in item 2. Although the existing rules of international law had not dealt adequately with the area, future law conferences might well elaborate new rules to fill the existing gaps in the law of the sea.

The question dealt with in item 3 was of great importance and it was essential to formulate a legal principle regarding it. His delegation doubted that discussion of the item would in any way prejudge or prejudice the negotitions in the Eighteen-Nation Committee on Disarmament. On the contrary, the discussions in the two Committees could usefully complement one another. He welcomed the submission by the USSR to the Eighteen-Nation Committee on Disarmament of a draft treaty which could serve as a basis for an international instrument to limit the use of arms on the sea-bed.

With regard to item 4, his delegation believed that the words "exploration, use and exploitation" should apply to the area as a whole and not only to its resources, and it favoured the formulation contained in paragraph 21 of the informal working group's report.

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Mr. DEBERGH (Belgium) said that in 1956, in connexion with article 2 of the Convention on the High Seas, the International Law Commission had stipulated that States should refrain from any act which might interfere with the use of the high seas by the nationals of other States. That principle should be taken into account in connexion with item 6. Activities on the sea-bed were bound to infringe on fishing and navigation, on the laying of cables and pipelines and on scientific research; moreover some conflict might arise among the different uses of the same vertical area of the sea. Article 5, paragraphs (1) and (6) of the Convention on the Continental Shelf had regulated the matter with regard to the continental shelf and similar - although not necessarily identical - provisions should be included in the principles relating to the sea-bed and ocean floor beyond the limits of national jurisdiction. His delegation was therefore in agreement with the ideas contained in elements (i) and (ii) in paragraph 28 of the informal drafting group's report. During the unofficial consultations his delegation had submitted the following formulation, which referred to the obligations and rights, and also of their nationals:

> "In undertaking activities concerned with the exploration and exploitation of the resources of the area, States and their nationals shall have reasonable regard to the interests of other States and their nationals".

In connexion with element (ii), his delegation had suggested the following formulation:

> "They shall not interfere unjustifiably with the exercise of the freedoms of the high seas, particularly in matters relating to navigation, fishing, the laying and maintenance of cables and pipelines, and scientific research".

Those two formulations were neither new nor original, and there might be some difficulty in defining what was meant by "reasonable" and "unjustifiably". Similar wording had, however, been used in article 2 of the Convention on the High Seas. In view of the possibility of conflict between the various uses of the sea, it was essential to make some provision to deal with that question under international law, and his delegation had therefore proposed the following formula:

> "The international régime shall arrange for the accommodation of the various commercial, scientific and other uses of the sea-bed and ocean floor and of the marine environment",

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(Mr. Debergh, Belgium)

an idea which was reflected in element (vi) (paragraph 25) and, indirectly, in element (x) (paragraph 28). It was too early to define the implications of such an accommodation, but a certain priority would undoubtedly have to be given, in one or another section, to one or another of the possible uses, after the advantages and disadvantages of the solution envisaged had been carefully weighed in the balance of the common interest. Conflicting interests would have to be reconciled, but the ancient rights of navigation and fishing would have to be respected as strictly as possible.

With regard to item 7, since the Sub-Committee was concerned with defining principles it should confine itself to very general formulations including the ideas contained in elements (iii), (iv), (v), (vi) and (vii) of paragraph 28. In connexion with element (viii), he doubted that there was any need to grant special rights to coastal States which already had such rights in respect of the continental shelf. The idea expressed in element (ix) should be further defined in order to make it clear whether it referred to preventive or coercive measures with regard to nationals and ships of other States or simply to practical measures to combat the harmful effects of pollution, such as those taken by France and the United Kingdom at the time of the Torre Canyon disaster. All the proposals made under items 6 and 7 were related to the general consideration that activities on the sea-bed entailed the international responsibility of the operating State. International responsibility was entailed whenever a State failed to show "reasonable regard" for the interests of other States or made "unjustifiable" use of the "freedoms of the high seas". The representative of Brazil had in that connexion proposed an interesting formulation which was contained in element (iii), paragraph 29, and which might gain from further definition. Provision should be made for cases in which exploration or exploitation was undertaken on behalf of one State by nationals of another, and for international organizations; the formulation should take into account the fact that there were existing rules of international law governing the international responsibility of States for the activities of their nationals; and consideration should be given to the suggestion made by his delegation at the 17th meeting that non-governmental organizations and private individuals should only be allowed to explore and exploit the sea-bed and ocean floor with the authorization and under the constant supervision of a State or an international organization.

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153

(Mr. Debergh, Belgium)

In connexion with items 8 and 9, he pointed out that the existence of an area of the sea-bed and ocean floor beyond the limits of national jurisdiction had become a fundamental axiom accepted by all delegations, whether it was a fact or a proposition or a legal deduction. The recognition of the existence of such an area had some effect on lex ferenda since it would prevent States from gradually encroaching on parts of the area outside their jurisdiction, and it would be difficult to proclaim the existence of the area without defining its boundaries. As was stated in paragraph 40 of the report of the Legal Working Group of the Ad Hoc Committee (A/7230), the fact that such an area existed should be emphasized because of the broad interpretation of which article 1 of the Convention on the Continental Shelf was susceptible. His delegation had suggested that all those points should be included in the preamble of the declaration of principles and they were in fact included in sub-paragraph (d) of element (ii) of paragraph 29, which had originally been drafted as follows:

"(i) Considering that the Geneva Convention of 1958 has not sufficiently clearly defined the boundary of the continental shelf;

"(ii) Concerned that such a definition might be interpreted as leaving coastal States the latitude to extend their national jurisdiction over the sea-bed and ocean floor without any distance limitation;

"(iii) Believing that, in order to avoid such a broad interpretation, a precise limit should be established as soon as possible by international agreement;".

A preamble of that kind, which would include all the formulations that were not of a mandatory nature and might also include the concept of "common heritage", or international public domain as the representative of France had called it, would be in line with the proposals made during the discussion and would allay the fears of certain delegations - not including his own - that the Committee would be going beyond its terms of reference if it were to deal with the question of boundary.

Mr. YANKOV (Bulgaria) said that at the present stage of the Sub-Committee's work it was concerned not with the elaboration of a code of specific norms but with defining some fundamental guidelines relating to a future régime for the exploration, use and exploitation of the sea-bed and ocean floor beyond the limits of national jurisdiction. At present priority should be given

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(Mr. Yankov, Bulgaria)

not to the definition of all possible elements in an exhaustive list of legal tenets, but to the elaboration of general rules, although those rules should not consist of vague and inadequate formulations open to conflicting interpretations. The Sub-Committee should therefore confine itself to finding the most appropriate and acceptable formulations of such general principles.

Item 4 in the informal drafting group's report contained very relevant elements but some of them could be the subject of a number of separate principles. In his delegation's view, the substance of the principle could well be expressed in the following formulation:

> "The exploration, use and exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction shall be carried out for the benefit and in the interests of mankind as a whole, irrespective of the geographical location of States, taking into account the needs and interests of the developing countries."

Other elements included under item 4 relating to the application of benefits or institutional and other matters, should not be included in that principle. The formulation contained in paragraph 22 and elements (i) and (ii) of paragraph 25, for instance, if included, should relate to separate principles. As for the question of international machinery, his delegation had already pointed out in the Economic and Technical Sub-Committee that, before any decision was taken concerning its establishment, a thorough scientific, technical, economic, legal and political analysis and evaluation would be needed. Although the future régime and its institutional superstructure were closely connected, they need not be decided upon at the same time. Item 5 covered two related but separate points: the freedom of scientific research and the question of international co-operation in scientific investigation. The first was concerned with the freedom of action of those who undertook scientific research and exploration and their obligation to observe certain rules, while the second constituted the concept relatively new to international law, of the duty of States to co-operate with one another in the field of scientific investigation and exploration. Although both matters could be combined in one formulation, they nevertheless had to be considered as distinct principles. The freedom of scientific research was a prerequisite for the promotion of the exploration and exploitation of the sea-bed and its resources, yet it must

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(Mr. Yankov, Bulgaria)

not lead to an unjustifiable interference with the freedoms of the high seas. At the same time, exploration and exploitation of the sea-bed and the ocean floor, as provided for in article 5 of the Geneva Convention on the Continental Shelf, should not result in any interference with the freedom of scientific research, which was indeed one of the freedoms of the high seas. In other words, there must always be proper harmony between the freedom of scientific research, the exploration and exploitation of the sea-bed, and the freedoms of the high seas. It was equally important to stress that the freedom of scientific research should be exercised in accordance with the rules of international law and should not in any way infringe the legally protected rights of all States, their legitimate interests or national security. So far as the second point was concerned, the duty of States to co-operate with one another was a relatively new concept and members would be aware that a Special Committee of the United Nations was considering its formulation as a new principle of modern international law. In his opinion, it would be sufficient at the present stage for the Committee to elaborate in more general terms a provision to the effect that all States should co-operate with one another in scientific research and exploration. Implementation of that rule could take different forms, such as the exchange of information, joint ventures, access to all collected samples, open publication, etc., and special arrangements could be worked out at the regional or world level, both within and outside existing organizations. There already existed a large area of agreement on the subject which could be expressed in a generally accepted formulation.

Again, paragraph 28 of the report encompassed quite distinct, though related, matters. Firstly, since the sea-bed and the ocean floor beyond the limits of national jurisdiction fell within the area of the high seas, all activities had to be conducted with reasonable regard for the interests of other States in their exercise of the freedoms of the high seas. That concept of accord between the régime of the high seas and exploration and exploitation of the sea-bed was reflected in, for example, paragraph 37 of the report of the Legal Working Group of the Ad Hoc Committee (A/7230, annex II). He also referred the members of the Committee to article 5 of the Geneva Convention on the Continental Shelf and expressed his view that elements (ii) and (iv) of paragraph 28 of the report (A/AC.138/SC.1/4) were both important and satisfactory. However, element (i) was vague and even ambiguous.

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(Mr. Yankov, Bulgaria)

The second problem dealt with in paragraph 28 was that of preventive and other measures against the dangers of pollution and other hazards. He supported elements (iii) and (iv) because they were in keeping with the spirit of articles 24 and 25 of the Geneva Convention on the High Seas. The same paragraph also dealt with three other matters which might be embodied in separate principles. The question of liability for damage caused by activity in the area, referred to in element (vii), could be taken together with element (iii) of paragraph 29, which dealt with international responsibility, and both ideas could be stated in a single general principle. Element (ix) in paragraph 28 related to the legitimate right of coastal States to take measures to protect their shores and coastal waters against pollution occurring outside their national jurisdiction, and the principle could be either considered within the framework of appropriate safeguards against dangers of pollution or be spelled out as a separate rule. The problem of assistance in the case of mishap, distress or danger, referred to in element (vi), merited formulation as a specific principle, bearing in mind its relevance to activities undertaken in such a hostile environment as the deep ocean floor.

His delegation was in agreement with the wording of paragraph 29 (ii) (b) and supported the proposal which had been made by the USSR in that regard.

The Committee had now entered the third stage of its work, in which it could more clearly identify the areas of agreement and disagreement. An attempt must now be made through informal negotiations, to achieve some agreement which could be reflected in the forthcoming report.

Mr. PANYARACHUN (Thailand) said that his delegation had no real difficulty in subscribing in general to the elements of item 5, although some redrafting seemed desirable. It was essential to state in any declaration of legal principles that there was an area of the sea-bed and ocean floor beyond the limits of national jurisdiction. He accordingly supported the Norwegian representative's view that such a statement should be included as the first fundamental legal principle, or, as a minimum alternative, inserted in a preambular paragraph.

(Mr. Panyarachun, Thailand)

The concept of common heritage could well become another fundamental legal principle if it was part of the declaration. However, he would find it hard to agree if a majority of the Committee preferred the concept to be set forth in the preamble. He fully endorsed elements (ii) to (v) of item 1 and would not oppose any new wording, provided the main ideas remained unchanged. In that connexion, he welcomed the suggestions which had been made by the Brazilian representative. The formulation contained in element (vi) was indispensable for the definition of the legal status of the area. Element (vii) was also pertinent, since the sea-bed and the ocean floor on the one hand, and the superjacent waters of the high seas on the other, were two separate entities with different legal status. Many provisions of international law were applicable to the high seas, but few dealt with the subject of the sea-bed and ocean floor. However, his delegation would be fully prepared to consider a revised wording. Element (viii) might be more appropriately dealt with under item 4, but if it was to be included in item 1, he could not entirely agree with the present text, particularly as it made reference solely to international law.

In respect of item 2, he believed that existing international law did not take adequate account of the area and that the régime of the high seas did not apply to the exploration, use and exploitation of resources. He would therefore prefer the suggestion contained in paragraph 18, as reformulated by the representative of Malta. Since the Committee was concerned with the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, any formulation regarding reservation of the area exclusively for peaceful purposes must be made in terms compatible with that form of language. The text for item 4 suggested in paragraph 21 was the most appropriate because it was based on operative paragraph 2 (a) of General Assembly resolution 2467 A (XXIII). Clearly the item should also call for the establishment of an international legal régime and the best formulation would be the one suggested in paragraph 23, together with the provisions set forth in paragraph 25.

His delegation would have no objection to the inclusion of any of the main elements of item 5 listed in paragraph 26. Similarly, all the elements in paragraph 28 of the report met with his approval. As for paragraph 29, reference

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(Mr. Panyarachun, Thailand)

must be made to the necessity for defining a more precise boundary and, in that connexion, he found great merit in the informal proposal submitted by the USSR representative.

In conclusion, he hoped that the Committee would endeavour to reach agreement before the end of the session on the texts of elements which had encountered general support. The effects of a successful effort in that direction would be most beneficial.

Mr. BALLAH (Trinidad and Tobago) said that, while some principles of international law were applicable to the marine environment, silence in the law did not amount to permissiveness and the absence of a prohibition did not constitute tacit consent. The freedom to explore and exploit the sea-bed was not a natural corollary of the freedoms of the high seas. The rules governing the area would, in the main, have to be the rules of lex ferenda. Accordingly, he favoured a formulation of item 2 based on the suggestion contained in paragraph 18 of the report. Taking into account the proposals made by other representatives, that paragraph would read:

> "All activities in this area shall be carried out in accordance with the principles of this declaration as well as with the legal principles and norms to be internationally agreed upon for the exploration, use and exploitation of the area and with (the relevant principles of) international law, in particular with the purposes and principles of the Charter of the United Nations."

With regard to item 3, his delegation had already expressed its view that the environment should be completely demilitarized or declared to be out of bounds for the deployment of military weapons, whether the intention was to use such weapons in the defence or the violation of peace. Consequently, he would welcome any formulation of the principle which took those elements into account. His comments, however, were not intended to prejudice the outcome of the deliberations of the Eighteen-Nation Committee on Disarmament. The use of resources for the benefit of mankind as a whole was essential, as it followed on directly from the key concept of common heritage. The first claim on those benefits should undoubtedly go to the peoples in greatest need of economic relief,

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(Mr. Ballah, Trinidad and Tobago)

and his delegation endorsed the formulation of item 4 contained in paragraph 21, which reproduced the language of operative paragraph 2 (a) of General Assembly resolution 2467 A (XXIII). He appreciated the realistic approach of those who had pointed out the abuses which might be made of a blanket provision granting unconditional freedom of scientific research. It was extremely difficult to distinghish between pure scientific research and scientific research with commercial objectives and he therefore considered element (ii) of item 5 to be essential. Programmes of scientific research should be communicated beforehand and the results should be accessible to all who needed them.

The elements set forth under items 6 and 7 appeared to be acceptable, but the subject needed careful consideration before any legal principles were formulated. He agreed that the words in parenthesis should be deleted from element (vii) and he favoured the application of a principle of strict liability with regard to damage caused by activities in the area. In the matter of State responsibility, the suggestion contained in paragraph 29 (iii) was appropriate, but the word "ensuring" would be more fitting than the word "assuring". It was not enough for States to encourage their nationals to follow the rules; they must bear responsibility both for their nationals and for any other persons in their employ.

Lastly, the future declaration must embody a comprehensive, balanced and interrelated set of principles, which would not permit of any ambiguity. At the present stage, it would be better to have no declaration at all rather than one so general as to allow exploitation which was not in the interests of all mankind.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

Held on Friday, 22 August 1969, at 3.30 p.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF THE REPORT OF THE INFORMAL DRAFTING GROUP (A/AC.138/SC.1/4) (concluded)

CONSIDERATION OF THE LEGAL ASPECTS OF THE REPORT SUBMITTED BY THE SECRETARY-GENERAL PURSUANT TO RESOLUTION 2467 C (XXIII) REGARDING INTERNATIONAL MACHINERY (A/AC.138/12 and Add.1)

Mr. RAMANI (Malaysia) said it was unfortunate that in its debate on the report of the informal drafting group (A/AC.138/SC.1/4) the Sub-Committee appeared to have forgotten that it was a draft intended primarily to stimulate discussion and not a series of sacred principles.

In discussing the basic ideal postulated in General Assembly resolution 2467 (XXIII) that the sea-bed and ocean floor should be used exclusively for peaceful purposes, some representatives had stated that an activity could be described as "peaceful" if it was consistent with the United Nations Charter and with other international obligations and that accordingly such a definition did not preclude military activities. A recent article in an English newspaper had dealt with the question and the discussions to which it had given rise. According to the writer, there was universal agreement that the sea-bed should be used only for peaceful purposes but that did not mean it should not be used for offensive purposes or that even defensive activity should be prohibited. The article had gone on to say that that there had been limited agreement on a number of amorphous principles but there was none on what they meant.

It was somewhat absurd to claim that the ideal of "peace" was first invented at the San Francisco Conference and that any international obligations could have been undertaken involving an area which no one had a right to own or even a pretence to control. It was also somewhat hypocritical to keep talking about "peace" while envisaging the possibility of activities which led to conflict and war.

It was an accepted fact that over 70 per cent of the earth's surface was covered by the oceans. Territorial waters formed only a negligible part of those oceans and the continental shelf was only slightly larger. The area with which the Committee was concerned was therefore of enormous potential which could be used for good or ill. The riches to be discovered in the area were so great that no conflict should be allowed to develop between particular Powers. To that end,

(Mr. Ramani, Malaysia)

some legal person or institution should be given the responsibility of developing the area for the benefit of all mankind and of seeing that it was used only for peaceful purposes. On that last point, there was no question of raising the problem as to what "peace" really meant; the important task was to ensure that it should serve none of the many forms of war-like activities which mankind was prone to conceive. The institution in question could only be the United Nations, which existed for the sole purpose of defending the interests of all States whether Members or non-members. The area must therefore be vested in the United Nations in the sense in which the word "vested" was used in common law and defined in the Oxford Dictionary.

The elements set forth in paragraph 5 of the informal drafting group's report gave a detailed idea of the status of the area if it was vested in the United Nations: it would be removed from the possibility of national appropriation (ii); it would be secured from any claim to sovereignty (iii); no State could create or grant rights, exclusive or otherwise (iv); and no State could acquire property rights over any part of the area (v). Finally, as he had pointed out at a previous meeting, a legal person would ensure that the rights relating to the area were reserved for mankind as a whole and that those rights were not infringed.

Finally, he wished to add, without wishing to influence the other delegations, that he had discussed that principle with the Legal Counsel of the United Nations who had seen no objection to it.

Mr. OULD HACHEME (Mauritania) said he shared the concern expressed by other delegations regarding the legal aspects of the question. It was generally admitted that there existed an area which was beyond the limits of national jurisdiction and which was considered as the common heritage of mankind. His delegation was particularly pleased with the Secretary-General's report (A/AC.138/12). He stressed the importance of paragraph 76 which referred to Article 33 and Chapter VI of the Charter concerning the settlement of disputes. That reference did not run counter to the proposals of Belgium and Malta which the Mauritanian delegation approved. It was advisable to follow the United Nations Charter in the elaboration of the régime envisaged, for international law, and particularly the law of the sea, was based on abstract and fragmentary notions

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(Mr. Ould Hacheme, Mauritania)

which each State interpreted in its own fashion. The Secretary-General's report, which was directly inspired by General Assembly resolution 2467 C (XXIII), constituted a useful basis for the work of the Sub-Committee. Generally speaking, the machinery contemplated should not be too unwieldy and should not absorb the profits that might accrue from the development of sea-bed resources. As the representative of Kuwait had recommended, the necessary measures should be taken to prevent the establishment of a new colonial empire under the cover of an international organization.

Mr. PARDO (Malta) pointed out, with respect to item 5, that freedom was not an absolute right. Freedom guaranteed by the community must be used for purposes acceptable to the community. The freedom of the high seas and the freedom of research should be exercised with due regard for the interests of other States. He was not entirely satisfied with the wording of paragraph 26 and suggested that it might be amended as follows:

> "There shall be freedom of access to this area for the purpose of fundamental oceanographic or other scientific research carried out with the intention of open publication. The undertaking of such research shall not confer special rights over any part of this area and its results shall be made available to all States without discrimination. States shall encourage the participation in such research of nationals of countries that are technologically less advanced in maritime matters."

With regard to paragraph 28 (items 6 and 7) he agreed with the representative of India on element (ix) and supported the idea formulated in element (vii). However, as the question must be studied in greater detail, Malta would not object to its provisional replacement by the more general wording in paragraph 29 (iii).

Paragraph 28 appeared to be too long for a first declaration of principles. Malta therefore proposed the following wording:

> "Activities in this area shall be undertaken with reasonable regard to the interests of all States and without unjustifiable interference with navigation, fishing, conservation of the living resources of the sea or the laying of cables and submarine pipelines, nor shall such activities result

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(Mr. Pardo, Malta)

in any interference with fundamental scientific or oceanographic research carried out with the intent of publication.

"Activities in this area shall be undertaken only with the observance of effective safeguards against the dangers of ocean pollution, including radioactive pollution and other harmful effects on the marine environment.

"States shall co-operate in providing assistance when requested in the event of accident or emergency resulting from activities in this area.

"States shall bear international responsibility for the activities of persons authorized by them to undertake activities in this area. States shall ensure that such activities are undertaken in conformity with the principles and purposes of the United Nations Charter and the principles set forth in the present declaration."

Paragraph 29 (vii) would be replaced by paragraph 29 (iii). Element (viii) would disappear for the measures it recommended appeared excessive. Malta did not perceive clearly the meaning of elements (ix) and (x) and suggested that study of them should be continued.

Paragraph 29 (i) and (ii) could be replaced by the following preamble which did not explicitly mention the need for a precise boundary of the area of the sea-bed beyond the limits of national jurisdiction:

"Considering that customary international law is ambiguous on the subject and that the 1958 Geneva Convention on the Continental Shelf does not precisely delimit the area over which a coastal State exercises sovereign rights for the purpose of exploration or exploitation of natural resources...

"Considering nevertheless that there exists an area of the ocean floor and the subsoil thereof underlying the high seas which lies beyond the area of national jurisdiction... ".

By referring to an area which lay beyond the area of national jurisdiction, the text recognized that such an area existed and, by mentioning the uncertain state of present international law, suggested the need to define it.

Sub-item (iv) of paragraph 29 could be omitted until the measures which the United Nations might take were worked out.

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(Mr. Pardo, Malta)

Reverting to item 4, paragraph 21, he suggested that the words "for the promotion of economic development" should be deleted from the proposed text because that was not the only objective sought.

He preferred the formulation in paragraph 23 to that given in paragraph 22, but felt that the words "legal" and "agreed" were complementary inasmuch as legal measures had to be taken to give effect to an agreement, but would remain a dead letter if agreement was not reached. As a compromise, either both words should be used, or both should be deleted.

With regard to paragraph 25, the Maltese delegation shared the opinion of the Soviet Representative that the list of elements was too long, that they were of varying merit and importance and that the appropriateness of including many of them in a declaration of principles had not been proven. In order not to be too concise, to keep all options open for individual delegations and at the same time give some direction to the future deliberations of the Committee, he suggested the following formulation:

"An agreed international legal régime shall be established for the exploration and use of this area and, in particular, for the exploration and exploitation of its resources. Such a régime shall reflect the principles contained in this declaration and shall also include, among others, provisions through internationally agreed arrangements for:

"(a) effective international co-operation on the international regulation of activities in this area, more particularly in the exploration, use and efficient management of this area, in the orderly and rational development of its resources, in the accommodation between its different uses and between these uses and the uses of superjacent waters in a manner reflecting the interests of the international community and the adoption of effective safeguards against ocean pollution;

"(b) effective international co-operation in the settlement of disputes;

"(c) effective international co-operation to minimize possible adverse economic effects in the exploitation of the resources of this area and to develop procedures for the equitable application of the financial proceeds resulting from the exploitation of the resources of this area, taking into account the special needs and interests of poor countries."

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(Mr. Pardo, Malta)

Thus, the international régime would provide only for the regulation of matters which, it was generally recognized, had to be regulated. The formulation did not prejudice the position of any delegation. The regulation sought could be obtained either through a series of international treaties or by applying the relevant provisions of the Charter. On the other hand, those matters could also be dealt with in the framework of an international régime. If the latter solution was adopted, the scope and functions of the machinery which was to give effect to that régime should be defined in the course of future deliberations. By mentioning the objectives of an international régime, the Committee was paving the way for a more detailed analysis of the problem at its next session.

Mr. EVENSEN (Norway) found the wording suggested in paragraph 20 of the report (A/AC.138/SC.1/4) acceptable, with the deletion of the words between brackets. It was true that activities on the ocean floor might have to do not solely with the use of the resources of the area, but might include the establishment of under-water communities, production and storage facilities, etc.

Since time was too limited to allow for a thorough discussion of the legal aspects of the question of defining an international régime, he suggested the following text as a compromise formulation:

"An international régime to be agreed upon shall be established for the exploration, use and exploitation of this area and its subsoil,"

or alternatively,

"All activities in this area shall be carried out in accordance with an agreed international régime which will promote within an equitable framework, orderly, just and effective international co-operation in the exploration, use and exploitation of this area and its subsoil."

With regard to item 5 of the report, it seemed obvious that the future legal instrument should guarantee and regulate scientific research in the ocean floor and its sea-bed. In that instance, as well, given the limitation of time, he suggested the following general formulation:

"Freedom of scientific research without discrimination is recognized in this area and its subsoil.

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(Mr. Evensen, Norway)

"In order to promote international co-operation in this field, States shall, inter alia, publish beforehand in a timely fashion their plans for such scientific research, make the results of their research available and, to the extent practicable, promote and participate in common research programmes."

There did not seem to be any disagreement regarding the principles formulated under item 6 concerning freedom of the high seas and reasonable regard for the interests of other States. He proposed the following formulation under that item:

"In the exploration, use and exploitation of this area and its subsoil,

(a) There shall be no infringement of the freedoms of the high seas and no unjustifiable interference with the exercise of such freedoms, in particular with reference to navigation, fisheries, the laying and maintenance of cables and pipelines, the conservation of the living resources of the seas and the freedom of scientific research;

(b) States and their nationals shall have reasonable regard for the interests of other States and their nationals."

Item 7 referred inter alia to the danger of pollution. The existing state of affairs entailed obvious dangers since it was not sufficient for a given State to adopt a safety code in order to protect itself or the international community against the dangers created by the non-regulated activities of the other coastal States in superjacent waters. The danger would increase with increased activities. The problem could only be met by the establishment of an appropriate international régime with appropriate machinery at its disposal. In addition to the questions of mutual assistance and liability for damage caused by activities in the marine region, consideration should be given to the obligation of States to take appropriate measures for the conservation of that common heritage of mankind. Basing himself on the proposal of the Soviet Union, he proposed the following text on that subject:

"Appropriate national and international measures shall be taken to ensure that activities carried out in this area and its subsoil do not cause pollution or other harmful effects or hazards to the areas concerned and their subsoil or to the marine environment... Appropriate national and international measures shall be taken to conserve and protect the resources

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of the areas concerned and their subsoil and the living resources of the marine environment."

With regard to the question of international responsibility, the formulation given on page 11 of the report was a clear statement of the principle, but he preferred the text proposed by the Soviet Union reading as follows:

"States shall bear international responsibility for their national activities on the sea-bed, irrespective of whether those activities are carried out by governmental organs, non-governmental organizations or private persons."

Mr. HOLDER (Liberia) felt that the work of the Sub-Committee, like that of the full Committee, involved very difficult problems, particularly because of the lack of precise data on the various aspects of the subject. Nevertheless, considerable progress had been made since the General Assembly had established the Ad Hoc Committee in 1967. The Sub-Committee had good reason to be satisfied that it had before it a single document compiling the views and suggestions expressed in the course of its meetings and describing in detail the problems confronting it. His delegation was glad that it had taken part in the work of the Committee from its very inception, when it was still an ad hoc committee; its uninterrupted participation had enabled it to understand that part of the difficulty in reaching agreement was due to confusion concerning the objectives sought. It was an open question whether the Committee was endeavouring to construct general principles applicable to the use of the resources of the sea-bed beyond the limits of national jurisdiction or whether it was seeking at the present stage to draft a detailed code intended to regulate all aspects of future activities connected with the sea-bed. For example, a consideration of item 3 of document A/AC.138/SC.1/4 showed that the Committee could decide that the sea-bed should be reserved exclusively for peaceful purposes and leave it to the Eighteen-Nation Committee on Disarmament to define the words "exclusively for peaceful purposes". The question of delimiting the area to which the principle would apply could also be left to a conference convened to review the Geneva Convention on the Continental Shelf, at which the question of the exercise of national jurisdiction beyond national territorial waters could also be clarified. His delegation was not opposed to the enumeration and identification of all the elements of the problems under consideration but felt that their discussion should proceed in accordance with precise guidelines.

(Mr. Holder, Liberia)

Another reason for the difficulties which the Sub-Committee was encountering derived from the fact that many varying interests were at stake. Those interests, whether national or international, should be exposed, identified and, above all, protected. The elements listed in document A/AC.138/SC.1/4 on which there appeared to be disagreement were those which affected national interests and had an obvious political significance. In order to pinpoint areas of agreement, the Sub-Committee might therefore separate existing interests and rights in the marine environment from those proposed future interests to be created in the area beyond the limits of national jurisdiction. For example, it was generally recognized that activities on the sea-bed should not jeopardize existing rights of users of the sea and the ocean floor. Any régime should therefore operate in such a way as to respect the rights of existing users. On the other hand, the question of future rights and duties in respect of the sea-bed was a new problem which was particularly difficult to resolve. If the Sub-Committee succeeded in pinpointing areas of agreement it would greatly facilitate the work of the Fall Committee the following week.

Mr. GOWLAND (Argentina), referring to item 5 in the report of the Informal Drafting Group (A/AC.138/SC.1/4), said that a broad scientific and technical survey was necessary to gain a better understanding of the sea-bed, its characteristics, the conditions of the marine environment and the nature and origin of the mineral deposits found therein. Knowledge of that environment could be greatly enhanced through genuine international co-operation based on the principle of freedom of scientific research. The declaration of principles should establish the principle of freedom of research because it was the very basis of co-operation and greater knowledge.

The study to which he had referred should be carried out in accordance with the rules of existing international law, particularly those relating to the continental shelf. With regard to the continental shelf, he stressed that the consent of the coastal States must be obtained in respect of any research, as articles 5 to 8 of the Convention on the Continental Shelf made clear. Provided that that condition was met, Argentina, for its part, was prepared to co-operate as fully as possible in all future research activities.

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(Mr. Gowland, Argentina)

With regard to item 5 (i) of the report of the Informal Drafting Group, he noted that scientific research was always peaceful; it was only its application that might be used for aggressive purposes. Nevertheless, his delegation saw the point of the observations which the United States representative had made concerning the words "for peaceful purposes". In dealing with that difficult point, the declaration of principles should invoke another fundamental principle of the United Nations: the principle that States must fulfill in good faith the obligations assumed by them.

Furthermore, his delegation agreed that "no rights of sovereignty or exploitation are implied in the carrying out of scientific research"; the Antarctic Treaty provided a useful precedent in that respect.

Turning to item 9, he stressed that the proposals contained in element (ii) ("Question of boundary") were unacceptable to his delegation because they went beyond the Committee's terms of reference as laid down in resolution 2467 (XXIII). At the twenty-third session of the General Assembly, his delegation, referring to the question of boundaries had stated that the jurisdiction of the coastal States over the sea-bed was determined first by existing international law and secondly by article 1 of the Convention on the Continental Shelf. The International Court of Justice had recently confirmed that position in its judgement of 20 February 1969 on the North Sea continental shelf. Before amending article 1 of the Convention as regarded the criteria for sovereignty and exploitation, it must first of all be reliably determined whether or not that article established precise boundaries. As a general rule provisions in force could be changed only by following the appropriate amendment procedure, a task which should be carried out by an international conference or body with ample authority to do so. The national and international interests at stake were so important that the greatest caution should be exercised in that connexion.

Mr. PAVICEVIC (Yugoslavia) said that he would make some preliminary comments on items 4 to 9 of the report of the informal drafting group.

He said that item 4 concerning the use of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of developing countries, constituted one

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(Mr. Pavicevic, Yugoslavia)

of the crucial problems of the subject matter before the Committee. His delegation was of the opinion that the set goal had already been accepted by all and that it had already acquired certain legal expression in paragraph 2 (a) of resolution 2467 A (XXIII). Nevertheless, his delegation felt that some doubts or hesitations continued to exist about whether another of the vital aspects of the problem before the Committee was the question of development in the world, and specifically, the question of the gap existing between developed and developing countries. He pointed out that the new informal formulation of that principle, as presented by the delegation of the Soviet Union, had failed to recognize the special needs and interests of the developing countries.

The efforts of the Sub-Committee should be closely associated with other international efforts being exerted with a view to enlisting the co-operation of the developed countries to promote development throughout the world, particularly within the framework of the Second Development Decade. As the representatives of Brazil, Cameroon, Ceylon, Trinidad and Tobago and other countries had rightly pointed out, recognition of the special needs and interests of the developing countries derived from their right to share in the benefits of the sea-bed, which constituted the common heritage of mankind. It should not be regarded as charity from the developed to the developing countries or as some kind of technical assistance in the conventional sense.

Without prejudice to its position on the final formulation of that principle, his delegation found acceptable the formulations contained in paragraphs 20 and 21, with the exception of the words between brackets. It supported in principle the idea of the establishment of an international régime for the exploration, exploitation and use of that area, without prejudice to its position on the final formulation of that principle. His delegation also accepted the formulations contained in paragraphs 22 and 23, without the words between brackets except for the word "agreed", which should be retained because the objective was, in his delegation's view, to establish "an agreed" international régime.

The international régime should apply to the area under consideration as a whole. Those delegations which had advocated a division between the uses of the area in general and those relating to the exploration and exploitation of the resources of the sea-bed had not thus far produced sufficiently convincing

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(Mr. Pavicevic, Yugoslavia)

arguments. Apart from the uses envisaged in item 3 (peaceful uses), there were other uses of the area of the sea-bed which could be regulated by an international régime. He wondered how those other uses of the sea-bed would be regulated and whether they could be allowed to exist outside the régime. His delegation would appreciate an answer to those questions.

His delegation could, in principle, support the ideas outlined in paragraph 24 and in sub-paragraphs (i) (a) and (b), (iii), (iv), (v), (vi) and (vii) of paragraph 25. It would study the other opinions and formulations submitted in respect of paragraph 25, with a view to finding such formulations as would be balanced, widely acceptable and at the same time reflect the main elements of future international régimes. With regard to item 5 on "freedom of scientific research and exploration" he said that at the moment of deliberation his delegation's position had been summarized in the proposal of the Afro-Asian developing countries submitted for discussion during the informal consultations, which read as follows: "This area shall be opened without discrimination to scientific research for peaceful purposes and States shall promote international co-operation in this research so as to enable all countries to have access to it, and shall disseminate its results, which must be made available to all without discrimination, bearing in mind that scientific research does not imply any rights to exploitation or provide a basis for a claim of sovereignty." His delegation supported every encouragement of scientific research in the interests of the national community as well as in the interests of the international community. It was not a question of subjecting such research to conditions or restrictions but of establishing reasonable regulations so that it would be placed at the service of peace and mankind. He was not quite certain whether at the initial phase of discussion it was advisable to proceed from the position of clear separation of the different approaches as indicated in paragraph 27 of the report and thus bring about a polarization of views. Elements of all three approaches should be utilized, starting with the basic assumption that scientific research must be free. All countries should have access without discrimination to the results of scientific research (element (iii) of paragraph 26); they should be communicated either directly by States involved in such research or through an appropriate international organization. That could be the substance of the second approach

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(Mr. Pavicevic, Yugoslavia)

which, in some instances, could be accompanied by elements of the third approach as expressed in element (iii) of paragraph 26 - when, for example, research was carried out in the area adjacent to the limits of national jurisdiction of a coastal State or under the auspices of the United Nations or other international bodies. His delegation supported the idea contained in element (vi) which stated that no rights of sovereignty or exploitation were implied in the carrying out of scientific research, because it was anxious to prevent activities which might be undertaken under national legislation or as a result of loop-holes in existing international law, with a view to acquiring rights of sovereignty or exploitation.

His delegation recognized the ideas contained in element (iv) regarding the participation of nationals of different States in common research programmes and the necessity of strengthening the research capabilities of the developing countries as very important goals in that field.

Under items 6 and 7 (para. 28), his delegation found element (i) on reasonable regard for the interests of all States acceptable. However, it deserved further consideration and elaboration with specific consideration of the sea-bed and its subsoil beyond the limits of national jurisdiction. It should be noted that element (i) was closely related to element (viii) and that to separate the two, as had been done in paragraph 28, might blur the distinction between the need for "reasonable regard" for the interest of all States in general and the need to respect the interests of the coastal State closest to the area in which any activities occurred. Certain delegations had expressed doubts concerning the necessity of retaining items 1 and 8. Those items, however, implied no new ideas. A rule similar to the one under item 1 with reference to the exercise of freedom of the high seas was to be found, for example, in article 2 of the Geneva Convention on the High Seas. States exercising certain freedoms on the high seas must take into account the interests of other countries relating to those freedoms. Moreover, consideration for the interests of coastal States had been dealt with in a rule already formulated in article 6 of the Geneva Convention on Fisheries and the Conservation of the Living Resources of the High Seas.

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The formulation used in element (viii) - "coastal States closest to the area" - could be improved. It was, in fact, always possible to find a State which was the State closest to a given point in the ocean or the ocean floor. Consequently, the special interests of States should be taken into account only in the regions adjacent to coastal States and not in any other regions of the high seas. For that reason, element (viii) should be redrafted as follows: "Consultations with coastal States whose jurisdictional parts of the sea-bed are adjacent to the area in which any activities occur...."

The ideas contained in element (iii) relating to safeguards against the dangers of pollution deserved support. However, it was not clear from those formulations whether the intention was to follow only the example of articles 24 and 25 of the Geneva Convention on the High Seas which did not go beyond reliance upon national legislation in preventing the dangers of pollution or to go a step further by adopting new international instruments which would obligate States to respect the standards adopted and make them binding on their nationals by means of national legislation. His delegation was inclined to support the second approach.

His delegation also supported element (iv), on the understanding that "living resources" implied all types of flora and fauna, as well as element (v) on safety measures, even though it made no reference to international instruments which would regulate those problems. Its comments on element (iii) also applied to element (v). Element (vi) relating to assistance in case of mishap, distress or danger was a progressive measure for international co-operation and enjoyed his delegation's full support. Element (vii) was essential and its wording should be strengthened in view of the fact that damage could affect not only the property of the operator or of individuals, but also the common interests of mankind and those of the closest coastal States. The concept of liability for such activities should be strengthened to provide not only for compensation for damage but also for criminal prosecution of those responsible. His delegation supported the principle that States bore responsibility for such activities vis-à-vis other States and the international community.

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(Mr. Pavicevic, Yugoslavia)

It must, of course, be recognized that problems might arise in relations between the enterprises engaging in activities in the area under consideration and in connexion with the responsibility of the State concerned. In order to avoid cases in which State responsibility would be involved, sufficiently broad international standards should be created which, if accepted by all countries and transformed into national laws through legislation, would provide a means of avoiding such situations as far as possible. In his delegation's opinion, it was not premature to discuss that question, since activities relating to the exploration, exploitation and use of the sea-bed and its resources were already under way, despite the absence of an international régime, and several cases of considerable damage to the marine environment had already occurred. That was why his delegation could not understand the arguments of those delegations which regarded the paragraph in question, as well as element (x), as prejudicial. Nor could his delegation agree with the arguments of those who wished to place the problem in the framework of the implementation of the inadequate international law relating to the sea-bed and the even more inadequate international law relating to the question of liability in general. It seemed that such arguments were being advanced by those States which were at present most advanced in the field of exploration and exploitation.

Element (ix) gave coastal States the right to take measures to protect their territory against pollution caused by a third State. However, the extent of that right, as well as the procedures for its application, should be defined in order to avoid possible abuses while ensuring due protection for coastal States.

Similarly, the obligations of countries engaged in activities which might cause damage should be clearly defined. Those States should take all necessary measures to prevent their activities from causing damage and, should damage occur, to eliminate the consequences, inter alia, by making compensation for losses. His delegation had already had an opportunity to comment on sub-paragraphs (i) and (ii) of paragraph 29. It supported the ideas contained in sub-paragraphs (iii) and (iv) and reserved the right to make detailed comments later on.

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Mr. OLISEMEKA (Nigeria) said that he wished to comment on items 4 to 9 of the report of the Informal Drafting Group. His delegation felt that the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction should be used for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries. That followed logically from the concept of "common heritage of mankind", which, in his view, was the basic concept applying to the area under consideration. His delegation would prefer a formulation which adequately protected the interests and needs of the developing countries, and it endorsed the views of those delegations which stressed that the exploration, use and exploitation of the area should apply not, as contended by some, to its resources alone but to the area as a whole in a broad sense. It was therefore satisfied with the formulation employed in paragraph 20. Nevertheless, if that formulation gave rise to difficulties, he would accept the wording of operative paragraph 2 (a) of resolution 2467 A (XXIII) as set out in paragraph 21 of the report. His delegation was also satisfied with the wording of paragraph 24, which it interpreted as meaning that rational development and equitable management of the area would be carried out in the context of an international régime. While he did not wish to go into detail concerning paragraph 25 of the report of the Informal Drafting Group, his delegation welcomed the provisions contained in sub-paragraph (v), which it regarded as entirely logical. The management of the resources of the area and the regulation of its activities should unquestionably be entrusted to an international body. The economic incentives mentioned in sub-paragraph (ii) would depend on the type of international machinery finally chosen. On the other hand, sub-paragraph (viii) would require further study, because the question arose as to when the boundary of the area would be established. The concept of freedom of scientific research and exploration mentioned in item 5 was perfectly acceptable, but it was clear that that freedom could easily be abused. It was therefore the nations capable of undertaking such research which should guarantee that such

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(Mr. Olisemeka, Nigeria)

abuses did not arise. While not taking a position on the possibilities mentioned in paragraph 27, his delegation wished to state that it attached great importance to the publication and dissemination of the results of scientific research and endorsed element (vi) of paragraph 26, which stated that no rights of sovereignty or exploitation were implied in the carrying out of scientific research. In that connexion, the formulations proposed at the present meeting by the Maltese and Norwegian representatives and on 20 August by the United Kingdom representative as well as the views expressed by the Brazilian delegation, deserved careful consideration. With regard to items 6 and 7 of the report, elements (i) and (ii) of paragraph 28 were perfectly acceptable. The importance of elements (viii) and (iii) should be stressed, although it was not certain that the only harmful effects to be taken into consideration were those listed in sub-paragraphs (a), (b) and (c). Element (vii) was also valid.

With regard to items 8 and 9, his delegation recognized that there was an area of the sea-bed underlying the high seas which lay beyond the limits of national jurisdiction and thought that a statement to that effect should be included in any statement of legal principles. It also agreed that, although the Committee's mandate did not empower it to determine the question of a boundary for the area, it should nevertheless recognize the need to establish a more precise boundary. The concept of State responsibility as set forth in paragraph 29 (iii) was sound. The questions to be resolved were obviously highly complex, but, if a sufficiently flexible approach was taken, it should be possible to make further progress.

Mr. de SOTO (Peru), referring to item 1 of document A/AC.138/SC.1/4 ("Legal status"), said that the criticism made by some delegations to the effect that the concept of the "common heritage of mankind" had no legal content was actually a purely formal criticism. The notion of a common heritage embraced certain concepts which should be set forth in the statement of principles. The first two of those concepts were contained, with variants, in elements (ii) to

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(Mr. de Soto, Peru)

(v) of item 1. In that connexion, his delegation supported the Brazilian proposals for reconciling those different versions. The third concept was that of joint administration, and the fourth, which derived from it, was that of an administering authority. The fifth concept was that of joint participation in the results of exploitation, taking particular account of the interests and needs of the developing countries. The three last-mentioned concepts were contained in element (vi). Consideration of the concepts which he had enumerated would make it clear that the principle of the common heritage of mankind was essential and could not be omitted in a statement of principles.

With regard to item 2, there was no question that the United Nations Charter applied to the sea-bed and the ocean floor. On the other hand, there was no body of international law specifically applying to that area. To state that existing international law applied to it might have grave consequences. In particular, it could justify the application to the sea-bed of provisions relating to other environments. The item should therefore be further clarified. It might not be possible to be very explicit on that point, since a statement of principles was more effective if it was brief. Nevertheless, a concern for brevity should not be permitted to detract from the clarity of a document which would form the basis of the Committee's future work.

Noting that item 3 did not seem to create any particular difficulties, he expressed the view that the principle contained in item 4 should be in harmony with the concepts set out in element (vi) of item 1. For the relevant formulation, he would refer the Sub-Committee to the set of principles proposed by a number of developing countries of Asia, Africa and Latin America at the Rio de Janeiro session of the Ad Hoc Committee. Peru, which had been one of the sponsors of those principles, hoped that the elements of the report of the Informal Drafting Group would follow as closely as possible the proposals made at that time by the developing countries. As to the establishment of appropriate international machinery, his delegation would present its views at a later date. In

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paragraph 25 (v), emphasis should be placed on the possible dangers to the production of raw materials in the coastal States, which was often so important to the economy of such States.

With regard to freedom of scientific research and exploration (item 5), it was essential to adopt principles directed towards an active policy of transferring and disseminating knowledge in accordance with the requirements of international co-operation as defined in the Charter and with the objectives of the Second Development Decade.

With regard to items 6 and 7, he hoped that the statement of principles would contain appropriate provisions concerning the rights of coastal States. Finally, the proposal contained in part (iii) of paragraph 29 (items 8 and 9) could provide the basis for constructive debate.

His delegation felt that the drafting group had done a useful job. It did not believe, however, that the delimitation of the area of national jurisdiction should be studied by the Committee, since that would only divert it from its assigned task. It agreed with the delegations of Brazil, India and Trinidad and Tobago that it was still too early to formulate a statement of principles based on a true spirit of co-operation, and the Sub-Committee should frankly recognize that fact in its report.

Mr. RAZAKANAIVO (Madagascar) said that he supported the objectives set out in item 4. However, in paragraph 22 a distinction should be made between the legal régime that would apply to the exploitation of resources and the international régime that would be established for the exploration and exploitation of resources. The two ideas were quite distinct. With regard to the area of the sea-bed and the ocean floor, the report of the Informal Drafting Group contained provisions prohibiting national appropriation, the exercise of sovereignty or sovereign rights, etc., but no such provision was made with regard to resources. It might therefore be supposed that once products were extracted, they would not be covered by any legal provisions and it would thus be necessary to decide whether they belonged to mankind as a whole or to the operator. Another aspect of the formulation obviously had a bearing on the legal standards and principles that were

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(Mr. Razakanaivo, Madagascar)

to govern the exploration and exploitation of the resources of the sea-bed. His delegation therefore proposed that paragraph 22 should be redrafted so that it would contain two separate formulations in which (1) the legal régime governing the resources of the area would be defined and (2) an international régime would be established for the exploration and exploitation of the resources of the area and the subsoil thereof, such régime to reflect the other principles set forth in the statement.

His delegation endorsed element (ii) of paragraph 25 and had already stated its views concerning element (iii) of the same paragraph. With regard to element (vii), it was essential that the developing countries should be able to participate actively in effective international co-operation. Appropriate measures should therefore be taken in that regard so that co-operation could take place on a basis of equality.

With regard to item 5, it would seem that the fundamental difference between the meanings given to the word "exploration" depended on whether the end in view was scientific exploration or exploration for commercial purposes. In actual fact, the only one who would be in a position to know the purpose of the work would be the operator, who was apparently to be judged on the basis of his intentions. The use of the word "exploration" in that context might therefore nullify the progress achieved by the Sub-Committee and should be replaced by the word "research", which had a sufficiently broad meaning.

As to element (ii) of paragraph 26, international co-operation called for communicating either the proposed programmes or the results achieved. Otherwise, scientific research would be useful only to the countries that had undertaken it. His delegation felt that the obligation to communicate the results of scientific research was extremely important and, far from being an obstacle to freedom of research, was a logical corollary of it. It should be borne in mind that science represented the only hope for the developing countries to improve their present position.

Finally, his delegation endorsed in principle the ideas set out in items 6 and 7.

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Mr. BAZAN (Chile) said that in his delegation's opinion the statement of principles that the Sub-Committee was in the process of drawing up and the establishment of machinery for ensuring their practical application constituted an indivisible whole.

A statement of principles would be meaningless in the absence of any means of implementing the ideas which it contained. Indeed, it might even hold back progress. If considered in isolation, the principles had the effect of limiting and imposing conditions on the opportunities for extracting resources from the sea-bed. Only machinery set up as an essential complement to those principles and as a basic element of the proposed legal régime would make it possible to exploit sea-bed resources for the benefit of mankind as a whole.

His delegation reserved the right to discuss the matter further in the plenary Committee.

His delegation would like to have it pointed out in the report that delegations had not had time to study in the Sub-Committee the Secretary-General's report on the machinery to be established and that, even before taking up agenda item 2, most of the delegations, including his own, had expressed the belief that the principles could not be given effect without the machinery in question.

The meeting rose at 6.10 p.m.

SUMMARY RECORD OF THE TWENTY-THIRD MEETING

Held on Monday, 25 August 1969, at 10.30 a.m.

Chairman: Mr. GALINDO POHL El Salvador

CONSIDERATION OF THE REPORT OF THE LEGAL SUB-COMMITTEE TO THE COMMITTEE FOR THE 1969 PERIOD OF ITS WORK (A/AC.138/SC.1/9 and Add.1 to 2)

Mr. BADAWI (United Arab Republic), Rapporteur, introduced the first par of the draft report of the Legal Sub-Committee (A/AC.138/SC.1/9) and read out changes to paragraphs 11, 15, 17, 22, 28, 29, 32 and 33. The insertion of a new paragraph after paragraph 15 meant that subsequent paragraphs would be renumbered accordingly. All the changes would be incorporated in the revised text of the draft report. The wording of the conclusions of the report, to be included under the item entitled "Synthesis", would be circulated as an unofficial document for consideration by the Committee.

Paragraphs 1-14

Mr. BERMAN (United Kingdom) said that the first sentence of paragraph 11, as originally drafted, reflected the views expressed by his own and other delegations during the March session. On the other hand, the insertion at the end of that sentence of the words "provided it would be a comprehensive and well-balanced one taking into consideration the positions of all members", which had been read out by the Rapporteur, could convey the wrong impression. Consequently, a semicolon might be placed after the word "principles", and followed by the words "it was, however, expressed that such a statement should be a comprehensive and well-balanced one taking into consideration the positions of all members".

Mr. DE SOTO (Peru) said that no delegation had asserted that a statement of basic principles should not be comprehensive and well-balanced. However, the amendment suggested by the United Kingdom representative might very well cause the readers to assume that some delegations had in fact opposed the idea of a comprehensive statement.

Mr. KOULAZHENKOV (Union of Soviet Socialist Republics), supported by Mr. GLASER (Romania), felt that, rather than state that the Chairman of the Sub-Committee could serve as a focal point for consultations, the last part of the third sentence of paragraph 11 should suggest something to the effect that consultations could be conducted under the aegis of the Chairman of the Sub-Committee.

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Mr. GOWLAND (Argentina) agreed with the previous speakers and felt that it might be possible to say that informal consultations should be held among the members of the Committee and that such consultations would be presided over by the Chairman of the Legal Sub-Committee.

Mr. GAUCI (Malta) considered that the phrase "one of the most striking features", in the first sentence of paragraph 11, might suggest that the draft report had failed to record a number of other features. Accordingly, it would be better to say merely "a feature of the debate".

Mr. CABRAL DE MELLO (Brazil) suggested that it might be sufficient to state "a most striking feature".

Mr. ENGO (Cameroon) supported by Mr. DE SOTO (Peru), expressed the view that the phrase "a very important feature" would be more appropriate. It would be better to avoid the somewhat frequent repetition in the draft report of the expression "it was also emphasized".

Mr. GAUCI (Malta) said that his delegation had no objection to the suggestions made by the representatives of Brazil and Cameroon.

Mr. KOULAZHENKOV (Union of Soviet Socialist Republics) observed that the Committee was concerned with general principles rather than with the "first principles" referred to in the third sentence of paragraph 11.

Mr. BERMAN (United Kingdom) said that, while there would be no distinction in English between first and basic principles, it was nevertheless desirable to make changes, where appropriate, in order to ensure that the texts in the four languages were equivalent.

Mr. ARORA (India) also considered that the word "basic" would be more fitting.

The CHAIRMAN suggested that the text of paragraphs 1 to 14 of the draft report (A/AC.138/SC.1/9) could be considered to be approved, subject to examination of the further revisions to be made by the Rapporteur in the light of the discussion within the Committee.

It was so decided.

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Paragraph 15

The CHAIRMAN said that any references to "first principles" in paragraph 15 and elsewhere should be changed to "basic principles".

Mr. BADAWI (Rapporteur) introduced a drafting amendment whereby the following sentence would be added at the end of paragraph 15: "In the context of this third view, it was stressed that there was a need for an organic approach in elaborating a statement with a view to arriving at a comprehensive and well-balanced set of principles which would embody the aspirations of all the members of the international community."

Mr. GLASER (Romania) thought that the present wording of paragraph 15 gave the impression that only the third view took into account the needs and aspirations of the developing countries whereas, in fact, the proponents of all three views had agreed on that score. He therefore requested the Rapporteur to make a change in the text to indicate that the concern for the needs of the developing countries was a common denominator of all the views expressed.

Mr. GAUCI (Malta) agreed with the representative of Romania that concern for the legitimate needs of the developing countries was widely felt among the members of the Committee. Referring to the fourth sentence in paragraph 15, he suggested that the words "and essential" should be deleted or replaced by a more exact expression. If replacement was preferred, he was willing to leave the substance of the change to the discretion of the Rapporteur.

Mr. SMIRNOV (Union of Soviet Socialist Republics) pointed out that the English expression "undefined area" had been incorrectly translated in the Russian text.

Mr. ARORA (India), supported by Mr. STEINER (United Republic of Tanzania), endorsed the suggestion of the representative of Malta that the words "and essential" should be deleted.

Mr. PAVICEVIC (Yugoslavia) suggested that, wherever possible, the report should adhere to the precise wording of relevant General Assembly resolutions; in particular, the reference to "the needs and aspiration of the

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(Mr. Pavicevic, Yugoslavia)

developing countries" in the fourth sentence should be changed to "the special needs and interests of the developing countries". He agreed with the representative of Romania that concern for the needs of the developing countries was common to all points of view and suggested that it would be appropriate, after referring to the different points of view, to add a final sentence in the paragraph along the following lines: "The recognition of the special needs and interests of the developing countries in the elaboration of the declaration of basic principles characterized all of the three aforementioned views." The Rapporteur was, of course, free to make any appropriate changes in the wording of that new sentence.

Mr. HASAN (Pakistan) expressed approval of the remarks made by the representative of Romania and supported the proposal of the representative of Malta to delete the words "and essential". While leaving the exact wording to the discretion of the Rapporteur, he suggested the following sentence to replace the fourth sentence in the paragraph: "A third view was that the principles, in order to be meaningful, should take into account the needs and aspirations of the developing countries."

Mr. de SOTO (Peru) agreed with the comments made by the representative of Romania; there were common elements in all three views and they were definitely not mutually exclusive. From the point of view of drafting, his delegation took exception to the present wording of the third sentence, being of the opinion that wide principles need not necessarily be ambiguous. His delegation would submit the following text to the Rapporteur's consideration for inclusions after the third sentence: "It was pointed out nevertheless that care should be taken not to sacrifice clarity to brevity".

Mr. BERMAN (United Kingdom) joined other delegations in supporting the remarks made by the representative of Romania. In his view, however, the discussions which had taken place in the Committee did not justify a division into three views but rather into two. Once one accepted the deletion of the words "and essential" as suggested by the representative of Malta and the fact pointed out by the representative of Romania, all that would be left of the third view would be that the principles had to be meaningful. Certainly all delegations were

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(Mr. Berman, United Kingdom)

in agreement that, whatever the scope or extent of the statement of principles to be adopted, it must be meaningful. The third view, therefore, as now stated, was fully covered by the preceding two views.

Mr. VALLARTA (Mexico) agreed that essentially there were only two points of view: some delegations wanted a declaration of very general and basic principles and others favoured a more detailed declaration of principles. His delegation was of the former group whose view was expressed in the second sentence of paragraph 15, but it could not agree with the second part of that sentence, beginning with the words "as the Committee... ", and therefore proposed the deletion of that part of the sentence.

Mr. PAVICEVIC (Yugoslavia) agreed with the United Kingdom representative that there were basically two points of view concerning the declaration of principles. With regard to the second sentence, he suggested that the words "undefined area" should be replaced by a more exact expression, perhaps "area which is legally not yet regulated".

Mr. YANKOV (Bulgaria) agreed that there were two principal approaches to the elaboration of a declaration of principles and felt that the reference to a third view should be deleted and replaced by a more general sentence on the following lines: "It was generally admitted that in any case in the elaboration of guiding principles special consideration should be given to the needs and interests of the developing countries." The above formulation was only a suggestion, however, and it would be for the Rapporteur to find appropriate phrasing for the thoughts expressed by the members of the Sub-Committee.

Mr. HOLDER (Liberia) said that his delegation would have no objection to referring merely to two points of view in paragraph 15. He did feel strongly, however, that the word "aspiration" in the fourth sentence should be changed to "interests".

Mr. HARGROVE (United States of America) considered that the Rapporteur should be entrusted with the task of devising appropriate language to express the two points of view referred to in paragraph 15. Regarding the suggestion by the representative of Yugoslavia to replace the words "undefined area" in the second sentence, his delegation would prefer to retain the word "undefined". He suggested the following formulation: "an undefined area not yet comprehensively regulated".

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Miss MARTIN SANE (France) agreed with previous speakers that the Rapporteur should decide on the details of the exact wording to reflect the various ideas expressed in the Sub-Committee. She appealed to all delegations to avoid lengthy comments on detailed and inessential matters of drafting.

Mr. BADAWI (Rapporteur) said that in redrafting paragraph 15 he would take account of all the comments made. He would refer to two views instead of three and include a sentence similar to the one suggested by the representative of Yugoslavia with regard to the special needs and interests of the developing countries.

Mr. BAZAN (Chile) supported the idea that there were two broad views on the subject of the declaration of principle and agreed that no reference to a third view should be made.

Mr. BRECKENRIDGE (Ceylon) said that reference should be made, in stating one of the views, to the adoption of a "meaningful and comprehensive" set of principles.

Mr. ARORA (India) agreed that reference should be made to a "comprehensive" set of principles and associated himself with those who had said that drafting changes should be entrusted to the Rapporteur provided that the Sub-Committee had an opportunity to discuss any changes made in the revised draft report.

The CHAIRMAN said that, if there was no objection, the Sub-Committee could approve paragraph 15 subject to examination of the revisions to be made by the Rapporteur.

It was so decided.

The meeting rose at 1.10 p.m.

SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

Held on Tuesday, 26 August 1969, at 11.30 a.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF THE REPORT OF THE LEGAL SUB-COMMITTEE TO THE COMMITTEE FOR THE 1969 PERIOD OF ITS WORK (A/AC.138/SC.1/9 and Add.1 and 2) (continued)

The CHAIRMAN suggested that the Sub-Committee should again follow the procedure of approving the draft report paragraph by paragraph, on the understanding that the Rapporteur would take delegations' comments and suggestions into account in preparing the final report.

It was so agreed.

Paragraph 15

Mr. BADAWI (United Arab Republic), Rapporteur, said that it was proposed that the word "first" in the first sentence should be replaced by "basic", and that the third and following sentences should be replaced by the following text:

"It was suggested that the principles should be few, broad and flexible as the Committee was dealing with an undefined area, not yet comprehensively regulated, the possible uses of which could not yet be foreseen. On the other hand, it was stressed that the principles should be comprehensive and well-balanced, in order to embody the aspirations of all members of the international community and avoid ambiguities which would later give rise to conflicts. It was underlined that clarity should not be sacrificed to brevity. It was generally recognized that, in any case, in the elaboration of principles particular consideration should be given to the special needs and interests of the developing countries."

Mr. de SOTO (Peru) said that the third sentence of the paragraph, as amended, was ambiguous. It could be interpreted as meaning that the Sub-Committee as a whole accepted that "the Committee was dealing with an undefined area", which was not the case. He accordingly suggested that the phrase in question should be amended to read "was dealing with an area which some considered undefined".

Mr. BAZAN (Chile) and Mr. VALLARTA (Mexico) supported that suggestion.

Paragraph 15 was approved.

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New paragraph to be inserted after paragraph 15

Mr. KOULAZHENKOV (Union of Soviet Socialist Republics), supported by Mr. EVENSEN (Norway), Mr. PAVICEVIC (Yugoslavia) and Mr. ARORA (India), suggested that the final phrase of the text introduced at the previous meeting by the Rapporteur (", and not merely to a handful of developed countries") should be deleted as unsuitable and unnecessary.

Mr. ARORA (India) suggested that the opening words of the paragraph should be amended to read "It was pointed out...".

The paragraph was approved.

Paragraph 16

Mr. GORALCZYK (Poland) said that the second sentence of the paragraph implied that it was generally recognized that the General Assembly, under Article 13 (1) a of the Charter, had the power to adopt a declaration possessing binding force. His delegation did not accept that view; in its opinion, the Charter conferred no power on the Assembly to adopt legally binding norms. Such a declaration might, of course, embody specific provisions of customary rules which, of themselves, were legally binding on States, but not as provisions of the declaration. On the other hand, it was undeniable that a declaration by the Assembly, particularly if it had been adopted unanimously, had great force.

His delegation therefore suggested that the phrase "possessing binding force" should be deleted. Alternatively, the entire sentence might be deleted, or followed by a new sentence indicating the position of his and other delegations with regard to Article 13 (1) a of the Charter.

Mr. EVENSEN (Norway) supported those observations. He suggested that the following words should be added at the end of the sentence in question:

"; other delegations were of the view that it was not legally possible under Article 13 of the Charter for the General Assembly to make declarations having binding force."

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Mr. VALLARTA (Mexico) said that his delegation could not agree to the Polish representative's suggestion that the entire sentence should be deleted. At least one delegation, and possibly more, had "expressed preference for a declarat possessing binding force".

Mr. BADAWI (United Arab Republic), Rapporteur, asked whether a phrase such as "a view was expressed" would be acceptable to the Committee.

Mr. EVENSEN (Norway) said that a wording of that type was not satisfactory. The report should stress that one single delegation had expressed the view in question.

Mr. ARORA (India) said that his delegation would have no objection to the formula suggested by the Rapporteur. However, at least one other delegation had also implied that it held the same view.

Mr. BERMAN (United Kingdom), supported by Miss MARTIN-SANE (France), said that the Rapporteur's suggestion was acceptable. In his opinion, such phraseology signified that the view was that of a small minority of the members of the Committee.

Mr. GORALCZYK (Poland) said that his delegation could agree to the Rapporteur's suggestion. It would be preferable, however, to include the amendmen put forward by the Norwegian representative.

Mr. LEGAULT (Canada) suggested that the word "possessing" should be replaced by the words "which it was asserted would possess".

Paragraph 16 was approved.

Paragraph 17

Mr. ARORA (India) said he felt that paragraph 17 could be deleted, since the central idea had been adequately covered by paragraph 15.

Mr. BERMAN (United Kingdom), supported by Miss MARTIN-SANE (France) and Mr. KOULAZHENKOV (Union of Soviet Socialist Republics), said that paragraph 15 dealt with the substance of the declaration. Paragraph 17, however, was concerned

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(Mr. Berman, United Kingdom)

with the form in which the future declaration was to be adopted. It was also a necessary counterbalance to paragraph 16 and he would be most reluctant to agree to its deletion.

Mr. ARORA (India), supported by Mr. de SOTO (Peru), Mr. STEINER (United Republic of Tanzania), Mr. BRECKENRIDGE (Ceylon) and Mr. IMAM (Kuwait), said that if paragraph 17 was to be retained, it should reflect the other point of view expressed in paragraph 15. It would therefore be advisable to insert a new sentence to the effect that it was suggested on the other hand that it would be desirable to have a comprehensive and meaningful declaration.

Miss MARTIN-SANE (France), supported by Mr. KOULAZHENKOV (Union of Soviet Socialist Republics) and Mr. CABRAL DE MELLO (Brazil), said that the difficulty might be overcome by using a phrase similar to the one contained in the French text, that is, "one of the suggestions which was made is that".

Paragraph 17 was approved.

Part A (paragraphs 18-85)

Mr. DEBERGH (Belgium), supported by Mr. ARORA (India), Mr. BRECKENRIDGE (Ceylon) and Mr. PAVICEVIC (Yugoslavia), said that he had some doubts regarding the desirability of including in the draft report the sections containing various formulations suggested in the course of the Committee's debate. In fact, some delegations had read out suggestions without making a request that they should be reproduced.

Mr. STEVENSON (United States of America) thought that the formulations would make a valuable contribution to the future work of the Committee. The best course would be to ensure that they appeared in full in the summary records or that they were, perhaps, set forth in a separate working document.

Mr. KOULAZHENKOV (Union of Soviet Socialist Republics) said that he, too, felt that the formulations should be preserved in some way. If they were to be reflected in full in the report, the latter would become too cumbersome.

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(Mr. Koulazhenkov, USSR)

Consequently, they might be issued in the form of an annex. Moreover, if they were to be issued in that manner, they should be taken from the original text. He wished to point out that the formulations submitted by his delegation had been translated into English, only to be retranslated into Russian.

Mr. BRECKENRIDGE (Ceylon) said that his delegation did not favour the idea of listing the formulations suggested regarding "Legal Status" in an annex to the report or in a separate document. If the Sub-Committee decided to reproduce the formulations proposed by specific delegations, however, his delegation would like to submit its own formulations for inclusion in the appropriate document.

Mr. ARORA (India) said that he shared the views expressed by the representative of Ceylon. It was unnecessary to include the formulations of specific delegations in an annex to the report or in a separate document since those formulations had already been recorded in the summary records. Nevertheless, if the Sub-Committee wished to have a separate document containing suggested formulations, his delegation reserved its right to contribute formulations to that document.

Mr. STEVENSON (United States of America) withdrew his earlier suggestion that there should be a separate document containing formulations suggested by the members of the Sub-Committee provided that those formulations were to be preserved for future reference in the summary records.

Mr. KOULAZHENKOV (Union of Soviet Socialist Republics) stressed the importance of having a record of the formulations proposed by specific delegations. One of the best ways to meet that need would be to reflect the exact wording of the various proposals in the text of the draft report. He therefore hoped that the Rapporteur, when drafting the revised text of the report, would fully reflect the views expressed by all delegations, including the Soviet delegation.

Mr. DEBERGE (Belgium) said that his delegation was of the view that the suggested formulations should be recorded in the summary records. He thought that it would be helpful in that regard to waive the time-limit for corrections of earlier summary records so that delegations would be able to incorporate the exact wording of their formulations in the official meeting records.

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Mr. GLAZER (Romania) pointed out that there was another possible solution. Delegations who wished to record the exact wording of their formulations could include them in their statements at the forthcoming meetings of the main Committee, and their formulations would thus appear in the summary records.

Mr. ARORA (India) agreed with the remark of the USSR representative that the report should reflect as fully as possible all the formulations suggested by the members of the Sub-Committee. He also welcomed the suggestion just made by the representative of Romania. Taken together, the suggestions of the USSR and Romania would obviate the need for an annex to the report or for a separate paper containing suggested formulations.

The CHAIRMAN said that there appeared to be a consensus in the Sub-Committee that the suggested formulations should not appear in an annex to the report or in a separate document. He appealed to all delegations to submit timely corrections to the summary records so that their formulations could be faithfully recorded.

Paragraph 18

Mr. GAUCI (Malta) suggested that the words "According to some delegations" should be changed to "According to many delegations". As the expression "coastal State theories" was unclear, he suggested that it should be replaced by the more familiar expression "national lakes theories".

Mr. BERMAN (United Kingdom) endorsed the suggestions of the representative of Malta.

Mr. KOULAZHENKOV (Union of Soviet Socialist Republics) pointed out that, in the Russian text, the reference to the theory of occupation contained an error of translation.

The CHAIRMAN said that in preparing the revised version of the draft report the Rapporteur would take note of the comments made by the representatives of Malta and the USSR.

Paragraph 18 was approved.

The meeting rose at 1 p.m.

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SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

Held on Tuesday, 26 August 1969, at 3 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF THE REPORT OF THE LEGAL SUB-COMMITTEE TO THE COMMITTEE FOR THE 1969 PERIOD OF ITS WORK (A/AC.138/SC.1/9) (continued)

Paragraph 19

Mr. RAMBISSOON (Trinidad and Tobago) suggested that the words "individual principles" in the third line should be replaced by "detailed principles". He also recommended the replacement of the word "in" by "of" in the phrase "freedom in access" in the eighth line of the paragraph.

Mr. BERMAN (United Kingdom) said that he would prefer the word "specific" to "detailed".

Mr. PAVICEVIC (Yugoslavia) said that he, on the other hand, would prefer the term "basic principles".

Mr. AKRAM (Pakistan) wished it to be made clear how "those with an interest in the common property" could be identified. If the property was common, it should in principle belong to everyone.

Mr. LEGAULT (Canada) proposed that a single term should be used for the expressions "common heritage", "common patrimony" and "common property", which he took to be synonymous.

Mr. HASHIM (Malaysia) recalled his proposal that the area of the sea-bed and ocean floor beyond the limits of national jurisdiction should be vested in the United Nations. If that idea was not mentioned elsewhere in the report, it should be incorporated in paragraph 19 or some other paragraph in the following form:

> "A view was also expressed that the area of the sea-bed and ocean floor beyond national jurisdiction should be vested in the United Nations for the benefit of mankind as a whole."

Mr. SMIRNOV (Union of Soviet Socialist Republics) supported the Canadian proposal and also suggested that the words "all the rules and guidelines" in the fourth line should be replaced by "all the principles" and that the first sentence should be connected with the second by the conjunction "and".

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Mr. ARORA (India) supported the Canadian, USSR and Malaysian proposals, the last of which could be covered by inserting the words "The vesting of the area in the United Nations" after the colon in the fifth line. He also proposed the deletion of the beginning of the paragraph, which would thus begin with the words "The notion ..." in the second line.

Mr. PAVICEVIC (Yugoslavia) felt that the words "the regulation of the use... the common property" (sixth and eighth lines)should be replaced by the wording used by the informal drafting group, namely, "the right of all States to participate in the administration and regulation of the activities in this area as well as benefits obtained from the exploration, use and exploitation of the resources of the sea-bed", which more closely corresponded to his delegation's understanding of the concept of common property.

Mr. DEJAMMET (France) felt that, if the Indian proposal was adopted, the words "it was suggested" at the beginning of the paragraph should be retained in order to separate it from the preceding paragraph.

Mr. SMIRNOV (Union of Soviet Socialist Republics) supported the French proposal.

Mr. ARORA (India) accepted the French proposal.

Mr. STEVENSON (United States of America) feared that any attempt to include a reference to the vesting of the area of the sea-bed in the United Nations would make agreement difficult to reach.

Mr. BERMAN (United Kingdom) agreed with the United States delegation, because views were likely to be very divergent concerning the possibility and desirability, legally and practically speaking, of vesting that area in the United Nations. Since the original wording of the sentence reflected the views held by most representatives, he suggested it should be retained.

Mr. HASHIM (Malaysia) requested that the report should mention his country's views, even if it was the only one to express them.

Mr. LEGAULT (Canada) said that he could not accept the formula proposed by the Indian representative because it would appear from the context that the

(Mr. Legault, Canada)

vesting of the area of the sea-bed in the United Nations was an essential ingredient of the concept of common property. He proposed, instead, that the words: ("With one delegation suggesting that this could include the vesting of title in the United Nations") should be inserted after the word "trustees" in the fifth line.

Mr. BERMAN (United Kingdom) recalled that the Committee had always sought to avoid specifying how many delegations supported any particular view. He proposed, in place of the wording suggested by Canada, that the sentence "A suggestion was also made that the area should be vested in the United Nations" should be added at the end of paragraph 19 or in paragraph 20.

Mr. HOLDER (Liberia) recalled that the Malaysian representative had already left it to the Rapporteur to decide where that idea should be mentioned.

Mr. ARORA (India) supported the United Kingdom proposal.

It was decided that the Rapporteur should revise the drafting of the paragraph in accordance with the United Kingdom suggestion.

Paragraph 20

Mr. LEGAULT (Canada) proposed that the words "pointed out" should be replaced by "suggested".

Mr. ARORA (India) proposed that the word "legal" in the second line should be deleted and that the words "and the regulation of all activities in this area" should be added at the end of the paragraph.

Mr. DEJAMMET (France) felt that the words "international machinery" should be translated into French by "mécanisme international", rather than by "dispositif international" throughout.

Mr. STEVENSON (United States of America) considered that the idea of the regulation of all activities in the area should be embodied in a separate sentence because it by no means corresponded to the views of all delegations.

Mr. ARORA (India) thought that he could take account of the United States objection by adding to his proposed amendment a new sentence drafted on the

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(Mr. Arora, India)

following lines: "Others felt that the international machinery should be confined to regulating the resources of the area."

Mr. BERMAN (United Kingdom) deplored the tendency shown by some delegations to try to develop in each paragraph all the ideas put forward during the consideration of the legal principles. It resulted in useless repetition and unduly complicated the debate. There was no point in repeating ideas which had already been better expressed in other paragraphs, as was the case with the Indian suggestion.

Paragraph 19 already covered the essential ideas involved in the concept of the common heritage of mankind and of the regulation of the area of the sea-bed by the international community. There was no need for anything more so far as the item of the Committee's programme of work now under discussion was concerned. The relationship between the resources of the area of the sea-bed and the international régime or machinery clearly came under item 4 and should not be dealt with under the present item. The Sub-Committee should now confine itself to considering the various aspects of the legal régime, bearing in mind that it had very little time in which to adopt its report to the Committee.

Mr. ARORA (India) maintained his proposal.

Mr. AKRAM (Pakistan) supported the Indian proposal but proposed the deletion of the words "the resources of" from the new text.

Mr. ARORA (India) accepted that proposal.

Mr. SMIRNOV (Union of Soviet Socialist Republics) asked the Rapporteur to record in paragraph 20 some of the opinions that had been stated by representatives but had not yet been mentioned in that paragraph.

Mr. BADAWI (United Arab Republic), Rapporteur, wondered if the representatives who had made statements on the matter could meet informally to reach agreement on a joint text.

Mr. GAUCI (Malta) suggested that, as a compromise, paragraph 20 could start with the words "The same view held..." and that the new version might read "of the sea-bed and ocean floor beyond the area of national jurisdiction" instead

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(Mr. Gauci, Malta)

of "the resources of the sea-bed". There would thus be a link with the preceding paragraph and there would be no need to add a sentence to reflect the views of other delegations.

Mr. STEVENSON (United States of America) agreed with the representative of the United Kingdom that the idea under discussion had already been developed elsewhere. However, if it should be decided to include a sentence on that matter in paragraph 20, he suggested that instead of including two sentences expressing opposing views, the Rapporteur might simply indicate that there had been differences of opinion as to whether the international machinery should be concerned with all the activities undertaken in the area or merely with the exploration and exploitation of its resources.

The CHAIRMAN asked the Rapporteur to draft the new text of the paragraph and reminded the Committee that it was absolutely essential to conclude its consideration of the draft report that day.

Paragraph 21

Mr. RAZAKANAIVO (Madagascar) found the paragraph obscure and thought that perhaps the word "heritage" should be replaced by the word "good".

Mr. DEJAMMET (France) also felt that the paragraph made no sense. To improve it he suggested that, in the second line of the French text, the comma should be replaced by a semicolon and that the phrase "pour ces délégations était" should be inserted after the word "intérêt" in the following line.

Mr. BADAWI (United Arab Republic), Rapporteur, explained that it was a matter of translation, the original English being the authentic text.

Mr. PAVICEVIC (Yugoslavia) thought that the purpose of the paragraph was to point out the various concepts involved in the notion of the common heritage of mankind. If that assumption was correct, he felt that those concepts should be clearly formulated.

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Mr. BERMAN (United Kingdom) suggested replacing the phrase "the word 'interest' preferred to the word 'heritage'", by "these phrases being preferred to the phrase 'common heritage'".

Mr. GAUCI (Malta) suggested deleting or changing the word "serious", which seemed inaccurate, in the penultimate line.

The CHAIRMAN asked the Rapporteur to draft the new text of the paragraph, taking into account the suggestions that had been made.

Paragraph 22

Mr. SCIOLLA-LAGRANGE (Italy) thought that the idea expressed in the first part of the paragraph was incorrect. The words "as well as" should be replaced by an expression such as "others considered that it was".

Mr. GAUCI (Malta) suggested replacing the word "contrary" in the second line by "new".

Mr. SMIRNOV (Union of Soviet Socialist Republics) wished a sentence to be added at the end of paragraph 22, to reflect the views of the USSR: "It was pointed out that the discussions of this topic led the Sub-Committee away from deciding practical matters and did not help the elaboration of legal principles."

Mr. ENGO (Cameroon) felt that the various ideas that the paragraph was intended to express should be set forth in separate sentences. He also suggested that the text proposed by the USSR should begin with some such phrase as "Some delegations considered".

Mr. CABRAL DE MELLO (Brazil), recalling that on the previous day the Rapporteur had proposed an addition to paragraph 22, asked whether the Sub-Committee was discussing the text of paragraph 22 as it appeared in document A/AC.138/SC.1/9 or the addition proposed by the Rapporteur.

The CHAIRMAN replied that both texts were being discussed.

Mr. GLAZER (Romania) suggested - in view of the many interests and suggestions that had to be taken into account, and of the need to complete the

(Mr. Glazer, Romania)

discussions so that the Sub-Committee could adopt and submit to the main Committee a report on its present session - that whenever the debate on a particular point, such as paragraph 22, showed signs of being lengthy, the delegations concerned should discontinue consideration of the point and reach agreement on a suitable text in the interval between that meeting and the evening meeting. It would thus be possible to make progress without detriment to the rights of delegations.

Mr. STANGHOLM (Norway) agreed with that idea and felt that it would be even better to adjourn the meeting so that all the members could informally settle the more difficult questions. The discussion on the document was far from being completed and the Sub-Committee had to adopt its report and submit it to the main Committee within the time at its disposal. That suggestion should make it possible to expedite the proceedings.

The CHAIRMAN considered that the Romanian suggestion was logical and commendable. Delegates could meet in small groups between meetings in order to facilitate the work of the main Committee.

Mr. DEJAMMET (France) observed that if each of the forty-two members of the Sub-Committee spent ten minutes recommending that it should speed up its work, they would not finish until after midnight. He therefore felt that the Romanian suggestion should be adopted and carried out in a manner compatible with the authority and competence of the Chairman. In other words, it could be left to the Chairman's discretion to ask delegates, whenever he considered it useful, to hold consultations privately with the Rapporteur.

Mr. ARORA (India) agreed that it was necessary to expedite matters and supported the views expressed by the French representative. The Romanian suggestion seemed preferable to the Norwegian proposal.

Mr. GAUCI (Malta) also endorsed the Romanian suggestion.

Mr. PAVICEVIC (Yugoslavia) felt that the following sentence should be added to the text proposed by the USSR: "However, it was stressed that the concept of 'common heritage of mankind' is a key concept in creating a régime of the sea-bed beyond the limits of national jurisdiction."

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Mr. ARORA (India) said that he did not quite understand how the Soviet suggestion would clarify that concept. Did the Soviet representative propose that the entire paragraph should be deleted?

Mr. VALLARTA (Mexico) recalled that the report under discussion was intended to be a synthesis rather than an analysis and proposed that the Sub-Committee should adopt the paragraph as it stood.

Mr. CABRAL DE MELLO (Brazil) objected to that view. If the report was a synthesis it should take into account all the different opinions that had been expressed.

Mr. PAVICEVIC (Yugoslavia) said that, realizing that the notion of common heritage was open to diverse interpretations and taking into account the wishes of the Mexican representative, he would be willing to withdraw his amendment.

Mr. BERMAN (United Kingdom) said he felt that the Sub-Committee was getting into a rather absurd situation. There was no question of adding to paragraph 22 views which had already been expressed elsewhere. The various ideas expressed by the Rapporteur with commendable brevity in paragraphs 21 and 22 of the report represented opinions different from those contained in paragraphs 19 and 20, and there could therefore be no question of distortion or exaggeration. In his opinion, the best solution would be to adopt the text as amended by the Rapporteur and with the inclusion of the additional sentence proposed by the Soviet representative.

Mr. STEINER (United Republic of Tanzania) said that paragraphs 21 and 22 in their present form appeared to express the view of those who opposed the inclusion of the concept of the common heritage of mankind. The effect of adopting the Soviet proposal would be to lend more weight to that point of view, which he thought was hardly necessary.

Mr. GAUCI (Malta) said that he supported the views of the previous speaker.

Mr. PAVICEVIC (Yugoslavia) expressed support for the United Kingdom proposal. If the representative of the Soviet Union insisted on the inclusion of the text which he had proposed, it could appear in paragraph 19.

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The CHAIRMAN said that he saw no purpose in protracting the debate on the paragraph in question. Although some delegations objected to the Soviet proposal, he suggested that, since it was customary to take different points of view into account, the Sub-Committee should accept the Soviet delegation's amendment.

Mr. ARORA (India) said that he was prepared to agree to that suggestion but had not yet grasped the precise significance of the amendment proposed by the Soviet Union. If the whole paragraph was controversial, the Sub-Committee could either delete it or come back to it after informal consultations with the Soviet representative.

Mr. SMIRNOV (Union of Soviet Socialist Republics) said that every delegation had the right to request that the ideas it had expressed should be reflected in the report. If members wished to delete paragraph 22 because of the amendment submitted by his delegation, then his delegation would accept the Sub-Committee's view of the matter, but it would prefer to see the paragraph retained in its present form, particularly since paragraphs 19 and 20 presented the ideas of other delegations.

Mr. LEGAULT (Canada) said that he would be willing to accept the Soviet proposal but in that case would prefer that the words "besides, it was also open to various interpretations" were deleted.

Mr. SMIRNOV (Union of Soviet Socialist Republics) said that he was prepared to support the Canadian representative's suggestion.

Mr. CABRAL DE MELLO (Brazil) said that provision must be made for delegations which wished to do so to reply to accusations. The report should be designed to give a written account of all the observations that had been made.

Mr. LEGAULT (Canada) said he thought that the representative of Brazil was putting the cart before the horse. There could be no question of arranging for a right of reply to what was said in paragraph 22, since that paragraph was already balanced by the opposing views expressed in paragraph 19.

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Mr. CABRAL DE MELLO (Brazil) said that in his view, if the Sub-Committee wished to retain paragraph 22, it would have to accept the amendment which the Rapporteur had read out the day before.

Mr. HARGROVE (United States of America) said that if the Sub-Committee wished to make progress in the adoption of its report, it was essential, within certain limits, to take account of the views expressed during the debate but also to remember that the report should not be reduced to a collection of replies. In a spirit of compromise, his delegation would be prepared to accept the present text as amended by the Rapporteur and supplemented by the Soviet amendment.

Mr. CABRAL DE MELLO (Brazil) said he thought that was a reasonable suggestion.

Mr. HOLDER (Liberia) said that the use of the words "as well as" in the sentence reading "... the concept of 'common heritage of mankind' was contrary to existing norms and principles as well as devoid of legal content" tended to give the impression that those two ideas had been put forward by the same delegations, which was not the case.

Mr. BADAWI (United Arab Republic), Rapporteur, suggested that the words "as well as" should be replaced by the words "the view was also expressed that it was".

Mr. DEBERGH (Belgium) said he thought it would be sufficient simply to replace the words "as well as" by a conjunction which existed in all languages, namely "or".

The CHAIRMAN suggested that the task of producing a final wording should be left to the Rapporteur, who would take into account all the proposals which had been made.

Paragraph 23

Paragraph 23 was adopted.

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Paragraph 24

Mr. HARGROVE (United States of America) proposed that the words "in regard to their respective fields" should be placed after the word "treaties" in the English text.

Mr. RAMBISSOON (Trinidad and Tobago) said that he supported the United States representative's proposal.

Paragraph 24, with that amendment, was adopted.

Paragraph 25

Mr. RAMBISSOON (Trinidad and Tobago) said he wondered whether, in the fifth line of the text, the word "consideration" would not be preferable to the word "compensation", which referred to reparation for damage and generally connoted something different from what was implied by the word "consideration".

Mr. BADAWI (United Arab Republic), Rapporteur, said that the idea which was meant was indeed that of consideration, and that was the right word.

Paragraph 25, with that amendment, was adopted.

Paragraph 26

Mr. ARORA (India) proposed that the words "the establishment of international arrangements" should be replaced by the words "the establishment of an international régime", that the words "for the orderly development of sea-bed resources" should be deleted, and that the words "of such resources" in the third line should be replaced by the words "of the resources".

Mr. BADAWI (United Arab Republic), Rapporteur, observed that the present wording accurately reflected the language used by a certain delegation. It was therefore for that delegation to take a decision on the proposed amendment.

Mr. HOLDER (Liberia) proposed that the words "The view was emphasized" in the first line of paragraph 26 should be replaced by the words "The view was expressed".

Mr. ARORA (India) observed that the report was not merely a compilation of the opinions expressed in the Sub-Committee; if it were, it would be nothing

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(Mr. Arora, India)

more than a condensed version of the summary records. The changes which he had proposed were intended to ensure a better balance between the points of view expressed.

Mr. HARGROVE (United States of America) said that he supported the Indian representative's amendment.

Paragraph 26, with the amendments indicated, was adopted.

Paragraph 27

Mr. BERMAN (United Kingdom) proposed that the word "régime" in the last line of the paragraph should be replaced by the word "status".

Paragraph 27, with that amendment, was adopted.

Paragraph 28

Mr. VALLARTA (Mexico) drew attention to the wording of the sentence which he had proposed should be added at the end of paragraph 28 and which the Rapporteur had read out at the previous meeting:

> "It was suggested that the idea that the area was the property of mankind was the basis for prohibiting any claim to or exercise of sovereignty and any kind of appropriation."

Mr. PAVICEVIC (Yugoslavia), Mr. BERMAN (United Kingdom), Mr. ARORA (India) and Mr. STANGHOIM (Norway) said that they thought it would be preferable to insert that sentence in paragraph 30.

Mr. VALLARTA (Mexico) said that the idea contained in the sentence which he had proposed was parallel to the idea of a "common heritage" referred to in paragraph 28; he would therefore prefer that the sentence was inserted in paragraph 28.

Mr. GAUCI (Malta), supported by Mr. SCHRAM (Iceland), said that paragraph 28 in its present form merely repeated ideas which were already contained in paragraphs 19 to 22. The present text of that paragraph could therefore be simply deleted and replaced by the sentence proposed by the representative of Mexico.

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Mr. DEJAMMET (France), supported by Mr. HARGROVE (United States of America) and Mr. BERMAN (United Kingdom), said he thought that the last sentence in the paragraph expressed an idea which should be reflected in the report.

Mr. ARORA (India), supported by Mr. PAVICEVIC (Yugoslavia) said that if there was no objection to its actual contents, it would be best to retain the present text of paragraph 28. The Sub-Committee's report already contained several instances of repetition of the same idea; paragraph 17, for example, recalled the basic principles that had already been mentioned in paragraph 15.

Furthermore, paragraph 28 contained new elements which could not be omitted, such as, in particular, the notion of the "province of all mankind" and the idea that "new technology and problems required the development of new concepts". The existing text of paragraph 28 should therefore be retained with the addition of the sentence proposed by the Mexican delegation.

Mr. SMIRNOV (Union of Soviet Socialist Republics) requested that the expression "province of all mankind" in the third sentence should be clarified by inserting the following sentence: "It was also argued that the expression 'province of all mankind' does not refer to outer space as such, but to its exploration and uses". As used in paragraph 28, that expression was likely to cause confusion. In any case, its meaning had been made clear during the Sub-Committee's discussions and that fact should be reflected in the report.

Mr. HOLDER (Liberia) said that since the Sub-Committee was not concerned with outer space, the clarification requested by the Soviet representative could simply take the form of a foot-note indicated by an asterisk. In the event that the Soviet proposal was adopted, he wished his reservation to be formally noted.

The CHAIRMAN said that, if there were no further objections, the existing text of paragraph 28 would be retained together with the sentences proposed by the Mexican and Soviet representatives.

Paragraph 28, as amended, was adopted.

Paragraph 29

Mr. BADAWI (United Arab Republic), Rapporteur, reminded the Sub-Committee that at the previous meeting he had read out a new sentence which was to be included in the paragraph.

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Mr. LEGAULT (Canada), referring to the second sentence of the paragraph, suggested that the word "emphasized" should be replaced by the word "contended".

Mr. PANYARACHUN (Thailand) suggested that the discussion on the concept of a "common heritage" would be more accurately reflected if the words "as a compromise" were inserted before the words "the concept". He was also in favour of reversing the order of the two views expressed in the paragraph.

Mr. ARORA (India) said he agreed with the representative of Thailand that the order of the two sentences should be reversed.

Mr. STANGHOLM (Norway) said that he supported that idea but favoured retaining the word "emphasized".

Mr. DEBERGH (Belgium) said that he was opposed to the Thai representative's first suggestion, since, as far as his delegation was concerned, the idea expressed in the first sentence of paragraph 29 did not represent a compromise but was the logical consequence of its concept of the "common heritage".

Mr. BERMAN (United Kingdom) said he did not think that the order of the two sentences in paragraph 29 should be changed, since the second sentence had to come immediately before the third sentence, which had been read out by the Rapporteur at the previous meeting. It might be possible to reflect the Thai representative's viewpoint by adding the words "necessary or at least" before the words "more desirable" in the second sentence.

Mr. DEJAMMET (France) said that he also preferred to retain the present order of the two sentences because of the link between the end of paragraph 28 and the beginning of paragraph 29.

Mr. ARORA (India) expressed the view that the amendment proposed by the United Kingdom representative would only weaken the second sentence of the existing text. That sentence should remain unchanged and become the first sentence in the paragraph.

The CHAIRMAN suggested that the Sub-Committee should revert to paragraph 29 at a later stage.

It was so decided.

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Paragraph 30

Mr. DEBERGH (Belgium) said he thought that the last sentence in the paragraph tended to confuse views which were in fact quite separate. For the sake of clarity, he suggested that the sentence should be redrafted to read as follows:

"Various proposals were made to amend the wording of the four elements mentioned above or to eliminate ideas that appeared to be superfluous or inappropriate; one of the proposals called for presenting them in a combined form."

Mr. ENGO (Cameroon) suggested that in the phrase "exercise of sovereignty on the area", the word "on" should be replaced by the word "in".

Paragraph 30, with that amendment, was adopted.

Paragraph 31

Paragraph 31 was adopted.

Paragraph 32

Mr. BADAWI (United Arab Republic), Rapporteur, reminded the Sub-Committee of the wording of the new sentences to be included in paragraph 32, which he had read out at the previous meeting.

Firstly, the third sentence would be replaced by the following:

"But it was also pointed out that although constituting an organic unity with the superjacent waters, the continental shelf has been the object of separate treatment for the purposes of the exploration and exploitation of its resources."

Secondly, the following two sentences would be added after the third sentence:

"It was, however, explained that the freedoms of the high seas should not automatically be applied to the régime of the sea-bed and the ocean floor. It was also suggested that any freedom laid down in the Convention on the High Seas should apply to the sea-bed only as far as provided by the régime to be set up."

Mr. HARGROVE (United States of America) said he felt that the insertion of the last two sentences read out by the Rapporteur would introduce a certain imbalance in the paragraph. The two sentences reflected a point of view which was opposed to that set forth previously and, by their length, gave it too much emphasis.

Mr. de SOTO (Peru), referring to the text read out by the Rapporteur, said that the phrase "régime of the high seas" would be more appropriate than the phrase "freedoms of the high seas".

Mr. LEGAULT (Canada) proposed that the word "explained" in the second of the sentences read out by the Rapporteur should be replaced by the word "suggested".

Mr. ARORA (India) said he thought that the last two sentences read out by the Rapporteur should be included in the report since they more accurately reflected the discussion. Account could, perhaps be taken of the objection raised by the United States representative by including the two sentences in a separate sub-paragraph.

He found acceptable the amendments proposed by the representatives of Peru and Canada.

The CHAIRMAN suggested that the Sub-Committee should resume its consideration of paragraph 32 at the next meeting.

The meeting rose at 6.30 p.m.

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SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

Held on Tuesday, 26 August 1969, at 8.40 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF THE REPORT OF THE LEGAL SUB-COMMITTEE TO THE COMMITTEE FOR THE 1969 PERIOD OF ITS WORK (A/AC.138/SC.1/9 and Add.1-3) (continued)

The CHAIRMAN, referring to the agreement reached at the 24th meeting concerning the incorporation in the appropriate summary records of formulations suggested during the session, said that the competent department of the Secretariat had agreed to accept any such formulations, as corrections to the records. The time-limit for the submission of corrections would be extended for ten days starting on 27 August 1969. In view of the lack of time it was requested that the formulations should be submitted in the language of the summary record to which they referred so that they could be used as quotations.

He invited the Sub-Committee to continue consideration of its report paragraph by paragraph. The Rapporteur would take into account any suggestions made in preparing the final text of the report.

Paragraph 29 (continued)

Mr. BADAWI (United Arab Republic), Rapporteur, read out the following revised text of paragraph 29 on which agreement had been reached during informal consultations:

"It was proposed that the concept of 'common heritage of mankind' should be mentioned in the operative part of the declaration. Some delegations felt that the concept might be accepted as a synthesis of the particular principles agreed upon. It was also suggested that the concept could be included in the preambular part of a draft declaration of principles."

Paragraph 29, as revised, was approved.

Paragraph 33

Mr. de SOTO (Peru) suggested that paragraph 33 was not necessary and should be deleted. If, however, it was retained it should include a sentence

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(Mr. de Soto, Peru)

indicating the reasons why the elements in question had been omitted from item 1, or at least a reference to paragraphs 75 to 81, which dealt with the matter fully.

Mr. BODY (Australia) said that he would like at least the first sentence of paragraph 33 to be retained since it represented a view expressed by his delegation during the session. He suggested that the additional final sentence read out by the Rapporteur at the 23rd meeting might take account of the views of the representative of Peru.

Mr. BAZAN (Chile), supported by Mr. GRANELLI (Argentina), said that the additional sentence would not make the paragraph a balanced one. If it was retained, it should also include a mention of the fact that some delegations considered that the elements in question were outside the terms of reference of the Committee and the Sub-Committee.

Mr. SCIOLLA-LAGRANGE (Italy) agreed with the representative of Australia that views expressed by delegations during the debate should be reflected in the report. He suggested that in the second sentence of the paragraph mention should be made of the view expressed by his delegation that uncertainty concerning internal and marginal seas also represented a serious obstacle.

Mr. DEJAMMET (France) agreed that the views expressed by certain delegations should be reflected in the report. However, it would be only proper to mention the opposing views too. He suggested that the representative of Peru and other representatives concerned should produce a joint text expressing their views, for inclusion in paragraph 33.

Mr. BAZAN (Chile) suggested that the following additional sentence would suffice: "Other delegations objected that the Sub-Committee and the Committee were not competent to deal with the boundaries of the area".

Mr. STANGHOLM (Norway) agreed. His delegation would insist that at least the first sentence of paragraph 1 should be retained.

Mr. de SOTO (Peru) said that although he still felt that the paragraph was unnecessary he would accept the Chilean suggestion as a compromise. He felt,

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(Mr. de Soto, Peru)

however, that the additional text should first state that other delegations expressed the opinion that there was no reason why the elements in question should be included in item 1, then state the reasons for that, namely, the reason given in the additional sentence read out by the Rapporteur at the 23rd meeting and the reason given in the text suggested by Chile and, lastly, include a reference to paragraphs 75 to 81 of the report.

Mr. BADAWI (United Arab Republic), Rapporteur, said it would not be appropriate to refer to paragraphs 75 to 81, since the report should be considered as a whole.

Mr. de SOTO (Peru) accordingly suggested that, instead of a reference to paragraph 75 to 81, the following sentence might be included: "This matter has been exhaustively dealt with under item 9, Synthesis".

Mr. ARORA (India) suggested that the word "serious" in the penultimate line of paragraph 33 should be deleted as it was superfluous.

Mr. SMIRNOV (Union of Soviet Socialist Republics) said he could not agree. The sentence reflected exactly the view expressed by his delegation on that matter.

New paragraph to be inserted after paragraph 33

Mr. BADAWI (United Arab Republic), Rapporteur, read out the following text of a new paragraph to be inserted after paragraph 33:

"The Sub-Committee's attention was drawn to the fact that the principle of non-appropriation by any State should be supplemented by:

(a) a statement to the effect that the activities of non-governmental organizations and private persons on the sea-bed must be authorized and kept under constant surveillance by an internationally recognized authority;

(b) a statement to the effect that the appropriation of the resources of the sea-bed shall be effected solely within the framework of the international régime to be established for the exploration and exploitation of the sea-bed."

Mr. HASAN (Pakistan) asked whether the "internationally recognized authority" referred to in sub-paragraph (a) was to be set up by the "international régime" mentioned in sub-paragraph (b) or was something entirely different.

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Mr. STANGHOLM (Norway), referring to the introductory phrase "the Sub-Committee's attention was drawn to the fact", asked whether in fact that question had been mentioned in the Sub-Committee.

Mr. LEGAULT (Canada) said that the new paragraph appeared to be a paraphrase of the formulation suggested by the representative of Belgium under item 1 and reproduced on page 11 of document A/AC.138/SC.1/9. He regretted that it was being included in that way after it had been agreed that all suggested formulations should be omitted from the report. If other suggested formulations were similarly included the report would be much too long and its objectives would be defeated.

Mr. DEBERGH (Belgium) said that while he appreciated the comments of the representative of Canada, the two ideas mentioned in the new paragraph, which had been introduced by his delegation, were entirely new ideas which had never before been touched on in an official report or in unofficial consultations. He therefore thought that they should be mentioned in the report.

Mr. BERMAN (United Kingdom) agreed with the representative of Canada. If the paragraph were to be included, many difficulties would arise concerning the exact wording. The two ideas had been introduced only at a late stage and there had been very little discussion of them. There would, for instance, be differences of opinion concerning "the principle of non-appropriation" and as to whether it was a "fact" that the principle should be supplemented by the statements mentioned. Disagreement could also arise over the phrase "an internationally recognized authority" or "State or intergovernmental organization" as in the original wording, and over the phrases "constant surveillance", which might be better expressed by "continuing supervision", "within the framework of", "international régime", and "for the exploration and exploitation of the sea-bed". There was no time to reach agreement on the text and if it was to be included in the report it should be introduced by some such phrase as "The opinion was expressed that" and should reproduce the language used originally by the representative of Belgium.

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Mr. CABRAL DE MELLO (Brazil) fully agreed with the representative of Belgium. The new paragraph contained very important new ideas, unlike the other suggested formulations which had originally been included in the draft report, and it should therefore be the subject of a separate paragraph in the report.

Mr. ARORA (India) said that while he recognized the great contribution made by the representative of Belgium in introducing the new ideas in question, he felt that the proposed new paragraph should be considered more carefully. Accordingly, he suggested that the text should be circulated and that the Sub-Committee should defer consideration until a later stage. The representative of Belgium might perhaps be able to make certain changes in the text to take into account the comments made by delegations; he might, for instance, consider deleting the phrase "for the exploration and exploitation of the sea-bed" at the end of the paragraph.

Mr. VALLARTA (Mexico) observed that the representative of Belgium apparently wished the ideas contained in the new paragraph to be included in the report as an anonymous proposal. He therefore proposed that the paragraph should begin with an introductory phrase such as "The following suggestion was submitted" and that the text of the formulation as originally suggested by Belgium and reproduced on page 11 of document A/AC.138/SC.1/9 should follow.

Mr. DE JAMMET (France) supported that proposal.

Mr. BRECKENRIDGE (Ceylon) said he was concerned about the proposed inclusion in the report of suggestions formulated by the representative of Belgium. The delegation of Ceylon could also have circulated proposals and asked for their inclusion in the report, but it had preferred not to divert the Sub-Committee's attention from the working documents before it. He agreed with the representative of India that consideration of the paragraph should be deferred.

Mr. DEBERGH (Belgium) assured the representative of Ceylon that his delegation had no intention of asking for the inclusion in the report of any other formulations it had suggested. He was prepared to accept the suggestion of

(Mr. Debergh, Belgium)

the representative of India. He could also agree to the insertion of an introductory phrase, but he would like to consult other delegations concerning the exact wording of the suggestion.

Mr. HASAN (Pakistan) supported the Indian representative's suggestion.

Mr. STANGHOLM (Norway) pointed out that since the problem concerned the manner in which the formulation should be included and not its substance, there would be no point in circulating the text.

Mr. BAZAN (Chile) said that the text originally submitted by the representative of Belgium and reproduced on page 11 of document A/AC.138/SC.1/9 was sufficiently clear and should not be redrafted. He agreed with the representative of Mexico that the formulation should be included verbatim following a short introductory phrase.

Mr. BERMAN (United Kingdom) said that he was not sure that the text of the proposed new paragraph reflected the language actually used when the suggestions had been submitted. He associated himself with the proposal of the representative of Mexico.

Mr. STEVENSON (United States of America) said that he agreed substantially with the previous speakers. The formulation should be included in the form in which it had been submitted, following a short introductory phrase indicating that it was a suggestion and not a fact. He suggested that the following sentence should be added at the end of the paragraph: "Because of limitations of time, the substance of the proposal was not discussed in the Sub-Committee."

Mr. HASHIM (Malaysia) pointed out that the ideas contained in the formulation suggested by the representative of Belgium were not really new. Those ideas had been discussed in substance among the developing countries of Africa and Asia.

The Mexican proposal was adopted.

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Paragraph 35

Mr. SMIRNOV (Union of Soviet Socialist Republics) felt that paragraph 35, as it stood, was incomplete. The first sentence should be replaced by a text along the following lines:

"Some delegations emphasized that international law, including the Charter of the United Nations, was applicable to the activities of States on the sea-bed. It was also pointed out that international law, by its very scope, was considerably broader than concrete norms applicable to the regulation of the activities of States in any individual area, for example, on the high seas. In this connexion, such general international legal principles were mentioned as the renunciation of the threat or use of force in relations among States, respect for the provisions of treaties, international responsibility of States, etc. Some delegations stressed the importance of the Convention on the High Seas and other international agreements, in particular, the 1963 Treaty banning nuclear weapons tests in the atmosphere, in outer space and under water and the 1959 Antarctic Treaty, in defining international law applicable to the sea-bed."

In the second sentence, the word "legal" should be inserted before "vacuum", and the semi-colon in the fifth line should be replaced by a full stop.

Finally, the last sentence in the paragraph should be deleted.

Mr. LEGAULT (Canada) proposed that the reference to the Convention on the Continental Shelf should be retained.

The USSR amendment, as sub-amended by the representative of Canada, was approved.

Mr. DEJAMMET (France) proposed the addition, after the words "respect for the provisions of treaties" in the USSR amendment, of a phrase along the lines of "duly ratified" or "concluded in accordance with the usual procedures of international law".

It was so agreed.

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Paragraph 36

Mr. SMIRNOV (Union of Soviet Socialist Republics) proposed that the words "For some" should be replaced by "From the standpoint" in the first sentence.

Mr. PARDO (Malta) proposed that paragraph 36 should be amended along the following lines:

"Existing international law was mostly customary or contained only very general legal principles to regulate the activities of States. Furthermore, it could in the main be applied to the sea-bed only by analogy. It was also in many cases controverted in this connexion which specific principles of customary international law were suitable for application to the sea-bed. This ambiguity required urgent clarification. Furthermore in some cases the application of some principles of customary international law to the sea-bed would not be equitable for a large number of States."

The rest of the paragraph, beginning with the words "A régime for the sea-bed", should read as follows:

"A régime for the sea-bed could not be developed on the basis of ambiguities or inequitable rules and it was therefore obvious that a legal vacuum existed. According to this view, the same could be said about the United Nations Charter, not all of which necessarily formed part of international law. Thus, international law could apply to the area only in a subsidiary way since it regulates mainly the use of the other areas of marine environment. It was pointed out that the inequities and ambiguities in present law were best shown by the fact that the Committee had been charged with the task of elaborating new legal principles in the field, since the application of existing principles of international law would have the effect of permitting the indiscriminate exploitation of sea-bed resources and this would be contrary to the interests of the international community."

Mr. de SOTO (Peru) proposed that the following text should be inserted at some point in paragraph 36:

(Mr. de Soto, Peru)

"It was pointed out that existing international law is not applicable entirely to the sea-bed and ocean floor beyond the limits of national jurisdiction. Consequently, it is not possible to apply principles which, although they do exist, are applicable only partially or by analogy. In accordance with existing international law and the United Nations Charter, it can be concluded that certain guidelines do exist, but these do not constitute norms."

Mr. OMBERE (Kenya) said that the Maltese amendment did not reflect his delegation's view of the concept "common heritage of mankind". In particular, his delegation felt that the opening words of the paragraph should be retained.

Mr. ARORA (India) agreed with the Kenyan representative that the opening words of paragraph 36 should be retained and suggested that they should be incorporated in the first part of the Maltese amendment. While most of the points covered by the Peruvian sub-amendment had been covered by the Maltese amendment, his delegation would not object to their inclusion in the paragraph.

Mr. PARDO (Malta) suggested that the Peruvian representative's sub-amendment could be inserted after the second sentence of his own amendment.

The CHAIRMAN said that, if he heard no objection, he would assume that the Sub-Committee agreed that the representatives of Malta, India, Kenya and Peru should consult in order to draft a final version of paragraph 36.

It was so agreed.

Paragraph 37

Mr. BADAWI (United Arab Republic), Rapporteur, said that in the fifth sentence, the word "They" should be replaced by the words "Some of these delegations". The following new sentence should be inserted at the end of the paragraph: "Other delegations questioned the desirability of the reference in the formulation of paragraph 18 to the principles and norms to be agreed in the future since it could only be reasonably construed as applicable after the conclusion of an agreed régime and added nothing to the principles dealing with the question of a régime."

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Mr. PAVICEVIC (Yugoslavia) suggested the insertion, after the second sentence, of a statement to the effect that some delegations felt that the elements in paragraph 14 were complementary.

Mr. BERMAN (United Kingdom) felt that the amendment to the fifth paragraph, read out by the Rapporteur, only increased the ambiguity. The text should make it clear which group of delegations was concerned.

Mr. BAZAN (Chile) proposed that the word "unjustified" in the seventh sentence should be replaced by the word "equivocal" and that the following sentence should be inserted after the seventh sentence: "That would lead to the erroneous conclusion that the régime of the high seas applied to the area by analogy".

Mr. ARORA (India) supported the Chilean amendment. He proposed that the words "with the deletion of the words in brackets" should be inserted after the word "formulation" in the fourth sentence.

Mr. SMIRNOV (Union of Soviet Socialist Republics) proposed that the following sentences should be inserted at the end of the paragraph, before the new sentence read out by the Rapporteur: "Some delegations considered this attitude to the United Nations Charter to be unwarranted. It was pointed out that the United Nations Charter, which is the corner-stone of contemporary international law, is intended to regulate international relations among States in the interest of maintaining international peace and security, regardless of the field in which such relations exist or may arise. To some delegations, Article 38 of the Statute of the International Court of Justice was irrelevant."

Mr. DEJAMMET (France), supported by Mr. PAVICEVIC (Yugoslavia), said that his delegation endorsed the Soviet amendment. However, the views of the Soviet delegation might be more concisely reflected if the last part of the eighth sentence, beginning with the word "reference", were deleted.

It was so agreed.

Mr. STEVENSON (United States of America) proposed that the following phrase should be inserted after the words "Other delegations" in the new sentence read out by the Rapporteur: "supported the reference to international law, including the reference to the United Nations Charter, and".

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The CHAIRMAN said that all the amendments proposed would be taken into account in the preparation of the final version of the paragraph.

Paragraph 39

Mr. LEGAULT (Canada) said that it was essential for the report accurately to reflect the Committee's mandate. He therefore proposed that the following sentence should be inserted after paragraph 39 or paragraph 40: "The view was expressed that while the Eighteen Nation Committee on Disarmament was already considering areas within national jurisdiction, the mandate of the Committee was confined to the area beyond national jurisdiction and that it would therefore not be possible to agree to a formulation applicable to the area over which States have sovereign rights with respect to the exploration and exploitation of resources." He also proposed that the words "beyond the limits of national jurisdiction" should be inserted after the words "the sea-bed and the ocean floor" in the first sentence of paragraph 39 and the last sentence of paragraph 41.

Mr. SMIRNOV (Union of Soviet Socialist Republics) felt that the views of his delegation were not adequately reflected in the paragraph. He accordingly proposed that the words "which would represent an obstacle to the use of the sea-bed for peaceful purposes" should be inserted at the end of the first sentence and that the following sentence should be inserted after the second sentence: "Other delegations stressed that the sea-bed and the ocean floor and the subsoil thereof beyond the limits of the maritime zone of coastal States, the boundaries of which are to be agreed upon in international negotiations on disarmament, shall be used exclusively for peaceful purposes; accordingly, all military activities shall be excluded and all forms of military use shall be prohibited."

Mr. DEJAMMET (France) said he would not object to the inclusion of the Canadian representative's amendment but he proposed that the following sentence should be inserted after that amendment: "Other delegations reminded the Committee of its terms of reference under operative paragraph 3 of General Assembly resolution 2467 A (XXIII)."

Mr. BERMAN (United Kingdom) felt that the views of the USSR delegation were in fact very fully covered in paragraphs 40 to 43.

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Paragraph 40

Mr. SMIRNOV (Union of Soviet Socialist Republics) pointed out that in the first sentence the date should be "18 March", not "10 March". He proposed the deletion of the second sentence and of the second part of the last sentence, starting with the words "in providing".

Mr. DEJAMMET (France) supported those proposals.

The USSR proposals were approved.

Mr. NITTI (Italy) said that in the French text, the beginning of the opening sentence should be reworded to avoid giving the impression that all delegations shared the view expressed in it.

Mr. BERMAN (United Kingdom) said that the same implication could be drawn from the English text, and requested that the Rapporteur should make the necessary changes.

Paragraph 41

Mr. SMIRNOV (Union of Soviet Socialist Republics) suggested that the first sentence should be amended to read "The view was expressed that any military activities are incompatible...", and the second sentence to read "Reference was made to precedents and to the understandings existing in this connexion...".

Mr. PARDO (Malta) proposed that, since his delegation's view was reflected nowhere in paragraphs 39 to 44, a sentence should be added to paragraph 41 reading "Some delegations, while supporting the concept of the exclusion of military activities from the greatest possible area of the sea-bed, pointed out that a difficulty in the realization of this desirable goal could be the interpenetration between scientific and military activities and the uncertainty as to whether it was possible to verify with present technology that certain military activities did not in fact take place on or under the sea-bed".

It was so agreed.

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Paragraph 42

Mr. BERMAN (United Kingdom) proposed the replacement of the word "it" in the second line by "this expression".

Mr. STEVENSON (United States of America) proposed the replacement of the word "defensive" in the third line by "military".

It was so agreed.

Paragraph 43

Mr. BERMAN (United Kingdom), supported by Mr. SMIRNOV (Union of Soviet Socialist Republics), proposed the replacement of the word "mineral" in the second line by "natural".

Mr. IWAI (Japan) opposed that amendment.

Mr. LEGAULT (Canada) pointed out that Continental Shelf Convention did in fact refer to "natural resources".

The amendment was approved.

Paragraph 44

Mr. PAVICEVIC (Yugoslavia) asked whether the paragraph implied that the limits of the area to be reserved for peaceful uses were different from those of the area of national jurisdiction.

Mr. PARDO (Malta) proposed that the words "of such area" should be replaced by "of the area to which this principle should be applied".

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Mr. BAZAN (Chile) proposed the addition of a sentence reading "Other delegations maintained that because of the lack of competence of the Committee with regard to boundaries, this issue was irrelevant."

Mr. PARDO (Malta) pointed out that the area beyond national jurisdiction and the area to which the principle of peaceful uses should be applied were not necessarily the same, and the Sub-Committee was competent to discuss the latter question.

Mr. YANKOV (Bulgaria) supported that view.

Mr. de SOTO (Peru) supported the amendment proposed by the representative of Malta.

The amendment was approved.

Paragraph 45

Mr. DEJAMMET (France) proposed the addition after the second sentence of a sentence reading "Certain delegations supported that objective but made no reference to work carried on outside the Committee."

Mr. BADAWI (United Arab Republic), Rapporteur, proposed the addition in the third line of the words "or appropriate" after "essential", and of a new sentence after the second sentence, reading "Such principles should avoid prejudicing the positions of delegations on issues - such as that of the specific activities to be prohibited or the geographical scope of the prohibition - currently under negotiation in Geneva."

Mr. PARDO (Malta), supported by Mr. STEVENSON (United States of America), proposed the deletion of the words "in Geneva" from that amendment.

Mr. de SOTO (Peru) proposed the replacement of the word "negotiation" by "study".

Mr. BERMAN (United Kingdom) felt that the essence of the amendment proposed by the Rapporteur was already contained in the last three sentences of the paragraph; there was no need to include both versions.

Mr. SMIRNOV (Union of Soviet Socialist Republics) proposed the replacement of the words "and technical formulations" in the fifth line by "formulations of a treaty nature" and of "there was agreement" in the second line by "it was stated".

Mr. DEJAMMET (France) said that if the amendment proposed by the Rapporteur was adopted, he would request that his amendment be inserted after it, with the opening phrase amended to read "Certain delegations supported this objective of general principles...".

Mr. YANKOV (Bulgaria) said he believed that the Rapporteur's amendment should be accepted, as it went beyond the wording of operative paragraph 3 of General Assembly resolution 2467 A (XXIII) in referring to the geographical scope of the prohibition of military activities, a subject which had been discussed by the Sub-Committee.

The amendments submitted by the Rapporteur and the representatives of France and the USSR were approved.

Paragraph 47

Mr. STEVENSON (United States of America) proposed the replacement of the words "be built into the very fabric of the régime, as..." by "be taken into account. Certain delegations suggested that...".

Mr. PARDO (Malta) proposed the insertion of the word "exploration" before "use" in the fourth line. He found the end of the second sentence puzzling, since it was difficult to see how Malta could secure equality with, for example, the United States, in actual use and exploitation of the resources of the sea-bed.

Mr. ARORA (India) said that he preferred the original wording of the second sentence to that proposed by the United States. However, he could accept the opening of a new sentence after the word "régime", on condition that it began "Many delegations" rather than "Certain delegations".

Mr. STEVENSON (United States of America) said that to refer to many delegations seemed rather to overstate the case since, as the representative of Malta had pointed out, the achievement of the desired situation was not easy to visualize.

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Mr. BERMAN (United Kingdom) suggested that rather than dividing the existing sentence into two, the opening phrase should be changed to "The view was expressed by some delegations that the special interests...", the rest of the sentence to remain in its present form.

Mr. ARORA (India) suggested as an opening phrase the words "The view was emphasized that...".

Mr. PAVICEVIC (Yugoslavia) proposed that, to meet the point made by the representative of Malta, the words after "opportunity" in the seventh and eighth lines should be replaced by "provide for actual equitable sharing in the benefits to be derived from the exploration, use and exploitation of the resources of the sea-bed".

Mr. NITTI (Italy) proposed that the second sentence should begin with the words "Certain delegations emphasized that..." and that a new sentence, after the word "régime", should begin with the words "Several delegations suggested that...", incorporating the Yugoslav amendment into the remainder of the sentence.

Mr. RAZAKANAIVO (Madagascar) suggested as an alternative to the Yugoslav amendment a phrase to the effect that it was suggested that measures should be undertaken to promote the participation of developing countries in the actual exploration, use and exploitation of the resources of the sea-bed.

Mr. PAVICEVIC (Yugoslavia) suggested that the second sentence could begin with the words "The view was expressed that...". After a full stop following "régime", the third sentence could begin "It was also stressed...", and be followed by the remainder of the sentence incorporating his amendment.

The CHAIRMAN said that the Rapporteur would take all the comments which had been made into account in preparing the final text.

Paragraph 48

Mr. PARDO (Malta) proposed that the last part of the second sentence, after the comma, should be replaced by "as many such countries did not possess adequate maritime forces to enforce respect for such areas".

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Mr. HACHEME (Mauritania) supported that proposal and suggested the deletion of the words "and of the waters beyond the limits of national jurisdiction".

Mr. YANKOV (Bulgaria) said that the paragraph was poorly composed in that it combined references to completely unrelated matters, namely, the interests of land-locked States and the question of protection of territorial waters of the developing countries, which did not seem to come within the terms of reference of the Committee. The whole of the second sentence could be deleted, and it would seem more appropriate to refer to the interests of land-locked States in paragraph 47, which dealt with questions of equality, the benefits to be derived from the sea-bed and the needs of the developing countries.

Mr. ARORA (India) suggested the last sentence of paragraph 47 should be preceded by a sentence reading: "In this respect, the view was expressed that the land-locked States should be placed on an equal footing with coastal States."

However, he could not agree to the deletion of the second sentence of paragraph 48, since a number of delegations had expressed concern about the protection of their territorial waters. He supported the proposals of the representatives of Malta and Mauritania with regard to that sentence.

Mr. LEGAULT (Canada) supported the proposal of the representative of Bulgaria. The reference to territorial waters exceeded the Sub-Committee's terms of reference in two respects. The area was within national jurisdiction and did not form part of "the sea-bed and the ocean floor".

Mr. PARDO (Malta) suggested that the first sentence of paragraph 48 should be amended to read: "It was widely recognized that a balanced and coherent statement of principles should enable land-locked States to participate on an equal footing with coastal States in the exploration, use and exploitation of the resources of the sea-bed."

Mr. HACHEME (Mauritania), referring to the statement by the representative of Bulgaria to the effect that the question of the protection of the territorial waters of developing countries was outside the Committee's terms of reference, pointed out that the Sub-Committee had considered a number of questions, such as

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(Mr. Hacheme, Mauritania)

nuclear tests, which were even further removed from the subjects before the Committee. The Rapporteur had simply reflected in the report an idea formulated by his delegation, which wished the question of the protection of the territorial waters of developing countries to be mentioned in the Committee's report and brought to the attention of the General Assembly. That question did not involve military assistance or intervention and therefore was not the concern of the Security Council.

Mr. PAVICEVIC (Yugoslavia) wondered whether the representative of Mauritania would be satisfied with the inclusion of a reference to full respect for the principle of the territorial integrity of all States.

The meeting rose on Wednesday, 28 August, at 12.35 a.m.

SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

Held on Wednesday, 27 August 1969, at 3.20 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF THE REPORT OF THE LEGAL SUB-COMMITTEE TO THE COMMITTEE FOR THE 1969 PERIOD OF ITS WORK (A/AC.138/SC.1/9 and Add.1 and 2) (continued)

The CHAIRMAN drew attention to a mimeographed document which had been circulated before the meeting. That document, which had been prepared as the result of consultations among delegations, contained an amended version of the texts of paragraphs 32, 33, 35-37 and 39-45 of the draft report.

Mr. HARGROVE (United States of America) suggested that the mimeographed text mentioned by the Chairman should be considered by the Sub-Committee after it had adopted the paragraphs reproduced in document A/AC.138/SC.1/9/Add.2. That procedure would give delegations time to familiarize themselves with the mimeographed text. As a means of saving time, delegations wishing to submit drafting amendments to the mimeographed text should get in touch directly with the Rapporteur.

It was so decided.

Paragraph 48 (A/AC.138/SC.1/9/Add.2)

Mr. HACHEME (Mauritania) announced that the delegations which had made observations on the second sentence of the paragraph had agreed to propose its substitution by the following text:

"Another view was that the exploration, use and exploitation of the sea-bed must not in any case impair the legitimate interests of coastal States, and in particular of the developing countries, which do not have adequate means of defending their interests."

The CHAIRMAN recalled that the Maltese delegation had already proposed an amendment to that paragraph at the previous meeting. If there were no objections, he would take it that paragraph 48 was adopted with the amendments proposed by the delegations of Malta and Mauritania.

Paragraph 48, as amended, was adopted.

Paragraph 49

Mr. DEBERGH (Belgium) recalled that his delegation had expressed the opinion that a point of view which it shared with certain other delegations had not been properly reflected in paragraph 49. The use of the term "unrealistic"

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(Mr. Debergh, Belgium)

had seemed in particular to be at variance with their thinking. The delegations of Japan, the United Kingdom and Belgium had agreed to propose the substitution of the second and third sentences of the paragraph by the following text:

"Some delegations have felt that these words should be applied to the area as a whole; other delegations held the view that they should be applied only to its resources. Both groups sought to justify their views by referring to General Assembly resolution 2467 (XXIII)."

In the light of the foregoing amendment, the words "that view" in the fourth sentence should logically be replaced by the words "the second view".

Mr. ODA (Japan), supported by Mr. ARORA (India), proposed that the final sentence of paragraph 49 should be replaced by the following:

"In addition, some of those who supported the second view interpreted the expression 'use of the resources for the benefit of mankind' as limited to resources other than living resources since the latter were clearly covered by the relevant provisions of international law governing high seas fishing."

Paragraph 49, as amended, was adopted.

Paragraph 50

Paragraph 50 was adopted.

Paragraph 51

Mr. ARORA (India) suggested that the words "contents of sub-paragraph (iii)" should be replaced by the words: "contents of sub-paragraph (i) (a) ("Application of benefits") and sub-paragraph (iii) ("International machinery")". He also proposed that the final part of the paragraph, beginning with the words "whether or not", should be replaced by the following:

"and also stressed that such a régime should provide appropriate and equitable application of benefits obtained from the exploration, use and exploitation of this area to the developing countries".

Paragraph 51, as amended, was adopted.

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Paragraph 52

Mr. HARGROVE (United States of America), supported by Mr. BERMAN (United Kingdom), proposed that the word "adequacy" in the first line of the paragraph should be replaced by the word "desirability".

Mr. ARORA (India) proposed that the following sentence should be added at the end of the paragraph:

"The other view was that this was an essential provision of a régime, particularly as such a régime was expected to cover according to this view the area as a whole."

Paragraph 52, as amended, was adopted.

Paragraph 53

Paragraph 53 was adopted.

Paragraph 54

Paragraph 54 was adopted.

Paragraph 55

Mr. SMIRNOV (Union of Soviet Socialist Republics) felt that since the Sub-Committee had not yet considered the report by the Secretary-General on international machinery, the words "in depth" in the last line of the paragraph ought to be deleted. Furthermore, his delegation had expressed, concerning that question, a point of view which it would like to have reproduced in the report as follows:

"It was stated that the future legal régime to be applied to the exploitation of sea-bed resources did not necessarily imply the establishment of international machinery; it was also pointed out that, as appears from the general tenor of General Assembly resolution 2467 (XXIII), there was agreement on the point that there is a difference between the international régime and the international machinery. The opinion was expressed in that connexion that a reference to international machinery was out of place in a statement of legal principles."

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Mr. ARORA (India) asked the Soviet representative not to proceed with his amendments. Since the Legal Sub-Committee had not considered the question of international machinery in depth, it would be somewhat out of place for the divergent views of certain delegations to be included in the Sub-Committee's report with regard to that question. Those views had, moreover, already been included in the report of the Economic and Technical Sub-Committee. If the Soviet representative insisted on the sentences which he had just read out being included in the report, the paragraph would have to be expanded still further in order that the opposing view might be reflected.

Mr. PARDO (Malta), supported by Mr. HASAN (Pakistan), joined the representative of India in asking the Soviet representative not to proceed with the amendments which he had suggested.

Mr. YANKOV (Bulgaria) noted that two opposing points of view had indeed already been expressed in the report of the Economic and Technical Sub-Committee with regard to the question of international machinery. According to the one view, the adoption of a legal régime was indissolubly linked with the establishment of the machinery for applying it. According to the second view, those two aspects of the matter were not necessarily linked and the consideration of international machinery was premature. He stressed that that question had been dealt with at length in the Economic and Technical Sub-Committee but had been touched upon only briefly in the Legal Sub-Committee.

Mr. SMIRNOV (Union of Soviet Socialist Republics) said that he wished to maintain the amendments which he had proposed, and he pointed out that the delegations which were asking him not to proceed with his amendments had themselves succeeded in having their own views on certain questions included in the report, and specifically in paragraph 51. He was merely asking that what was a normal procedure should be followed.

Mr. HOLDER (Liberia) said that he supported the Soviet view. However, while he agreed to the addition of the paragraph proposed by the USSR, he was opposed to the deletion of the words "in depth" as had been suggested by the Soviet delegation.

Mr. PARDO (Malta) said that he would like the Soviet amendment to be followed by the sentence: "Other delegations had not, however, shared that opinion".

Mr. ARORA (India) said that he supported that proposal.

Mr. YANKOV (Bulgaria) pointed out that paragraph 55 as presently worded was in conflict with paragraph 85, according to which the Sub-Committee had not given any consideration to the question of international machinery. He accordingly proposed that paragraph 55 should end with the words: "had not yet been studied by the Sub-Committee, as is noted in paragraph 85".

Mr. PARDO (Malta) said that he could agree to that proposal on condition that the words "international machinery" were replaced by the words "the legal aspects of the international machinery".

Mr. HOLDER (Liberia) said that he supported that proposal.

Paragraph 55, as amended, was adopted.

Paragraph 56

Mr. BERMAN (United Kingdom) recalled that with regard to the effectiveness of an international régime his delegation, among others, had stressed the importance of the question of the limits of the area. In a spirit of conciliation, it would not propose that paragraph 56 should be amended to take account of that view, but it would revert to the idea before the Sub-Committee concluded its examination of the draft report.

Paragraph 56 was adopted.

Paragraph 57

The CHAIRMAN reminded the Sub-Committee that it had been decided at the twenty-sixth meeting (A/AC.138/SC.1/SR.26) that the formulations suggested by the delegations would not be debated further.

Paragraph 58

Paragraph 58 was adopted.

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Paragraph 59

Mr. BERMAN (United Kingdom) proposed that in the third line of the paragraph the word "in" should be replaced by the words "on or concerning", in order to indicate the broader scope of the research in question.

Paragraph 59, as amended, was adopted.

Paragraph 60

Mr. ODA (Japan) proposed that after the word "rigid" in the eighteenth line the words "prior or post dissemination or" should be inserted. In the English text the word "requirement" in the eighteenth and nineteenth lines should be in the plural, as should the words "was" and "this", and the word "a" before "rigid" should be deleted. He also proposed the insertion at the end of the clause, before the semicolon, of the words "or without imposing an unreasonable financial burden on research institutions".

Mr. HARGROVE (United States of America) said that he would like to see reflected in that paragraph the opinions of delegations which, like his own, had accepted elements (ii) and (iii) but did not want those elements to be conditions which would limit freedom of research. He therefore proposed that the word "supported" in the fourth line should be replaced by the words "in supporting", and that the words "which for them" in the seventh line should be replaced by the words "took the position that they". In the twelfth line, the words "while also supporting elements (ii) and (iii)", preceded and followed by commas, should be inserted after the word "delegations".

He would also like the words "The adequacy of" in the second line to be deleted.

Mr. PARDO (Malta) said that he would like the word "elaborate" in the twentieth line to be replaced by the word "existing", for it would be advisable to refrain from making a value judgement on the system in question.

Mr. BERMAN (United Kingdom) said that he was in favour of the amendments proposed by Japan but not of those proposed by the United States, except for the one affecting the second line of the paragraph. The formulation proposed by the United States representative with respect to elements (ii) and (iii) did not reflect the view of certain delegations which, like his own, had expressed reservations with regard to those elements.

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(Mr. Berman, United Kingdom)

Since a delicate balance had been achieved in the drafting of paragraph 60 as it now stood, he felt it should remain unchanged, except for the amendments proposed by the Japanese representative.

Mr. ARORA (India) shared the view of the United Kingdom representative.

The CHAIRMAN suggested that the delegations which had made observations on that paragraph should work out an agreed text.

Mr. BERMAN (United Kingdom) said that the delegations concerned had reached agreement on an amendment to be made in the fifteenth line of paragraph 60. The comma after the parenthesis would be replaced by a full stop and the words "pointing out" would be replaced by the words "Some of these delegations nevertheless supported elements (ii) and (iii) while others among them pointed out". The rest of the sentence would remain unchanged. The following sentence would be amended in accordance with the proposal of the Japanese representative.

Paragraph 60, as amended, was adopted.

Paragraph 61

Paragraph 61 was adopted.

Paragraph 62

Mr. BADAWI (United Arab Republic), Rapporteur, said that he had received an amendment which would consist of inserting in the fourth line, after the word "sea-bed", the words "and ocean floor and the sub-soil thereof beyond the limits of national jurisdiction". In the English text, the word "was" in in the fourth line would have to be replaced by "were" if the text was to be grammatically correct.

Mr. ARORA (India) said that in order to reflect more exactly the tenor of the deliberations, the following sentence should be added at the end of the paragraph: "Some delegations, however, emphasized that no rights of exploitation should be implied in the carrying out of scientific research."

Mr. HOLDER (Liberia) suggested that the word "and" before the words "ocean floor" in the amendment proposed by the United Arab Republic should be replaced by a comma.

Paragraph 62, as amended, was adopted.

Paragraph 63

Mr. PARDO (Malta) proposed the deletion of the definite article before the words "scientific research" and "exploration" in the second and third lines respectively of the English text.

Mr. BERMAN (United Kingdom) proposed that after the word "distinction" in the first line of the paragraph the following words should be added in parentheses: "a distinction which already exists in law in the Convention on the Continental Shelf".

Mr. CABRAL DE MELLO (Brazil) proposed the addition of the following text at the end of the paragraph: "The view was set forth that since the marine environment constitutes a whole, coastal States should be recognized some rights with regard to research carried out in the areas of the sea-bed adjacent to the ones under national jurisdiction, so that research on the sea-bed is not used as a pretext for research on the continental shelf without the consent of coastal States, as required in article V of the Geneva Convention."

Mr. ODA (Japan) said with reference to the amendment proposed by the United Kingdom delegation that he thought it would be preferable to avoid mentioning the Convention on the Continental Shelf, which was not binding on all States.

Mr. BERMAN (United Kingdom) said that he would be willing to withdraw that amendment. If the amendment proposed by Brazil was accepted, he would like the following sentence to be added after that amendment: "This suggestion was regarded as unacceptable by other delegations."

Mr. CABRAL DE MELLO (Brazil) maintained his amendment.

The CHAIRMAN said that, in order to maintain a balance between the points of view expressed, he thought it would be necessary to include in the paragraph the United Kingdom amendment as well as the amendments of Malta and Brazil.

Paragraph 63, as amended, was adopted.

Paragraph 64

The CHAIRMAN reminded the Sub-Committee, as he had done earlier in the meeting, that the formulations suggested by delegations were not to be discussed further.

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Paragraph 65

Mr. PAVICEVIC (Yugoslavia) said that he thought the second sentence was not very clear. He would like the delegation which had proposed it to clarify that point. In his opinion, it would be preferable to say "For the protection of the interests of the coastal States, reference was made to article 6."

Paragraph 65, as amended, was adopted.

Paragraph 66

Mr. PARDO (Malta) observed that the question of assistance to persons in distress, mentioned in the second sentence of the paragraph, was also brought up in paragraph 69, where different viewpoints were set forth in that connexion. He therefore wondered whether it would not be preferable to use the second sentence in paragraph 66 as the first sentence in paragraph 69.

Mr. PAVICEVIC (Yugoslavia) suggested that the second part of the second sentence should be worded as follows: "and that international arrangements for this purpose should be worked out for persons working in that environment", since he felt that the reference to aquanauts was not clear. He would like to see the following sentence inserted after the first sentence: "It was also indicated that there existed a need to adopt new international instruments which would provide for firm obligations of States to respect the adopted standards and make them obligatory through their national legislation." Finally, in the seventh line of the paragraph, the word "international" should be inserted before the word "regulations".

Mr. SMIRNOV (Union of Soviet Socialist Republics) said he felt that the first of the conventions mentioned, which related to the pollution of the sea by oil, was far too limited in scope, whereas the IMCO Convention was not. It would be sufficient to say simply that the conventions in question "lacked effective means of implementation".

Mr. PARDO (Malta) said that he shared that view. He suggested deleting the words "were too narrow" in the third line of paragraph 66 and replacing the rest of the sentence by the following: "did not deal with all sources of ocean pollution and lacked effective means of implementation."

Paragraph 66, with that amendment, was adopted.

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Paragraphs 67 and 68

Paragraphs 67 and 68 were adopted.

Paragraph 69

Mr. YANKOV (Bulgaria) proposed that the following sentence should be inserted after the first sentence: "However, other delegations felt that the elaboration of principles concerning assistance in cases of mishaps, distress or danger could be justified."

Paragraph 69, with that amendment, was adopted.

Paragraph 70

Mr. HARGROVE (United States of America) proposed that, in order to give a more accurate idea of his delegation's views, the following words should be added to the last sentence: "or referred to only in the enumeration of the features of the régime to be agreed upon".

Mr. LEGAULT (Canada) said that, in the sixth line, it would be preferable to replace the word "strict" by the word "absolute".

Mr. PAVICEVIC (Yugoslavia) proposed that the following sentence should be added either at the end or at an appropriate place within the paragraph: "However, certain delegations indicated that this kind of damage could affect not only the property of operators or private persons, but also the national economic life of the nearest coastal States. For these reasons the responsibility of States should be expanded not only for compensation of damage but also for criminal prosecution of responsible persons."

Paragraph 70, with that amendment, was adopted.

Paragraph 71

Mr. BADAWI (United Arab Republic), Rapporteur, suggested that the words "a principle of justice such as that embodied in" should be inserted after the words "compatible with" in the penultimate line of the paragraph. The rest of the sentence would remain unchanged.

Mr. ODA (Japan) proposed that the following words should be added at the end of the second sentence: "and that the resources should be utilized for the benefit of mankind".

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Mr. PAVICEVIC (Yugoslavia) proposed that the following sentence should be inserted in the paragraph wherever the Rapporteur felt it would be appropriate: "Special interests of those States should be taken into account only in the regions which are adjacent to the coastal States and not in other regions of the high seas."

Paragraph 71, with that amendment, was adopted.

Paragraph 72

Mr. BADAWI (United Arab Republic), Rapporteur, proposed that the following sentence should be added at the end of the paragraph: "Others considered that such measures would not constitute a violation of the principle of the freedom of the high seas but rather of the collective competence which is to derive from recognizing or declaring that the sea-bed and the ocean floor beyond the limits of national jurisdiction will constitute the common heritage of mankind and cannot be the subject of national appropriation."

Mr. LEGAULT (Canada) proposed that the words "in violation of", in the sixth line of the English text, should be replaced by the words "and violate" and that the following sentence should be added at the end: "Other delegations contested this view".

Mr. PAVICEVIC (Yugoslavia) suggested that the last sentence in the paragraph should be amended to read as follows: "Some delegations suggested that this element should ,be considered together with element (iii) (Pollution) and element (vii) (Damage)."

Mr. SCHRAM (Iceland) proposed that, with a view to reflecting all the views which had been expressed, the following sentence should be inserted before the last sentence: "Other delegations considered such a concept a necessary element in combating and controlling pollution in the marine environment."

Mr. de SOTO (Peru) said that the Canadian amendment was redundant since it expressed an idea that had already been stated in the paragraph.

Paragraph 72, with the amendments indicated, was adopted.

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Paragraph 73

Mr. HARGROVE (United States of America) proposed that the words "supported this element but" should be inserted after the word "others" at the beginning of the second sentence, the rest of the sentence remaining unchanged.

Paragraph 73, with that amendment, was adopted.

Paragraph 74

The CHAIRMAN noted that the formulations suggested by delegations were not open to further discussion.

Paragraphs 75 and 76

Paragraphs 75 and 76 were adopted.

Paragraph 77

Mr. BADAWI (United Arab Republic) proposed that the first sentence in the paragraph should be amended to read as follows: "Some delegations pointed out very strongly that General Assembly resolutions 2340 (XXII) and 2467 (XXIII) instructed the Committee to study the elaboration of an international régime for the sea-bed and the ocean floor beyond the limits of national jurisdiction and not to determine the limits of that area."

Mr. SMIRNOV (Union of Soviet Socialist Republics) said he did not think that those were the precise terms of the General Assembly resolution.

Mr. BAZAN (Chile) read out the text of resolution 2467 A (XXIII) and proposed that that wording should be used to summarize the idea expressed in the resolution.

Mr. SCIOLLA-LAGRANGE (Italy) said he thought that the expression "very strongly" was unfortunate. Every delegation naturally defended its views very strongly, and yet that expression was not used anywhere else. Other delegations might also request that it should be noted that they had "strongly" expressed a given viewpoint.

Mr. BAZAN (Chile) said that his delegation was not the only one which had used that expression. The day before, the Indian representative had asked

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(Mr. Bazan, Chile)

the representative of the Soviet Union to agree not to use it in a paragraph reflecting the Soviet delegation's views but he had refused. In any event, he (the Chilean representative) would not insist on including the words "very strongly".

Miss MARTIN-SANE (France) said she also felt that it was best to avoid the expression, particularly since it had already been agreed not to mention the number of delegations that had expressed any given view.

Mr. SMIRNOV (Union of Soviet Socialist Republics) said he thought it necessary to define more precisely the task entrusted to the Committee by the General Assembly and to use the exact words of the resolution, i.e. "legal principles and norms".

Paragraph 77, with that amendment, was adopted.

Paragraph 78

Mr. CABRAL DE MELLO (Brazil), recalling that during the March session certain delegations had stressed that it would be preferable to consider the question of delimiting the area after the question of elaborating the proposed régime, suggested that the following sentence should be inserted after the fourth sentence in the paragraph: "The idea was also put forward that the previous establishment of an international régime would facilitate the task of determining the limits of national jurisdiction."

Mr. BADAWI (United Arab Republic) proposed that the following sentence should be inserted after the third sentence: "It was also pointed out that no international régime could be effective unless it was established in advance what area it would cover. It would therefore be necessary to refer to the need for a precise boundary in the context of the need for an international régime."

Mr. BERMAN (United Kingdom) said that the proposal just read out by the Rapporteur reflected his delegation's point of view. The Brazilian amendment dealt with the same point, the only difference being that his delegation, as well as several others including Canada and France, had expressed the view that the questions of the delimitation of the area and of the international régime should be studied simultaneously.

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Mr. PARDO (Malta) said that he did not understand the meaning of the last sentence, which spoke of recommending "that action be taken to cordon off the territorial sea".. Was the Committee competent to do that? He thought it would be preferable to delete the passage.

Mr. LEGAULT (Canada) said he also felt that the last sentence should be deleted.

Mr. PAVICEVIC (Yugoslavia) said that he shared the view of the United Kingdom representative, that is, that the questions of the delimitation of the area and of the régime should be studied simultaneously. However, since the Sub-Committee had not been unanimous on that point, Brazil's views should also be reflected in the report.

Miss MARTIN-SANE (France) noted that the representative of Malta wished to delete only the last sentence and not the entire paragraph. She also felt that since there were two schools of thought on the question, it was appropriate that both should be reflected in the report.

Mr. SCIOLLA-LAGRANGE (Italy) said that he supported the amendment proposed by the representative of the United Arab Republic. In addition, since he noted that the Rapporteur had not included in the revised wording of paragraph 33 the amendment suggested by his delegation the day before, he proposed that it should be inserted in paragraph 78 immediately after the United Arab Republic amendment. It would read as follows: "In this connexion, it was also stated that special situations like the situation of internal or marginal seas should be considered."

Mr. SMIRNOV (Union of Soviet Socialist Republics), recalling his delegation's observations concerning the boundaries of the area of the sea-bed and the ocean floor, requested that the following sentence should be inserted immediately after the Brazilian amendment so that those views would be reflected in the report: "It was noted that the existing uncertainty about the boundaries of this area could seriously hinder the formulation of legal norms governing matters relating to the exploitation of the resources of the sea-bed and the ocean floor."

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Mr. de SOTO (Peru) said he felt that discussion of the delimitation of the area served only to distract the Committee from the task entrusted to it. The report did not reflect an idea expressed by several delegations, namely, that the Committee's work should be primarily concerned with consideration of the relevant principles. His delegation therefore endorsed the Brazilian proposal, which reflected that idea.

Miss MARTIN SANE (France) proposed that the following sentence should be inserted after the fifth sentence in the paragraph on the last line of page 15: "In this connexion, some delegations observed that such a recommendation could be included in the preamble of a statement of principles on the same basis as any other general concept." That sentence reflected the views expressed in the Committee.

Mr. BERMAN (United Kingdom) said he recognized that there were two different viewpoints, as the representative of Yugoslavia had pointed out, and agreed to the wording proposed by Brazil, even though he had some reservations regarding the views that had been expressed during the March session.

Mr. de SOTO (Peru) suggested that the following sentence should be added to the paragraph: "Other delegations considered that the discussion on delimitation would serve only to distract the Committee from what constituted its real mandate."

The CHAIRMAN noted that no objections had been raised to the various amendments proposed.

Paragraph 78, as amended, was adopted.

Paragraph 79

Mr. BAZAN (Chile) pointed out that the absence of precise boundaries for the territorial sea, the continental shelf or fishing zones had not prevented the conclusion of international agreements in those fields. He therefore proposed the addition to paragraph 79 of the following sentence: "It was added, furthermore, that 'internationally agreed boundaries' of any of the maritime spaces (territorial sea, continental shelf or fisheries) do not exist and that, however, legal régimes reflected even in international conventions have been elaborated for such spaces."

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Mr. PARDO (Malta) proposed that, at the end of the first part of the sentence, the words "... in the exploration and use of the sea-bed" should be followed by the words "beyond national jurisdiction and in the exploitation of its resources". He also proposed that, in the last line, the words "the codification" should be replaced by "a partial codification".

Mr. SMIRNOV (Union of Soviet Socialist Republics) proposed that the words "it was" should be replaced by the words "some delegations".

Mr. BERMAN (United Kingdom) noted that there was a slight difference between the Rapporteur's text and the amendment proposed by Chile. The former stated a fact, whether or not one agreed, concerning the conclusions to be drawn. The second contained affirmations which several delegations would have difficulty in accepting. He suggested that the Chilean amendment should begin with the words "A view was expressed that...".

Mr. BAZAN (Chile) said that he could accept that amendment.

Mr. CABRAL DE MELLO (Brazil) said that he supported the views of the Chilean delegation.

Mr. BERMAN (United Kingdom) said that, in that case, his amendment should be worded as follows: "Some delegations expressed the view that...".

Paragraph 79, as amended, was adopted.

Paragraph 80

Mr. SMIRNOV (Union of Soviet Socialist Republics) proposed that the paragraph should begin with the words "It was suggested by some delegations..." and that the following text should be inserted after the third sentence: "The view was also expressed that the question of the revision of the Convention on the Continental Shelf could only be settled in accordance with the procedure provided for in that Convention."

Mr. PARDO (Malta) thought that paragraph 80 was somewhat unclear and he proposed that the text should be amended as follows, after the third sentence:

"The view was emphasized that a conference convened to determine principles for the delimitation of the area beyond national jurisdiction should be preceded by careful preparatory work to enlarge the prospects of agreement

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(Mr. Pardo, Malta)

on this complex question. It was stated in that connexion that the substantial body of national and international law based on the 1958 Geneva Convention on the Continental Shelf and on the interpretation of customary international law could not be ignored, nor could political realities be disregarded without increasing disagreements and conflicts, since both States Parties to the Geneva Convention and those not parties to it had been guided by their interpretations of international law in enacting national legislation or concluding bilateral agreements. Thus the Sub-Committee should concentrate...". The last few lines of paragraph 80 would remain unchanged.

Mr. BERMAN (United Kingdom) thought the text proposed by the representative of Malta less objective than the original wording. He suggested that, in the Maltese amendment, the words "the interpretation of" should be deleted and that the words "their interpretations" should be replaced by "this body".

Mr. LEGAULT (Canada) supported the United Kingdom proposal and suggested that the words "based on the 1958 Geneva Convention" should be replaced by "including the 1958 Geneva Convention".

Paragraph 80, as amended, was adopted.

Paragraph 81

Mr. EVENSEN (Norway) proposed the addition of the following sentence, the exact wording of which could be decided upon by the Rapporteur: "It was suggested on the other hand that such moratorium or freezing might cause practical difficulties."

Mr. LEGAULT (Canada) proposed that the following sentence should be added to the paragraph: "Some delegations questioned the desirability (or practicability) of imposing such a moratorium."

Mr. PARDO (Malta), supported by Mr. YANKOV (Bulgaria), supported the Norwegian proposal and suggested that the words "over the sea-bed beyond present national jurisdiction" should be added at the end of the paragraph.

Mr. BERMAN (United Kingdom) agreed with the representative of Norway, but suggested that his amendment might be replaced by the following simpler text: "This view was contested."

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Mr. de SOTO (Peru) said that he was surprised to see that paragraph included in the report. The Committee had no right to prejudge any decisions that States might take in that field. There were no grounds to justify the adoption of a moratorium or a decision to freeze claims. He supported the proposal by the representative of Malta, but proposed the addition of the sentence: "Other delegations questioned the validity of the concept of freezing claims and the legality of such a measure."

Mr. ODA (Japan) proposed that the following sentence should be added to the paragraph: "It is stated by some delegates that moratorium or freezing of claims does not necessarily mean the prohibition of exploration or exploitation of the area."

Paragraph 81, as amended by the above proposals, was adopted.

Paragraph 82

Mr. CABRAL DE MELLO (Brazil) proposed that the word "comprehensive" should be replaced by "restricted" in the second line. Actually, element (vii) dealt with liability for damage caused, which was not an aspect of State responsibility.

Mr. PARDO (Malta) proposed the deletion of the words "more comprehensive subject contained in" and their replacement by the words "framework of".

It was so decided.

Paragraph 82, as amended, was adopted.

Paragraph 83

Mr. PAVICEVIC (Yugoslavia) thought that the paragraph, as drafted, might be construed as reflecting the unanimous opinion of the Committee. He proposed the addition of the following sentence: "On the other hand, it was stated that this element should be incorporated in a declaration of principles."

Mr. ARORA (India) agreed with the proposal by the representative of Yugoslavia but suggested that it might be better expressed if the text of paragraph 83 were replaced by the following sentence: "While this element was supported by some delegations, a suggestion was made that it was premature to consider proposals concerning this question."

Paragraph 83, as amended, was adopted.

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Paragraph 84

The CHAIRMAN reminded members of the Sub-Committee that there would be no further discussions concerning the proposals submitted by delegations.

Paragraph 85

Paragraph 85 was adopted.

The meeting rose at 6.40 p.m.

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SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Held on Wednesday, 27 August 1969, at 9.15 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF THE REPORT OF THE LEGAL SUB-COMMITTEE TO THE COMMITTEE FOR THE 1969 PERIOD OF ITS WORK (A/AC.138/SC.1/9 and Add.1-3) (continued)

Mr. BADAWI (United Arab Republic), Rapporteur, introduced the revised provisional text of paragraphs 33, 34, 35-37 and 39-45 of the draft report and said that the following insertions and corrections should be made:

Paragraph 33: A sentence reading "Other delegations pointed out that so far as existing law is concerned, the sea-bed is included in the high seas" should be added at the end of the paragraph.

Paragraph 36: The phrase "on the high seas", following the words "for instance" at the end of the second sentence, should be replaced by the words "that part of the high seas which comprises the bottom"; in the third sentence, a comma should be inserted after the word "mentioned" and followed by the words "such as" and, lastly, the phrase "to which they are parties" should be added after the word "treaties".

Paragraph 37: The words "with regard" in the first sentence should be replaced by the phrase "of which the relevance" and, together with the words "was not specific and only incidental", should be placed after the word "jurisdiction"; the whole of the second sentence beginning with the word "Furthermore" and ending with the word "analogy" should be deleted, as should the word "Finally" at the beginning of the next sentence; in the latter, the words "doubtful and controverted" should be inserted between the words "or by" and the word "analogy"; in the first part of the fourth sentence, the word "only" should be inserted before the word "possible" and, in the last sentence, the phrase "of human relationships" should be deleted.

Revised paragraph 33

Mr. PARDO (Malta) felt that it would be advisable to insert the phrase "beyond the limits of national jurisdiction" after the word "sea-bed" in the sentence which was to be added to the end of the paragraph.

Mr. KOZLUK (Poland) endorsed that view. Perhaps the words "and its subsoil" should be inserted as well.

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Mr. ARORA (India) thought that the words "is comprised" in the same sentence should be replaced by the words "is included".

Mr. de SOTO (Peru) supported the suggestions of the representatives of India and Poland.

Mr. STANGHOLM (Norway) said it was difficult for his delegation to accept the formulation of that sentence, as read out by the Rapporteur, and he proposed the following wording: "international law governing the high seas is also applicable to the bottom of the sea".

The Norwegian amendment, and the addition of the words "beyond the limits of national jurisdiction", were adopted.

Mr. PAVICEVIC (Yugoslavia) said that, in the third sentence from the end of the paragraph, the words "should not automatically", preceding the words "be applicable", should be replaced by the word "cannot".

Mr. KROYER (Iceland) said that the sentence in question reflected the statements which had been made by his own delegation and he considered the wording appropriate.

Mr. PARDO (Malta) proposed retaining the words "should not" and following them with the words "and indeed cannot automatically".

It was so decided.

Revised paragraph 33, as amended, was approved.

Revised paragraph 34

Mr. HARGROVE (United States of America) proposed that paragraph 34 should be broken down into two paragraphs. The second paragraph would begin with the words "As a synthesis" (paragraph 34 bis).

Following a comment by Mr. BERMAN (United Kingdom), Mr. DEBERGH (Belgium) said that the word "synthesis" at the beginning of paragraph 34 bis could be replaced by the word "corollary". Moreover, the phrase "no one may undertake... intergovernmental organizations" should be deleted since the idea was expressed later on in the same sentence.

Paragraphs 34 and 34 bis, as amended, were adopted.

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Revised paragraph 36

Mr. PARDO (Malta) and Mr. SMIRNOV (Union of Soviet Socialist Republics) considered that the text proposed by the Rapporteur to replace the phrase "on the high seas" at the end of the second sentence was vague and did not improve the wording.

Mr. HARGROVE (United States of America) pointed out that the original text of paragraph 36 had reflected the statements made by his delegation. After being redrafted by the Soviet delegation, the wording was still close to the first version and, consequently, it should be possible to revert to the earlier formulation. However, since the phrase "on the high seas" might seem too elliptical, he proposed that it should be replaced by the expression "in the various marine environments included in the high seas - the sea-bed, water column and superjacent air space".

The United States amendment was adopted.

Mr. SMIRNOV (Union of Soviet Socialist Republics) proposed the addition in the third sentence of the word "international" before "treaties", so that the expression used would apply to all treaties, both multilateral and bilateral, and to conventions. He also proposed that there should be explicit reference in the fourth sentence to the Convention on the Continental Shelf, and that the brackets in that sentence containing the reference to the 1963 and 1959 treaties should be deleted.

The Soviet amendments were adopted.

Revised paragraph 36, as amended, was adopted.

Paragraph 37

Mr. de SOTO (Peru) pointed out that a number of words had been omitted at the end of the third sentence. The phrase should read "but these guidelines do not suffice to constitute norms".

Mr. LEGAULT (Canada) proposed the replacement of the word "imperfect" in the sixth sentence by the phrase "incomplete in respect to its application to this area".

Mr. PARDO (Malta) supported the Canadian proposal, but said that the words "inadequate and" should be added before the word "incomplete".

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Mr. BERMAN (United Kingdom) supported the Canadian amendment, but said that the addition of the word "inadequate" would reintroduce the difficulty which the Sub-Committee had tried to eliminate by deleting the word "imperfect".

Mr. STANGHOLM (Norway) said he saw no need to change the text.

Mr. SMIRNOV (Union of Soviet Socialist Republics) said that the word "Those" at the beginning of paragraph 37 should be replaced by the words "Those delegations".

With regard to the Convention on the Continental Shelf, he wondered to what extent it actually dealt with the area of the sea-bed with which the Committee was concerned.

Mr. LEGAULT (Canada) pointed out that the Convention was of interest to the Committee at least to the extent that it defined the area within national jurisdiction.

Mr. BERMAN (United Kingdom) said it would be preferable to delete the whole of the sentence referring to the Convention on the Continental Shelf, since it added nothing to the ideas expounded in paragraph 37.

Mr. DEJAMMET (France) supported the United Kingdom proposal.

Mr. BAZIN (Chile), Mr. PARDO (Malta) and Mr. HACHEME (Mauritania) were against the deletion of that sentence because it reflected a view which had in fact been expressed by some delegations.

Mr. BERMAN (United Kingdom) said that if that sentence was retained, it should at least be made clear that "Some delegations felt that... ".

Mr. KROYER (Iceland) said he fully shared the views of the representative of the United Kingdom.

The CHAIRMAN noted that all the members of the Committee apparently found the wording proposed by Canada acceptable, with the amendments suggested by Malta and the United Kingdom.

Mr. SMIRNOV (Union of Soviet Socialist Republics) pointed out that now that the second sentence of the paragraph had been deleted, the sentence which followed seemed too abrupt. A phrase such as "In their opinion" should be inserted at the beginning.

Paragraph 37, as amended, was adopted.

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Paragraph 38

Paragraph 38 was adopted without change.

Paragraph 39

Mr. PAVICEVIC (Yugoslavia) proposed the deletion from the paragraph of the two sentences beginning with "Reference to the Charter of the United Nations..." and ending with the words "was unwarranted".

Mr. SMIRNOV (Union of Soviet Socialist Republics) further proposed the deletion of the sentence which followed, beginning with the words "It was pointed out..." and ending with the words "may arise". The next sentence would then begin with the words "Other delegations...".

Paragraph 39, as amended, was adopted.

Paragraph 40

Mr. SMIRNOV (Union of Soviet Socialist Republics) said he was not very clear as to the meaning of the penultimate sentence, which referred to the Eighteen-Nation Committee on Disarmament.

Mr. LEGAULT (Canada) pointed out that the Eighteen-Nation Committee was concerned precisely with the areas under national jurisdiction, and that the Soviet Union had in fact laid before it a draft treaty concerning arms control beyond the area within national jurisdiction.

Mr. YANKOV (Bulgaria) said it would be clearer if the sentence read: "The Eighteen-Nation Disarmament Committee was already considering disarmament and arms control measures in areas within national jurisdiction...".

Mr. PARDO (Malta) observed that the Eighteen-Nation Disarmament Committee was considering disarmament measures both in areas within national jurisdiction and in those beyond the limits of national jurisdiction.

Mr. ARORA (India) said that rather than refer to "disarmament and arms control measures", it would be preferable to say: "ENDC was already considering the application of this principle in the areas within and beyond national jurisdiction".

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Mr. LEGAULT (Canada) observed that the Disarmament Committee was not only considering the application of that principle. It would seem best not to adopt the Indian representative's suggestion in order to avoid any confusion between the mandate of the Committee on the Peaceful Uses of the Sea-Bed and that of the Disarmament Committee.

Mr. VALLARTA (Mexico) proposed that the paragraph should simply be deleted.

Mr. LEGAULT (Canada) said that he was against its deletion.

Mr. ARORA (India) withdrew his suggestion.

Mr. de SOTO (Peru) proposed the following wording: "While the Geneva Disarmament Committee was already considering disarmament and arms control measures in areas within and beyond national jurisdiction...".

Paragraph 40, as amended in accordance with the Peruvian representative's proposal, was adopted.

Paragraph 41

Mr. PANYARACHUN (Thailand) felt that the word "approval" at the end of the first sentence was ambiguous.

Mr. PARDO (Malta) proposed that the end of the sentence should be altered to read "... with interest, and by some with appreciation and approval".

Mr. BERMAN (United Kingdom) considered the words "interest or approval" to be superfluous. They could easily be deleted since the text which followed was sufficiently clear.

Mr. PANYARACHUN (Thailand) felt that it was sufficient to say simply "was noted with appreciation".

Mr. KOSTOV (Bulgaria) proposed the following wording: "This initiative was noted by many delegations with appreciation, interest and approval."

Mr. PANYARACHUN (Thailand) proposed the following wording: "The initiative of the USSR in submitting a draft treaty to the Committee on Disarmament on 18 March 1969 was noted with approval and interest." He could accept the word "approval" in that context.

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Mr. HARGROVE (United States of America) proposed the wording "... was noted by some delegations...", which was in keeping with the facts.

Mr. SMIRNOV (Union of Soviet Socialist Republics) said that he favoured the Thai representative's suggestion but felt that it would be improved if it read: "... was welcomed by some delegations".

Paragraph 41, as amended in accordance with the Thai and Soviet representatives' proposals, was adopted.

Paragraph 42

Mr. SMIRNOV (Union of Soviet Socialist Republics) proposed that the words "should be prohibited" at the end of the first sentence of the paragraph should be deleted and the word "is" should be inserted between "activity" and "incompatible".

Mr. BRECKENRIDGE (Ceylon) believed that it should be made clear in the first sentence that the paragraph dealt with military activity on the sea-bed.

Mr. HARGROVE (United States of America) proposed that the wording "any military activity on the sea-bed" should be used. He also felt that it would be useful to insert foot-notes concerning the treaties to assist future readers.

Paragraph 42, as amended in accordance with the Soviet representative's proposal was adopted.

Paragraphs 43 and 44

Paragraphs 43 and 44 were adopted without change.

Paragraph 45

Mr. ODA (Japan) proposed that the first sentence should be reworded as follows: "It was pointed out that the sovereign rights granted to the coastal State under the Continental Shelf Convention were limited for the purpose of exploring the continental shelf and exploiting its natural resources and therefore were quite irrelevant to its military uses; furthermore, the...".

Mr. PARDO (Malta) supported the proposal.

Paragraph 45, as amended in accordance with the proposal, was adopted.

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Paragraphs 46 and 47

Paragraphs 46 and 47 were adopted.

The CHAIRMAN invited the members of the Sub-Committee to consider, paragraph by paragraph, the part of the draft report reproduced in addendum 3 (A/AC.138/SC.1/9/Add.3).

First paragraph

Mr. KROYER (Iceland) and Mr. PANYARACHUN (Thailand) expressed approval of the wording of the first paragraph, to which they proposed two minor drafting changes.

Mr. SMIRNOV (Union of Soviet Socialist Republics) considered that it would be useful to add a sentence to the first paragraph indicating the objective towards which the Sub-Committee had been working, that is, the elaboration of legal principles which would promote co-operation in the exploitation and utilization of the sea-bed. The sentence might read: "The necessity was recognized of working out, as a first step, a declaration of legal principles which would promote international co-operation in the investigation and utilization of the sea-bed and ocean floor and the exploitation of its resources for the benefit of all mankind."

Mr. ARORA (India), supported by Mr. de SOTO (Peru), proposed that the statement should be shortened to read: "The necessity was recognized of working out a declaration of legal principles."

Mr. SMIRNOV (Union of Soviet Socialist Republics) said that he had no objection to the adoption of a shorter statement. Nevertheless, the members of the Sub-Committee appeared to agree that the working out of legal principles should only be a first step.

Mr. RAZAKANAIVO (Madagascar) supported the Soviet proposal but suggested that a statement should be added indicating that the object sought had not been attained because of certain differences of opinion.

Mr. BAZAN (Chile) said that it would also be desirable to include a reference to the necessity of establishing an international régime.

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Following an exchange of views in which Mr. BRECKENRIDGE (Ceylon), Mr. PARDO (Malta), Mr. VALLARTA (Mexico) and Mr. de SOTO (Peru) took part, the delegations concerned expressed support for the Indian proposal.

Mr. YANKOV (Bulgaria) said that he also supported the Indian proposal but found it too general. The sentence should reproduce the wording of the relevant General Assembly resolution: the words "declaration of legal principles" should be followed by the clause in operative paragraph 2 (a) of resolution 2467 A (XXIII) reading: "... which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole".

Mr. VALLARTA (Mexico) said that there appeared to be two points of view in the Sub-Committee, one favouring a declaration of general principles and the other favouring a more detailed statement of principles.

Mr. BAZAN (Chile) said that attention should likewise be drawn to the need for a second stage, i.e., the establishment of international machinery to ensure the application of the principles.

The CHAIRMAN said that the proposal made by the Soviet representative with the amendment proposed by India and Bulgaria appeared to be acceptable. The Chilean proposal still had to be considered.

Mr. YANKOV (Bulgaria) pointed out that the Sub-Committee was engaged in working out a synthesis dealing with the statement of legal principles. Paragraph 2 (a) of General Assembly resolution 2467 (XXIII) called for the elaboration of a statement of principles and for study of the economic aspects.

Mr. ARORA (India) pointed out that the Chilean proposal was related to the Soviet proposal.

Mr. PAVICEVIC (Yugoslavia) said that if the Soviet Union agreed to withdraw the second part of its proposal, Chile should also withdraw its proposal.

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Mr. BAZAN (Chile) agreed to withdraw his proposal.

Mr. SMIRNOV (Union of Soviet Socialist Republics) considered that the areas of agreement and disagreement should be more clearly defined.

Mr. VALLARTA (Mexico), supported by Mr. de SOTO (Peru) and Mr. ARORA (India), stressed that the Sub-Committee should draw up a synthesis and it should concentrate on establishing the common denominator of all the viewpoints expressed.

Mr. HARGROVE (United States of America) felt that a kind of common denominator could be worked out if the proposals on which no agreement had been reached were not taken into account. Accordingly, the question of underscoring areas of agreement and disagreement should be dropped.

The first paragraph, as amended in accordance with the proposals of the Soviet Union, India and Bulgaria, was adopted.

Second and third paragraphs

The second and third paragraphs were adopted.

Fourth, fifth and sixth paragraphs

Mr. SMIRNOV (Union of Soviet Socialist Republics) proposed the deletion in the sixth paragraph of the phrase: "upon which a number of delegations believed that a declaration of principles should be based". Furthermore, there was a certain lack of logic in the text: the fourth paragraph referred to a "common denominator", but the fifth paragraph contained the phrase "though acceptable to many".

Mr. PARDO (Malta), supported by Mr. PANYARACHUN (Thailand), proposed that the word "over-all" at the beginning of the sixth paragraph should be deleted.

Mr. STANGHOLM (Norway) suggested that the word "over-all" should be replaced by the word "important".

Mr. ARORA (India) considered that the Rapporteur had summed up the situation accurately by referring to a common denominator in the fourth paragraph. In the fifth paragraph, the words "acceptable to many" should be replaced by "acceptable to all" and the term "by others" should be replaced by "by some". In the sixth paragraph, his delegation would accept the adjective "important" proposed by Norway, but it was also perfectly possible to dispense with any adjective.

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Mr. HARGROVE (United States of America) supported the suggestions made by the delegations of India and the Soviet Union. With regard to the fifth paragraph, his delegation felt that in order to reflect exactly how the debate had developed, the formulation underlined in the paragraph should not refer solely to the granting of exclusive rights without regard for the question of claiming or exercising those rights. That idea was in fact only a corollary of the idea expressed in the fourth paragraph. Furthermore, in the English text the word "not" in the first line should be placed immediately before the word "sufficiently". His delegation would take into consideration the amendments which had been proposed to the sixth paragraph.

Mr. SMIRNOV (Union of Soviet Socialist Republics) did not think that it would be advisable in the synthesis to call the sea-bed and the subsoil thereof "part" of the common heritage of mankind, even if they had been referred to in that way during the discussions.

Mr. PARDO (Malta) said that in the sixth paragraph the words "are part of the" should be replaced by the words "are the".

Mr. DEJAMMET (France) said that he personally felt that it was quite in order for the main ideas put forward during the discussions to be reflected in the synthesis. The term "are part of the common heritage" had been used frequently and he felt that they could be retained.

The meeting rose at 12.15 a.m.

SUMMARY RECORD OF THE TWENTY-NINTH MEETING

Held on Thursday, 28 August 1969, at 8.40 p.m.

Chairman: Mr. GALINDO POHL El Salvador

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CONSIDERATION OF THE REPORT OF THE LEGAL SUB-COMMITTEE TO THE COMMITTEE FOR THE 1969 PERIOD OF ITS WORK (A/AC.138/SC.1/9/Add.1-3) (concluded)

Mr. BADAWI (United Arab Republic), Rapporteur, introduced a new text of the Synthesis, which was intended to replace that appearing in document A/AC.138/SC.1/9/Add.3.

The new text was adopted with minor drafting changes.

Mr. YANKOV (Bulgaria) proposed that the text of the Synthesis should be inserted in the draft report between paragraphs 83 and 84. The heading "(9) Synthesis" immediately preceding paragraph 75 of the report could then be deleted, as could the words "and '(9) synthesis'" in paragraph 84.

It was so agreed.

The draft report (A/AC.138/SC.1/9/Add.1-3), as a whole, as amended, was adopted.

COMPLETION OF THE WORK OF THE SUB-COMMITTEE

After an exchange of courtesies, the CHAIRMAN declared the work of the Sub-Committee for the 1969 period concluded.

The meeting rose at 9.30 p.m.
