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Summary records of meetings of the First Committee
17th meeting

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for the proposals by the Group of 77 and France for the Eight-Power proposals.

46. If he saw no objection he would take it that the list was acceptable to the Committee.

It was so decided.

47. Mr. ZEGERS (Chile) requested the Secretariat to prepare a study in co-operation with the United Nations Conference on Trade and Development on the economic implications of sea-bed mining in accordance with the provisions of General Assembly resolution 2750 A (XXV) before the next session of the Conference. That study should examine three basic aspects of the question: the updating of the description of activities being carried out in the area with particular emphasis on nodule mining; further analysis of possible solutions to minimize the adverse economic effects of sea-bed mining, taking into account the solutions or alternative methods proposed in the reports by the Secretary-General and the United Nations Conference on Trade and Development, the debates in the Committee and the summaries by the Chairman of the Committee; consideration of possible measures to be adopted by the Authority to minimize such adverse effects and related powers.

48. Mr. RATINER (United States of America) said that the precise terms of reference of such a study should be discussed in the Committee. The question of the economic implication of sea-bed mining had already been considered and his delegation had detected a shifting of views on the subject in the course of the discussions. He wondered whether there should be an updating of the study or whether, in presenting the report in document A/CONF.62/25, the Secretary-General had not completed the mandate entrusted to him under General Assembly resolution 2750 (XXV). His delegation would like to ensure that such a study presented a properly balanced view. He would like to have an opportunity to consider the suggestion by the representative of Chile and to state his views at a future meeting of the Committee.

49. Mr. IMAM (Kuwait) said that when his delegation had submitted the draft resolution to the First Committee of the General Assembly requesting a study of the adverse effects of sea-bed mining on land-based production, it had asked for periodic reports on the subject. The representative of Chile had not asked for a new study, he had merely requested the Secretariat to take note of his request in order to ensure that future reports were as pertinent and comprehensive as possible and took account of all relevant proposals.

50. Miss MARTIN-SANE (France) said that before stating its opinion, her delegation wished to know whether the matter under discussion was the position of the Chilean delegation, or whether the latter wished the Committee itself to take a decision. In the second case, she wished to reserve her delegation's position.

51. The CHAIRMAN said that all delegations had the right to request the Secretariat to take note of items which they would like to see included in its report. Two delegations had requested the Secretariat to provide an updating of the economic implications of sea-bed mining in time for the next session of the Conference. The representative of the United States could take the floor at future meetings of the Committee to request the inclusion of additional material or to ensure that certain matters were discussed.

The meeting rose at 6.50 p.m.

17th meeting

Tuesday, 27 August 1974, at 3.30 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

Statement by the Secretary of the Committee

1. Mr. LEVY recalled that at the previous meeting the representative of Chile had referred to General Assembly resolution 2750 A (XXV) and had requested the Secretariat to pursue the study of the economic implications of the exploitation of sea-bed resources mentioned therein. The resolution requested the Secretary-General to identify the problems arising from the production of certain minerals from the area beyond the limits of national jurisdiction, to propose effective measures for dealing with those problems, and to keep the matter under constant review so as to submit supplementary information annually or whenever it was necessary and recommend additional measures in the light of economic, scientific and technological developments, in co-operation with the United Nations Conference on Trade and Development, specialized agencies and other competent organizations of the United Nations system. In accordance with the provisions of that resolution, the Secretariat hoped to be able to submit at the next session a short study supplementing the study submitted as document A/CONF.62/25, which it would, essentially, update, taking into account the discussion in the Committee. In that connexion, he appealed to all Governments, official bodies and intergovernmental institutions to provide the Secretariat with all the necessary information so that the Secretariat would not need to have recourse to articles or press cuttings which were not always accurate.

Report of the Chairman of the Working Group

2. Mr. PINTO (Sri Lanka) recalled that at its 14th meeting on 19 August 1974 the Committee had established a Working Group charged with the responsibility of pursuing negotiations on draft articles 1-21 as contained in document A/CONF.62/C.1/L.3, with special emphasis on draft article 9 as well as on "conditions of exploration and exploitation". The Working Group had met for the first time on 21 August 1974 and had since then held six meetings. In order to enable the Chairman of the Committee to report at the appropriate time to the plenary meeting of the Conference on the work of the Committee, it had been decided that the Working Group should not hold any more meetings at the current session and that he should report at the current meeting to the Committee on what had taken place thus far.

3. In the course of a discussion on its methods of work, several delegations had supported the view that the Working Group should immediately take up draft article 9 and the conditions of exploration and exploitation, while some other representatives had felt that more progress could be made if the Working Group were to deal with the other draft articles, with regard to some of which there seemed to be some prospect of an early reconciliation of views. It had eventually been agreed that the Group should concentrate on draft article 9 and the conditions of exploration and exploitation, since that would accord more with its terms of reference, as approved by the Committee, which laid emphasis on that subject. It had also

been agreed that the most practical way to proceed would be to begin discussing draft article 9. It had been felt that in due course a point would be reached when it would be appropriate to discuss the conditions of exploration and exploitation, at which time the Group would undertake consideration of that subject.

4. With regard to the conduct of negotiations on draft article 9, it had been agreed that account should be taken of the concerns of all delegations and that that principle ought to be given natural and just expression. Consequently, delegations would be free to address themselves to any of the four versions of draft article 9 of document A/CONF.62/C.1/L.3, it being understood that all four alternative versions had equal status before the Group. In discussing one alternative, however, any delegation would have the right to invoke the essential elements of any other alternative when necessary. In the event, the discussion had centred around alternative B, the text submitted by the Group of 77. Under the procedure delegations could make, in regard to alternative (B), tentative observations not necessarily representing their final views, but designed to elicit certain clarifications of substance that would indicate where there might be common ground.

5. He felt it was essential to respect the privacy of the negotiations that had taken place and to protect the frankness, cordiality and trust of the members of the Working Group who had participated in those discussions. That was why he was restricting himself to outlining in his report the very considerable number of issues of substance that had been probed and analysed in the search for solutions acceptable to all, and also why he would not refer to the anonymous working papers submitted to the Group to facilitate its work.

6. Of the principal matters discussed, mention should be made first of the question of who could explore and exploit the area. Both paragraphs of alternative B of draft article 9 were relevant to that issue. The first paragraph empowered and required the Authority to conduct directly all activities of exploration and exploitation and other related activities, including those of scientific research, in other words, the Authority was itself required to explore and exploit the area, using finance, technology and other resources acquired by it for that purpose. The second paragraph conferred on the Authority discretionary powers to utilize "juridical or natural persons" in the conduct of the activities contemplated. That might be viewed as a preliminary phase of the Authority's existence when, having yet to acquire the means to explore and exploit the area, it contracted with others to discharge some of its functions and responsibilities. It was necessary to stress the integral nature of a concept that was fundamental to both paragraphs of alternative B since some of the obstacles to agreement on the provisions of the second paragraph could be comprehended and assessed only in the light of the basic concept of the Authority as the sole representative of mankind for carrying out exploration and exploitation in the area.

7. While maintaining an awareness of that fundamental concept, the Group had decided to focus its attention for the time being on the second paragraph of alternative B.

8. As he had said, the second paragraph referred to "juridical or natural persons" as possible instruments of the Authority for exploration and exploitation activities. There was no specific mention of States or State enterprises for that purpose. The supporters of alternative B had frequently and categorically stated that the phrase "juridical or natural persons" was also intended to include States and State enterprises. However, States in which the juridical concept of the private company had been rejected and was no longer known, and where the concept of juridical personality might differ from that in other States, might be apprehensive regarding the reference to "juridical or natural persons"—which could, in that unqualified form, be interpreted not merely as excluding States and State enterprises, but also as discriminating against them in favour of private companies, since the latter immediately came to mind when reference was made to the "juridical persons" familiar under the law of States with a different social and economic system. Specific reference to "States" and possibly to "State enterprises" would be necessary in the second paragraph of alternative B if such apprehensions were to be allayed.

9. It had been noted that alternative B of draft article 9, as currently worded, made no mention of States as such. Should it be decided, in order to meet the concerns of some countries, to make specific mention of a right of participation of States in exploration and exploitation activities, it would be necessary to consider whether that right should be conferred only on States parties to the convention—the "Contracting Parties"—or simply on "States", whether or not they were parties to the convention. Some held the view that, since the resources of the area were the common heritage of mankind, all States, whether or not parties to the convention, should have the right to participate in exploration and exploitation, provided they undertook to accept the Authority's conditions. On the other hand, it might be said that the right of participation should be available only to those who were legally bound by the convention and had accepted in full the obligations and responsibilities flowing from it.

10. Another issue arising in that connexion was how, if at all, compliance with the terms and conditions of the convention by States that were not parties to it might be secured. Under the general rule in article 34 of the Vienna Convention on the Law of Treaties, a treaty did not create either obligations or rights for a third State without its consent. However, article 36 of that Convention provided that a right might arise for third States under a treaty in certain specified circumstances, and required that a third State exercising such a right should comply with the conditions for its exercise provided for in the treaty or established in conformity with it. It might be said that strict compliance with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, which appeared in General Assembly resolution 2749 (XXV), would have the effect of bringing into being "an international treaty of a universal character generally agreed upon", so that there would be no States that were not parties to it, and that problem would not arise. On the other hand, if some States—and particularly those possessing the technical and financial capacity to explore and exploit the area—did not, in fact, become parties to the convention, choosing to remain outside the régime established by it, some might feel that the common heritage concept was not adequately observed unless a means could be found to ensure that States not parties complied with at least certain basic duties and responsibilities imposed by the convention.

11. A different problem, but one associated with the idea of State participation, might be mentioned, namely, whether a State that had entered into contractual arrangements with the Authority would, in the event of breach by that State of its obligations, be entitled to have recourse to its traditional jurisdictional immunities. While the matter had still to be explored in detail, it might be useful to bear in mind the possibility of reflecting in the results of the Conference's work the principle that a State could not in those circumstances invoke its traditional immunities, particularly in a case where a dispute had been adjudicated by a tribunal with appropriate jurisdiction.

12. A second issue of importance that would need to be resolved—the extent of the discretionary power of the Authority and the limits that should be imposed on it by the convention—had given rise to a whole series of problems. The mineral wealth of the sea-bed was the common heritage of mankind and that wealth and the benefits to be derived from it must be available and accessible to all. It might be argued that, while alternative B of draft article 9 contained no actual restriction on access to the minerals of the area, the comprehensive powers conferred on the Authority, and the fact that its

power to utilize juridical or natural persons in exploration and exploitation activities was discretionary and permissive, rather than mandatory—as reflected in the opening phrase of paragraph 2, "The Authority may . . . confer certain tasks"—produced uncertainty and lack of confidence in the minds of those to whom access to sea-bed minerals was vitally necessary for economic growth and stability.

13. It might be necessary to allay those apprehensions by including provisions that would demonstrate beyond a doubt that the Authority would in fact be required to explore and exploit the area in accordance with the convention, in other words that there would be no possibility of inaction on its part. The clear injunction in paragraph 5 of the Declaration of Principles required that the area should be open to use by all States without discrimination. In that connexion it could be suggested that the opening phrase of paragraph 2 might be changed from "The Authority may . . ." to "The Authority shall . . .". It might also be thought desirable to demonstrate beyond doubt that in the Authority, States were not creating an entity endowed with a wide range of discretionary powers comparable to that of a sovereign State. The inclusion in the convention of certain basic conditions that would limit or orient the discretionary powers of the Authority would be welcome to some States, and a reference to such basic conditions might appear in paragraph 2 of draft article 9 as well.

14. Alternative B of draft article 9 covered other areas where the wide discretion of the Authority had given rise to uncertainty and to possibly excessive caution. Thus, in addition to the Authority's implied discretion as to whether or not to explore and exploit the area, it was also given discretion to decide what "tasks", if any, might be assigned to other entities, and a choice of the legal devices by which the Authority could enter into a relationship with one or more of such entities. As to the "tasks" contemplated, those were listed in paragraph 5 of the basic conditions as set forth in the Committee's document A/CONF.62/C.1/L.7. It would be within the discretion of the Authority to assign one or more such tasks to contractors. In exercising that discretion, the Authority might be expected to pay due regard to considerations of efficiency and financial viability; but it might assist the negotiations if some assurance of that were to appear, perhaps among the basic conditions of exploitation.

15. The Authority's discretion in the selection of legal devices by which to establish a relationship with the entity of its choice might be regarded as already circumscribed by the reference in paragraph 2 of variant B, ". . . service contracts, or association or through any other means . . .". It seemed clear that the drafters had not intended there to give an unfettered discretion to the Authority. The range of devices opened to use by the Authority was limited, it would seem, by the *ejusdem generis* rule: only contractual arrangements could be entered into. As the list of legal devices mentioned was not exhaustive, and perhaps did not need to be, it might be considered whether a reference there to "appropriate contractual arrangements" would not offer flexibility and brevity, while remaining within the limitation to the contractual devices contemplated by the drafters, and excluding other types of legal arrangements which they regarded as unacceptable in that context.

16. Again, there was the discretionary power of the Authority to select entities to which it would assign tasks and with which it would enter into contractual arrangements for their performance. As he had noted in another context, the Authority was empowered to choose from among "juridical or natural persons", a phrase which had time and time again been interpreted by its drafters as clearly including States, as being persons under international law, and State enterprises, as being juridical persons under the domestic law of the State of their incorporation or registration. However, there were States under whose social and economic system the private company was no longer known, and which might regard the phrase "juridical or natural persons" as unduly restrictive and inadequate to cover their concept of the State enterprise. It would seem necessary to accommodate those views and to consider the possibility of distinctions of a social, economic and legal character that might be made between private companies, on the one hand, and State enterprises, on the other, in the treatment accorded to each in dealing with the Authority. Under alternative B of draft article 9, read together with subparagraph 6 (*b*) of the associated basic conditions, selection of partners by the Authority must be "on a competitive basis"; that foreshadowed a non-discriminatory screening system but stopped short of an explicit statement to that effect. It might be necessary to consider more detailed treatment that would make explicit the non-discriminatory nature of the system of selection. In doing so, due account would have to be taken of the view of the drafters of alternative B that reference to criteria aimed at the redressing of social and economic imbalances—such as that reflected in subparagraph 6 (*b*) of the basic conditions, on the need for direct participation by the developing countries—would not be treated as "discriminatory" in that sense.

17. Finally, mention might be made of the possibility of limiting the Authority's discretion in two other ways: first, by requiring that contracts be awarded to entities within a State only upon the concurrence of that State and, secondly, by specifying the maximum number of contracts that might be awarded to a single State or to entities within that State. Further negotiations would be required before the positions of States became clear on those matters.

18. A third issue, the last to which he would refer, had to do with the exercise of control by the Authority over the entity with which it had contracted to carry out one or more specific tasks. Alternative B, paragraph 2, of draft article 9 required that the terms of the contracts entered into by the Authority should ensure its direct and effective control at all times over the activities covered. According to one view, control over the affairs of a private company could all too easily degenerate into interference, with a corresponding reduction of efficiency and serious danger to viability. Even if the idea that the Authority would exercise "direct and effective control" were to be within the accepted range of ideas, its further elaboration would be necessary. Paragraph 4 of the basic conditions did no more than add the idea that such control would be exercised "through appropriate institutional arrangements". While that addition seemed to contemplate a stable and equitable system of control, the elements of which would be known to prospective contractors beforehand, it would assist the negotiations if further light could be thrown on the details of the proposed system. The modalities of the exercise of control would be important to discuss. Would it, for example, satisfy the concept of "direct" control if the Authority were to delegate its own responsibility to maintain control to the State of which its partner entity was a national? To what extent would regular visits and inspections be part of the system? Would it not be reasonable to contemplate separate modalities of control for States, on the one hand, and the other entities on the other, in recognition of the fundamental differences that clearly existed between States and private companies?

19. His report had perhaps been more diffuse and vague than usual. That was the result of the difficulty which he had had in reconciling two separate objectives that he had had in mind, namely, to outline for the Committee certain principal issues of substance with respect to which negotiations were taking place and, at the same time, to protect the privacy of those negotiations and scrupulously to avoid any implication that proposals had been made or positions taken which might retard frankness in the future. In his opinion, a good deal of progress had been made and a sound foundation laid for further work.

20. He had already indicated that the negotiations had in fact centred around alternative B of draft article 9, submitted to the First Committee with the support of the Group of 77, and

also, to some extent, around the basic conditions in document A/CONF.62/C.1/L.7, supported by the Group of 77 and other States. He had naturally had to concentrate in his report on the various ideas that had emerged in the course of negotiations and which, if accepted, could result in amendment of the present text. The fact that many ideas had been put forward and noted in his report in no way detracted from the importance of the basic texts of the Group of 77 and did not imply any reduction of the support they now enjoyed.

21. He paid a tribute to all those whose efforts had made possible the informal meetings of the Committee and the meetings of the Working Group and to the Chairman of the Committee whose patience, wisdom and diplomacy had greatly contributed to the progress achieved during the session.

22. Mr. RAO (India) said that the work of the First Committee gave cause for both satisfaction and dissatisfaction: dissatisfaction because it had not been able to reach agreement on the major issues before it, especially as there was only one session left to finalize the text of the convention, and satisfaction because the crucial issues concerning the régime of the international area had been identified and the opposing points of view considered with all the attention they had deserved.

23. The concept of the common heritage of mankind was not only a conventional norm but a peremptory norm of international law from which no derogation was permitted. One of its corollaries was that no State or person, natural or juridical, could appropriate the area or its resources or, consequently, act unilaterally in the area. The essential principles of the convention should be in consonance with that basic norm.

24. The Committee had studied and analysed in detail two main issues, namely, the system of exploration and exploitation, and the conditions of exploration and exploitation. The most significant development at the current session had been the submission of proposals by the Group of 77 on those two issues—proposals which had been supported by over 110 delegations. They were a realistic compromise designed to advance the work of the Committee and facilitate general agreement. The specific proposal on the system of exploitation was set forth in alternative B of article 9 (A/CONF.62/C.1/L.3). The concept of the role of the Authority in that proposal was completely different from that in the proposals submitted by the industrialized countries. The United States proposal (A/CONF.62/C.1/L.6), the Eight-Power text (A/CONF.62/C.1/L.8) and the Japanese text (A/CONF.62/C.1/L.9) provided that the Authority would have only regulatory powers, whereas under the Group of 77 proposal (A/CONF.62/C.1/L.7) the Authority would be a strong international body with comprehensive powers in the area.

25. His delegation did not feel it would be useful to elaborate on the so-called conditions of exploration and exploitation in the draft convention since that task ought to be left for the Authority itself. The Group of 77, however, in a spirit of compromise and wishing to meet the concerns of the technologically advanced countries, had submitted a comprehensive proposal on that question: while it provided that, as a necessary corollary of the principle of the common heritage of mankind, the title to the area and its resources would be vested in the Authority on behalf of mankind as a whole, it also provided for a number of guarantees for the exploiter. It was to be hoped that the gesture of the developing countries would not be in vain.

26. Mr. PALACIOS (Bolivia) said that the group of land-locked and other geographically disadvantaged countries had submitted to the Working Group a new text for article 7, paragraph 2. The text read as follows:

> "Participation of land-locked and other geographically disadvantaged States in the exploration of the area and the exploitation of its resources shall be promoted and protected, having due regard to the special needs and interests of these States, in order to overcome the adverse effects of their disadvantaged geographical location on their economy and development."

27. That text had been adopted by consensus by the Group to replace the wording proposed by the representative of Singapore. The intention was to ensure that the exploration of the area and exploitation of its resources would be conducted in accordance with the principles of equality and justice, which was why it was essential to take account of the special difficulties faced by the land-locked and other geographically disadvantaged States.

28. The CHAIRMAN said that, if he heard no objections, he would take it that the Committee agreed to replace the text of article 7, paragraph 2, as set forth in document A/CONF.62/C.1/L.3, by the text just proposed by the representative of Bolivia.

It was so decided.

29. The CHAIRMAN said that, if there were no objections, he would consider that the Committee had decided to include *in extenso* the statement made by the Chairman of the Working Group in the summary record of the meeting.

It was so decided.

Consideration of the statement of activities of the Committee (A/CONF.62/C.1/L.10)

30. Mr. MOTT (Australia), Rapporteur, thanked the delegations that had communicated to him their comments on the draft text which he had distributed. Those comments had enabled him to prepare the statement which was now being submitted officially to the Committee.

31. Several changes needed to be embodied in the text.

32. First, in the fourth paragraph of section IV the text should state that two working papers had been tabled on the subject of the economic effects of deep sea-bed exploitation, and the missing symbol (A/CONF.62/C.1/L.11) should be added.

33. Secondly, the following phrase should replace that appearing between square brackets in the sixth paragraph of the same section: "Following reference to General Assembly resolution 2750 A (XXV) and a request by one delegation, the Secretariat informed the Committee that, in accordance with that resolution, it would prepare a brief and concise follow-up study to the previous report (A/CONF.62/25) on the economic implications of sea-bed mining, taking into account the discussions that had taken place during this session of the Conference, for presentation at the next session of the Conference."

34. Thirdly, the seventh paragraph should state that four documents had been tabled and introduced on the subject of conditions of exploration and exploitation, and the missing symbol (A/CONF.62/C.1/L.9) should be added.

35. Fourthly, since Zaire had replaced Madagascar among the representatives of the African group of countries in the working group, the list of members of that group should be modified accordingly.

36. Finally, the Rapporteur would read out later the phrase that would complete section VI of the statement. Furthermore, the document would include two annexes which would likewise be added at a later stage.

37. Mr. WARIOBA (United Republic of Tanzania) said that his delegation, like the Indian delegation, was experiencing mixed feelings at the conclusion of the second session of the Third United Nations Conference on the Law of the Sea. Admittedly, it had entertained no great hopes that the session would lead to the signature of a convention, but it had nevertheless expected much greater results than had actually been achieved. It could not, however, be denied that considerable progress had been made, to which the First Committee had contributed not a little.

38. He wished to make some remarks of a general nature on the statement of activities of the First Committee, which would apply equally to the statements that would be submitted by the other Committees. He regretted that his delegation had not been given an opportunity of making its views known before a decision on the statement had been taken at a plenary meeting. He had been unable to attend that meeting, having been informed too late that it was being held. In those circumstances, it was only with feelings of the greatest hesitation that he accepted the statement submitted, in view of the reservations which he wished to set forth regarding its nature.

39. It had been decided that the Committee would confine itself to submitting a statement of facts for the record and for purposes of information. Yet if one considered document A/CONF.62/C.1/L.10, it was legitimate to ask what was its real usefulness. It dealt, in the main, with the structure of the Committee, its terms of reference and the documentation that it had used. If that information was intended for the Committee, it was clearly useless, and if it was intended for the Governments represented at the Conference or for the public, it obviously failed in its aim, since what the Governments and the public expected was information about the work of the session. On that point, the statement was completely inadequate. Mention was made of the summary of discussions given by the Chairman, presented as reflecting personal opinions and committing no delegation. Yet if it was desired to ensure that the Caracas Conference would not be considered a failure, it was, on the contrary, important to give an account of the positions taken by the delegations, which actually represented the results of the Committee's work. The statement should therefore have reflected the trends that had emerged, as they found expression, for instance, in the statements made by the Chairman of the Group of 77, and should not have been confined to mentioning the statements made by the Chairman of the Committee and the Chairman of the Working Group, which were not binding on delegations.

40. On the other hand, where reference was made to documents A/CONF.62/C.1/L.6 to 8, which dealt with the vitally important question of conditions of exploration and exploitation, they were dismissed in a single line without the slightest mention of the work which had led to their preparation.

41. In the statement, emphasis was placed mainly on questions connected with the organization of work. For example, the last paragraph of section IV dealt with the establishment and functioning of the Working Group and, in that connexion, reference was made to the summary records of the 14th, 15th and 16th meetings of the Committee. It would thus appear that the Committee attached particular importance to that question. Yet it was actually a mere question of procedure, on which there had been general agreement that it should be considered as of secondary importance in comparison with the detailed discussions and persevering negotiations that had taken place within the Committee. However, since it had been deemed appropriate to stress that point, his delegation wished to express the most serious reservations with regard to the last phrase of the paragraph, for the summary records cited as references did not constitute an adequate and balanced source of information. In particular, in the record of the 15th meeting, where reference was made to the possible reopening of the issue of the decision taken to set up a negotiating group, the statement made by representatives favourable to that possible course had been fully summarized, whereas the purpose of certain delegations—which had nevertheless explained their positions on that point at length—to reject it, were passed over in complete silence. His delegation considered that it was not an issue of primary importance and, in fact, it did not see that the final paragraph of section IV was essential, and suggested that it should simply be deleted in order to avoid the recording of unduly incomplete information.

42. He considered that the statement of activities in no way reflected the work that had been accomplished at Caracas, and that it left the false impression that the Conference was ending in failure. He would have preferred an objective assessment of the work of the Committee to the existing statement of activities.

43. The CHAIRMAN observed that the question of the nature and content of the document in question had been examined at length and had been discussed in the General Committee of the Conference. Whatever the individual views of delegations might be, the General Committee and the plenary of the Conference itself had decided to prepare the statement in the form presented. Therefore it was now a matter to be considered by the Conference in a plenary meeting. The Rapporteur would note the suggestions made by the Tanzanian representative and would transmit them to the Rapporteur-General.

44. He agreed that perhaps the last paragraph of section IV of the statement was not essential, and suggested that it should be deleted.

45. Mr. ZEGERS (Chile) shared the view of the Tanzanian representative with regard to the formula adopted for the report on the Committee's work. His delegation had, however, bowed to the decision which had been taken officially and which could not now be rejected.

46. Mr. KASEMSRI (Thailand) agreed that it would be desirable to delete the last paragraph of section IV. However, if that was done, specific mention should also be made in that document of the fact that the composition of the Working Group should not constitute a precedent for the composition of any similar bodies that might be set up in the future.

47. Mr. VANDERPUYE (Ghana) was strongly opposed to the idea of not mentioning the summary records. In view of the form in which the statement of activities appeared, there should be available a further source of information on the Committee's work.

48. The CHAIRMAN said that no decision had yet been taken in that regard. Moreover, the statements presented by the Rapporteur of the Committee to the Rapporteur-General were not binding on the Committee, and he felt it was useless to revert to a point which had already been discussed at length. Any criticism of the Rapporteur's statement should be made in a plenary meeting.

49. Mr. DE SOTO (Peru) shared the opinion of the Tanzanian representative concerning the substance of the statement, and agreed that it was essential to reflect the various trends of the discussions.

50. However, it had finally been decided that the Rapporteur would be asked to confine himself to submitting a factual statement. The Rapporteur had done his best, considering that he had been given little latitude. The decision on the nature of the statement of activities might be regrettable, but it could not be reversed now. Moreover, the Chairman had pointed out that the statement was not binding on the Committee. However, the language used, particularly in section VII which stated that the Committee "recommends", gave rise to some doubts in that connexion. Perhaps the wording should be amended to make it quite clear that the Committee was not bound by the statement.

51. The CHAIRMAN said that the Committee could not in any case be bound since it had taken no decision. Having held discussions with the Peruvian representative and the Rapporteur, he felt that it was not essential to make any changes.

52. Mr. MOTT (Australia), Rapporteur, read out the following text which he had prepared for Section VI of the statement of activities of the Committee:

> "At the 17th meeting, the Chairman of the working group gave a preliminary report to the Committee on the work done in the Group, which related to draft article 9 of the

articles relating to the principles of the régime. By decision of the Committee, this statement appears *in extenso* in the record of that meeting. His report contained personal views and was not binding on any delegation. A delegation commented on the statement of the Chairman of the working group and its remarks are summarized in the record of the session."

53. Mr. RATINER (United States of America) said that he thought it would be more correct to speak of the terms of reference of the Working Group and not merely of consideration of article 9, which constituted only a part of those terms of reference.

54. The CHAIRMAN said that, if there were no objections, he would take it that the Committee had decided to take note of the statement of activities (A/CONF.62/C.1/L.10), with the amendments proposed.

It was so decided.

55. Mr. HASSOUNA (Egypt) said that in the view of his delegation, one of the main features of the current session of the Committee was the constructive role played by the Group of 77, which was not to be wondered at since the developing countries had always defended the concept of the common heritage of mankind adopted by the General Assembly at its twenty-fifth session. Conscious of the fact that article 9 was the corner-stone of the future régime for the international area, the Group of 77 had submitted a new draft article to replace the two alternatives which members of the Group had submitted to the sea-bed Committee. That draft article was based on the fundamental principle that all sea-bed operations should be conducted directly by the Authority, which might enter into contractual arrangements with natural or juridical persons while retaining continuing effective control. In spite of the views which had been expressed to the contrary, objective evaluation of the draft article showed that it had been formulated in a spirit of compromise: in addition to the initial proposals by the Group, it contained an element of flexibility in the form of provisions enabling the Authority to enter into contractual arrangements with third parties. However, the proposal had not satisfied the developed countries, which had insisted that the basic conditions of exploration and exploitation should be considered at the same time. The Group of 77 had acceded to that demand and had submitted comprehensive proposals on the subject.

56. A desirable feature of all the proposals of the Group of 77, whether on article 9 or on the basic conditions of exploration and exploitation, was that they were aimed at achieving a compromise solution and set forth relatively flexible formulations. They were politically important since they expressed the common position of over 100 countries on issues affecting the whole of mankind.

57. The debate on the establishment of a working group had shown the importance which delegations attached to the mandate conferred on that subsidiary organ. Unfortunately, the Working Group had not begun real negotiations on the issues of principle. It was still at the exploratory stage and no firm positions had been adopted on the negotiations. Nevertheless, the establishment of the structure for future negotiation could be regarded as progress.

58. Negotiations had not yet begun because some delegations were reluctant to commit themselves with regard to the future régime until other issues before the Conference was settled. Unfortunately, the political will to negotiate and to make firm commitments was still lacking.

59. At the current session of the Conference, the First Committee had endeavoured to devise a régime and international machinery which would guarantee that the resources of the international area were exploited for the benefit of all mankind, particularly the developing countries. The interests of the developed countries could no longer be isolated from those of developing countries and the prosperity of the former could no longer be achieved without the development of the latter. The developed countries which possessed the technology and financial capacity to exploit the resources of the sea-bed should bear that fact in mind. The system to be established for the exploration of the area and the exploitation of the resources therein could be viable only if it protected the wealth of the oceans from selfish exploitation. It was to be hoped that the developed countries would recognize that the Authority should be the custodian of the common heritage; otherwise the resources of the area beyond the limits of national jurisdiction might never be exploited for the benefit of mankind as a whole.

60. Mr. KEITA (Guinea) endorsed the views expressed by the representative of Tanzania with regard to the summary record. He noted that positions had remained virtually unchanged following the report by the Chairman of the Working Group. In that connexion, he shared the concern expressed by the President of Mexico at the 45th plenary meeting, who had stated that the great industrialized Powers wanted the competence of the Authority to be limited to the allocation of concessions and exploitation permits. Those countries wanted to make the Conference the Yalta of the Law of the Sea, although more than four fifths of the international community fully supported the revolutionary concept of the common heritage of mankind, as clearly stated in alternative B of draft article 9, submitted by the Group of 77. That proposal was aimed at protecting the resources which belonged to the international community for the benefit of mankind as a whole. It had been said that the Authority would interfere with efficiency of exploitation, but what was really meant was free-enterprise exploitation, a principle which had been criticized by the majority of delegations at the Conference. In that respect, the Caracas session had been a success since it had provided the opportunity to define the respective positions with regard to the noble ideals in the Declaration of Principles.

61. His delegation, faithful to the ideal of international co-operation based on justice and mutual benefit, had participated extensively in the elaboration of draft article 9 submitted by the Group of 77, which had received the support of many other countries. Guinea considered that any assistance which did not have the ultimate aim of enabling developing countries to become self-sufficient should be rejected. The countries opposing the document submitted by the Group of 77 wished to make the sea the private domain of those who possessed the requisite technology, thus depriving all the others of the right to development. The thinking of his delegation was not directed against anyone, it simply emerged from the correct interpretation of the Declaration of Principles.

62. Considering the issues before the Conference from both the national and international angle, his delegation had stated categorically that it supported the concept of a 200-mile territorial sea; it was anxious to ensure the security and the development of the Guinean people and at the same time, it was convinced that social justice and development would prevail throughout the world.

63. Political debate was inevitable at the Caracas session: there was evidence of a cleavage between those who favoured a system of concessions and exploitation permits in the international area and the Group of 77, which was unanimous in rejecting that system. It was precisely that unanimity which would ensure the realization of the novel concept of the common heritage of mankind. It remained to be seen whether the poor countries, which had in the law of the sea Conference a unique opportunity to establish a new legal system, were prepared to accept their responsibilities towards their peoples.

64. Mr. RAKOTOSIHANAKA (Madagascar), speaking on behalf of the group of African States, welcomed the fact that the First Committee had been able to hold serious discussions on the key issues, particularly article 9 and the conditions for the exploration and exploitation of the international area. The

group of African States, for its part, had spared no effort, to assist the Committee, both on its own and within the Group of 77.

65. The régime proposed in alternative B of article 9 should save the world from a merciless conflict of interests. The group of African States attached the greatest importance to the text prepared by the Group of 77, and he hoped that, with the co-operation of all concerned, the concept of the common heritage of mankind would be translated into a formula that was really worthy of it.

66. Miss MARTIN-SANE (France), speaking on behalf of the group of Western European and other States, congratulated the Chairman. It was only at the end of the session that delegations, having firmly stated their positions, had begun a dialogue within the Working Group. Since it had been decided that there would be no voting in the Working Group, it was comforting to know that, if its members did not succeed in reaching agreement on a particular issue, they could appeal to the good offices of the Chairman. They would surely do so more and more frequently.

67. Mr. KASEMSRI (Thailand), speaking on behalf of the group of Asian States, congratulated the Chairman of the Committee and the Chairman of the Working Group. He also thanked the Secretariat for its co-operation, and the Government and people of Venezuela for their welcome. The group of Asian States expected the Geneva session to be even more fruitful.

68. Mr. KOPAL (Czechoslovakia), speaking on behalf of the group of Eastern European States, expressed his thanks to the Chairman of the Committee and to the Secretariat. Even though modest, some definite progress had been achieved, and positions had been clarified. If all delegations demonstrated a spirit of understanding and a genuine determination to reach a compromise, further progress would be achieved at Geneva.

69. Mr. FONSECA TRUQUE (Colombia), speaking on behalf of the Latin American countries, emphasized that the positions adopted at Caracas on the question of who might exploit the area had been clearly defined for the first time. The adoption of a common position by the countries of the third world had created a constructive atmosphere, and he hoped that progress would be achieved at Geneva, as was to be expected from the report submitted by the Chairman of the Working Group. He thanked the Chairman and officers of the Committee, the Secretariat, and also thanked the Government and people of Venezuela for their warm hospitality.

70. Mr. RATINER (United States of America) said he wished to be associated with the congratulations addressed to the Chairman of the Committee. He thanked the Secretariat, the officers of the Committee and the Chairman of the Working Group.

71. Mr. KO Tsai-shuo (China) said he was sorry to have to point out that, in the document just distributed (A/CONF.62/C.1/L.11), the province of Taiwan was included in the list of countries in table 3. His delegation requested the officers of the Committee to take immediate and effective steps to correct that error.

72. Mr. PRIETO (Chile) recalled that the document in question had been submitted by his delegation. The tables annexed to that document contained data for 1967 and 1968 and had been prepared on the basis of documents dating from 1968 and 1969. The error referred to was a purely technical one, and should of course be rectified to take account of the current situation.

73. The CHAIRMAN said that the Secretariat would make the necessary adjustment.

Concluding statement by the Chairman

74. The CHAIRMAN said that in his statement of 10 July at the 1st meeting, he had emphasized the importance and the historic nature of the mandate assigned to the Committee, and had particularly stressed the fact that the concrete realities of the new revolution of thought relating to ocean space would be worked out in the First Committee. The Committee's work had more than demonstrated the correctness of that view.

75. He congratulated the Rapporteur on the care with which he had prepared the statement of activities so as to avoid any controversy. No report of that nature could of course replace the summary records of the meetings, and not even the summary records could truly reflect the progress achieved on any particular issue.

76. In spite of the adoption of the concept of the common heritage of mankind as applicable to the area and the resources lying beyond national jurisdiction, there were still many difficulties to solve.

77. The Committee's task had therefore been to resolve those difficulties through negotiation. The documentation of the seabed Committee had revealed a few broad and well-defined issues which the First Committee had to resolve if it was to succeed; but over 55 States that were members of the First Committee had *not* participated in the preparatory work of the Committee, and they had therefore demanded the opportunity to express their views on the issues and their priorities. In that connexion, he congratulated the new members on their spirit of co-operation.

78. The Committee had decided to devote most of the time available to informal meetings; thanks to the freer and franker exchanges of views that had thus taken place, it had been possible to eliminate obstacles and define the positions of delegations on some very important questions, such as the economic effects of exploitation and the conditions of exploration and exploitation. It had also been possible to review and tidy up the first 21 articles on the international régime and to take out some brackets, alternatives and foot-notes.

79. The main issues which must be negotiated were now very clearly defined.

80. In the course of the debate, it had been further underlined that the first thing to determine was who would exploit the zone and how. The alternatives for draft article 9 spelled out the different positions, which were now very clear, and there had been grounds for hoping that the negotiations would be successful. However, the importance attached to off-shoots of the main issue and to the content of proposals relating thereto had made the discussion of the conditions of exploitation, namely, of how the zone was to be exploited, a crucial element in the negotiations. Yet another issue had drawn imperative attention—that of the adverse effects of exploitation of the resources of the area on the economies of land-based producers of similar resources, and on the developing countries as a whole. A consensus existed as to the need to take measures to ensure that such adverse effects were minimized where possible. It should be possible to provide the machinery with the means to take such measures when necessary.

81. A major choice faced the present generation; it had to choose between exploitation by the new International Authority, on the one hand, and the *de facto* monopoly of a few technologically developed countries under a licensing system, on the other. The alternatives under article 9 would seem to show a somewhat less rigid position on the part of the supporters of alternative A, permitting the participation of other entities under a contractual relationship with, and under the control of, the Authority. He believed there was room for more movement there, especially on the part of some of the technologically developed nations. That was why, following a request to that effect, he had begun preliminary negotiations on that issue some two weeks before. The Committee had then decided to establish a working group to negotiate both on that issue and on the conditions of exploitation. Realistic negotiations had therefore commenced at the level of the Committee, de-

spite the complexity of the issues to be resolved, the diversity of national interests and needs, and the revolutionary character of the ideas that had been proposed. That was definitiely progress.

82. The negotiations had not led to any results that could be called spectacular, but all the difficulties which had stood in the way of negotiations had been thoroughly discussed. No agreement had yet been reached on treaty articles; to achieve that purpose, differences must be reconciled. He thought that it would be advisable to hold informal consultations between delegations and groups before the Geneva session. It would not be an impossibility to agree on treaty articles, but that could be done only if the ideas enshrined in the Declaration of Principles prevailed. It was no longer possible to tolerate a world dominated by a privileged few to the detriment of all the others but, on the other hand, there was nothing in contemporary trends which justified the conclusion that the young developing nations merely wished to bring down those privileged few and establish a new dictatorship of their own. In order to rule out any such eventuality, the new international community must be given the means to create conditions of peace for the survival of man. The needs and interests of all could be met by rational exploitation of the common heritage of mankind. Endeavours should be concentrated on guaranteeing the equitable distribution of resources and benefits, not on the quest for new privileges or the perpetuation of acquired privileges. It was not a question of sharing stolen property but of organizing, on the basis of equality, the management of the common heritage. The adoption of a universal régime and the creation of new international institutions that responded to the realities of the modern world would help to promote real and lasting peace for the generations to come.

83. In conclusion, he expressed his gratitude to the officers of the Committee, the Special Representative of the Secretary-General, the heads of the various regional groups and the staff of the Secretariat. He thanked the Venezuelan Government and people once again for their hospitality and declared the work of the First Committee of the second session of the Conference closed.

The meeting rose at 6.30 p.m.